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Reforming the Incorporated Societies Act 1908

1.0 INTRODUCTION

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of 55 groups with a concern for the environment. We welcome this opportunity to make a submission on the Law Commission's Paper which we found interesting and largely constructive – though a Word version on your website would have helped us in making a submission. ECO has been involved in issues of conservation, environmental administration, policy and law, resource management and land-use policy since its formation nearly 40 years ago.

This submission has been prepared by members of ECO Executive. We find ourselves often offering informal advice to members of the community on how to proceed organisationally, and often advise people to form an incorporated society, particularly regarding matters relating to the Resource Management Act 1991, and of course we are one ourselves.

ECO keeps a general watching eye on issues that relate to civil society and relationships with government, and in particular on matters to do with New Zealand as an open society and on open government.

2 Our Comments on the Paper.

2.1 General Comments:

ECO welcomes the paper and the thought that has gone into it. We know little about some of the matters discussed and more about some other areas, so we found your paper both instructive and thought provoking. We agree with much of your paper, disagree with some of it, and have spotted a few issues that we think could benefit from your attention.

ECO is grateful for your consultative approach.

We will number our comments in relation to your paragraph numbers in order that you can easily relate our comments to your paper.

2.2 A matter not covered by your paper: Organisations of Organisations.

Most of your discussion seems to be primarily about incorporated societies that comprise individual persons. Obviously some of your discussion could apply to any form, but since ECO is an organisation of about 55 member organisations, we thought some discussion of organisations of organisations might be worthwhile, though we couldn't really think of many issues around these that needed special attention.

One matter that we have differing advice on is whether organisations that belong to incorporated societies themselves have to be incorporated and if so, why? Our view is that unincorporated groups should continue to be members in the same way that people are.

2.3 Classification

The UN International Classification of Non-profit Organisations is useful and we find it helpful to be reminded of it. It clarifies for us that non-profit organisations have the ability to make surpluses so long as the purpose is not profit.

2.4 Social Capital and civil society

We affirm the need to have societies both incorporated and unincorporated and consider that the role of such societies is very important for a variety of reasons, both intrinsic and for the social capital that they hold and develop and for the work they do.

We think the role of organisations can be considered from a variety of analytical angles. One that we find helpful is the economic idea of rival and non-rival benefits. Rival benefits are those that are captured by individuals, non-rival benefits accrue to all. We consider that often organisations working for private benefits will have a different character from those which work for a broader public good. This particularly true when the latter is largely non-privately appropriable, as for instance protection of the environment which is both non-rival and non-excludeable, so those who do this cannot capture private benefits and thus are largely not able to accrue funding for what they do.

These organisations stand in contrast to those that are primarily for private benefit – be they industry organisations, or private, non-charitable trusts or groups for the benefit of members, such as reading groups, drinking clubs or the like.

3.0 Your Discussion and Your Questions: Our comments in Response

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?

Yes, so long as it does not serve as an excuse to exert government control over us. Distrust of government has grown in the last few years, particularly with the current emphasis by the government on business at the expense of civil society.

1.19 We agree that there are good reasons to have requirements for disclosure of conflicts or potential conflicts of interest, and that there should be low-transactions costs mechanisms for dispute resolution.

Q2 Is the current limitation of liability sufficient?

We agree with your suggestions in 1.19 but are not quite sure what else you have in mind for Q2.

1.21, 1.22, 1.24. We consider that the Charities Commission has made some counter-intuitive decisions about the purpose or activities of organisations that it has disallowed their charitable status. We would like to see the definition of charity broadened to allow organisations such as Greenpeace and National Council of Women, but we note you have a separate paper on the Charitable Trusts Act 1957. We are unsure whether you will address this issue but hope you will. We find the UN definition that you cite on p5 of your report both interesting and helpful on the nature of not-for-profits which nevertheless make surpluses.

Recent Australian Court cases and UK legislation has supported a broader scope on charities than New Zealand's rather limited definition.

1.26 We agree the Companies Act 1993 would impose rules too onerous on some societies, many of which are too small, too informal and too otherwise motivated to merit the kinds of rules that are applied to companies. Yes, societies do value being seen as different from companies, and indeed we are different.

1.27 We know nothing about the Ag and Pastoral Societies Act 1908 and the Industrial and Provident Societies Act 1908 so have nothing to say about these. We do sometimes wish that industry organisations such as Federated Farmers and mining or oil or fisheries industry organisations were more visibly differentiated as pushing private commercial interests. We consider that they should be distinct from groups that are devoted entirely to public or civil society purposes.

1.34 We have difficulty with some of the decisions of the Charities Commission though, and until that problem is sorted, we consider that organisations should be able to be incorporated and to apply for "donee status" with IRD, without having to apply for charitable status.

1.35 Yes, differentiation of the public purpose groups from the members' purpose is useful, but it may be hard to determine. What for instance of organisations such as ECO, whose purpose is a public purpose, the protection of the environment, the future, and promotion of sustainability which in economic and lay terms would be considered "public" (in economic

terms that is both non-rival and non-excludeable) but we also aim to help our member organisations who themselves share our objectives of the public good?

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?

We consider there are good reasons for groups that are non-profit to be able to get that status and donee status without having to get Charities Commission registration, given the current interpretation and decisions of the Charities Commission, and in the light of the decision to fold the Charities Commission into the Department of Internal Affairs where it will be subject to Ministerial, and hence political direction.

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?

Yes, we do, but there may be difficulties if members themselves are public interest or public benefit groups.

Many civil society groups will confer benefits on both the members and on society – for instance refugee and migrant groups, tramping clubs, and so on. There will be positive externalities from many groups' activities. On the other hand, industry lobby groups may save transactions costs and provide a shield for members, but often these are not truly public interest groups. So, it may be that there should be three categories?

Q5 Should Agricultural and Pastoral Societies be incorporated under the new statute?

We have inadequate information to answer this.

Q6 Can Industrial and Provident Societies that are conducted for business purposes be incorporated under the new statute?

We have inadequate information to answer this. Do industrial societies cover unions? If they are business purposes, then probably not, but presumably cooperatives need different rules than other companies?

1.36-1.41
We agree that organisations may wish to remain unincorporated for a variety of legitimate reasons and that easily available rules and simple low transactions cost registration may help a good deal.

2.3 In general, we agree these matters should usefully be covered by constitutions.

2.4 We consider the matters required by the 2009 NSW Act to be generally reasonable, so long as there is flexibility, for instance, to decide to have no disciplinary rules, should they so choose.

Q7a 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?

Yes.

Q7b Have you any other suggestions about other types of rules that might be required?

Ballots rather than postal ballots?
Rules for AGMs and SGMs?
Matters of competence of the Committee or Board v matters of competence of the body as a whole?

2.6 Yes, we agree. Doesn't the Interpretation Act 1999 already allow writing to include electronic forms, or does "tangible" restrict this to exclude electronic forms?

2.7 Yes, we agree – and we often supply people with sample constitutions of relatively simple organisations that they can adapt for their own groups.

2.11 We agree with the idea of default rules that can be substituted by different rules should the organisation wish.

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?

Yes, so long as existing organisations can retain what they have and perhaps have defaults to areas not covered – so long as the default rules are simple and do not embody governmental controls.

Q9 If there is to be a division between members' benefit and public benefit societies, should there be different generic codes of rules?

Yes, we think so, so long as there is recognition of groups with both public and private benefit, different from say, private benefit business interest groups.

ECO sees some difficulties with drawing lines here though. At what point are professional groups, like accountancy or medical professions considered, if say, self-regulating and setting standards for a profession, to be of public or of private benefit?

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?

We think probably not, or at least there should be both a clear and effective process for notifying groups of new rules (not buried in other material in dry reports) and at least three years for groups to change their rules should they want to opt out of the default rules.

2.13 We agree principles of natural justice should be available and expected and provided for in rules.

We wonder if there is a case for an incorporated society ombudsman to aid this, appointed by, say, Parliament, rather than by a government?

2.15, 2.16 We agree but consider that guidance should be available as to how to fulfil the requirements of natural justice, given this may not be self-evident to those unused to thinking about such concepts.

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?

Yes, we do agree particularly since it provides all sides of the dispute with a way forward. It might be useful to give guidance on the guidelines for arriving at agreement on the qualities that might make someone an "unbiased decision maker".

Our previous suggestions of an incorporated society ombudsman could also help.

Q12 How should the requirement be phrased?

We are not experts in these matters, but consider that the Victorian Language is adequate.

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.

We can see no particular rationale for 15 and in the interests of simplicity suggest five is a better number. This then raises the issue of how many organisations are required if they are not natural persons? Should this remain at three? But do these have to be themselves incorporated societies or not? Does this matter after the initial incorporation?

Three organisations seems adequate, but two might also be suitable given the numbers of members each group may have?

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?

ECO itself does have a Secretary, Treasurer, Co-chairs and so on, but we know some organisations are wary of hierarchies, and some individuals are wary of carrying full responsibility for compliance. As such, we suggest that organisations be asked to supply a contact for notification of the statutory requirements, and perhaps be encouraged to have a designated person or committee, but that it not be legally required that they have such.

Q15 Is it appropriate to move towards a name regime similar to that in the Companies Act?

No, we think the legal remedies are far too expensive for most societies, and that the system should remain as it is, so that there is an officer of the Crown who can simply make a ruling.

The alternative approach is involving an incorporated society ombudsman.

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?

No, we see no call for a regulator of incorporated or unincorporated societies, and we consider that even the requirement to provide annual accounts is often unnecessary work for small organisations with low levels of activity, either because they just do things without formality or because they have a watching brief and only spring into action periodically (eg when an RMA issue arises in their locality or area of concern).

NGOs in general should not be regulated by government since civil society has every right to form associations independently of government and government approval.

It might be that there is a case for a ombudsman for civil society to use when there are disputes, but that this should not be a government regulatory function.

Q17 Is a general variation power justified? Who would appropriately exercise it and what safeguards ought to exist to prevent its misuse?

We are not aware of such problems, but consider that there should be a low-cost system for remedying any problem that may exist, and the registrar might be the way to go, given most groups won't be able to afford court decision making. In our view, any proposal should follow a resolution of a pre-notified AGM or SGM of the society, and should have to be documented to have the approval of the whole organisation, not simply a committee.

Chapter 3, Good Governance

We agree that there are sound grounds for good governance rules and protocols, but we are concerned that anything modelled on a for-profit professional organisation such as a company may be unwieldy and cumbersome for most non-profits, particularly those relying entirely or almost entirely on voluntary activity.

Q18 Do you agree that the new Act should provide a 'code' of duties that committee members must observe in their decisions?

Q18 Yes, we agree a modest code of activity is a good idea, so long as it is appropriately scaled to the size and purpose of the organisation, and focuses on good practice and principles of action.

Q19 If so, what duties ought to be included in the code?

3.5 Re your bullet points (how much easier it would have been with numbers!)
We agree to a requirement to act in good faith for the organisation.

Re bullet point 2, we are unfamiliar with the Companies Act except for the bits you reproduce, so can't comment on the whole of it. In general, constitutions should be observed.

Re bullet point 3, NGOs sometimes are formed, specifically to moderate risk to members, for instance to take cases under the RMA which, once the Environment or higher courts are involved, are inherently risky. Similarly many activist groups are purposely involved in what staid corporate regulators may consider to be risky. So this would need to be crafted to ensure that anything designed to protect creditors cannot be used to freeze off civil society actions under the RMA or other laws.

Q20 In what respects might the Companies Act obligations need to be altered if included in a new Incorporated Societies Act?

We are not familiar with the Companies Act and so cannot comment, except in relation to the obligations that you record from S131-137, and our comments on that are in the section above.

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?

3.8 Conflicts of interest. We agree that there should be avoidance of conflicts of interest, though some may be simply a matter of disclosure to the Committee, rather than absolute avoidance. For instance many environmental NGO people may belong to more than one group, or people may have professional work distinct from their NGO governance work. So long as there is a requirement for disclosure and good faith, most of the problems may be dealt with. We would welcome rules that made hostile infiltration of NGOs an illegal practice, to stem the use of infiltrators and moles by corporates such as Solid Energy who want to spy on groups campaigning for better environmental practice. For that matter, government spying should also be limited by the statute to preserve a free and open society.

Re Q21 We agree on the need for some minimum standards, but we think these should not be the same as with corporates. There should be a requirement to disclose conflicts of interest where these relate to work for organisations that are hostile to the purpose of the organisation, not simply personal financial or other 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?

Q22 Yes, we do agree on disclosure of "material personal interest", but the issue then is disclosure to whom? Would this be to other members of the Committee or are disclosures to the public or to funders or what envisaged by you? We would have thought that the common requirements of disclosure of material personal interest is fine, but perhaps disclosure should be only to the Committee or perhaps to public funders?

As discussed in relation to Q21, we would like to see a compulsory disclosure to the organisation of any engagement by any party to spy on the organisation involved and penalties not only for the spy but for the principal who has retained the spy. We have seen too many of these examples and know the damage they do to social capital and the chilling effect on open

discussion – and sometimes they are actually agents provoking bad behaviour to bring an organisation into disrepute.

Q22 – Yes and Yes, but not necessarily public disclosure except where public money is involved, and then some requirement could be to inform the public funding agencies (if any) for any particular project.

3.14 We assume with the reference to runanganui, you mean to the governing committee of the board?

3.18 ECO Exec's practice is that conflicted members must disclose such conflicts, may be part of an initial discussion and, depending on the significance of the conflict, either abstains from voting or leaves the room for the latter part of the discussion and any vote. We have not codified this practice – it is simply how we normally do things.

ECO also has rules about people in close relationships not being part of any decisions with interest conflicts, and we have a rule that two people from such a close relationship cannot both sign cheques, though both can be signatories but may not sign for the same thing, eg a cheque.

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?

3.19 ECO considers that most failures to disclose are likely to be trivial but a few cases seem to be substantial enough to warrant enforcement action.

We think criminalisation for oversights is too extreme in most cases, since people are often volunteers and working with little time and money.

Mostly civil action will be too expensive for groups and their members to use, so we suggest that there be a low-cost disputes tribunal and possibly an Ombudsman for such events.

Major malfeasance should be able to be referred to Police and the courts, since civil remedies will rarely be affordable.

General Offence for the Dishonest Use of Position?

Q25 Does there need to be a general prohibition on the "dishonest use of position"?

3.25 Dishonest use of a position should be discouraged, but the points a) and b) in 3.25 may be in the eye of the beholder and not always obvious. The language below leaves a lot open to interpretation:

"A committee member of an association who uses his or her position as a committee member dishonestly with the intention of directly or indirectly:

(a) gaining an advantage for himself or herself or for any other person, or
(b) causing detriment to the association, is guilty of an offence."

For some groups, what is detrimental to the association or not may depend on the time frame. Speaking out about a government or corporation that is doing bad things (say to the

environment) may be rewarded with various abuse and sanctions from those in power, and could be regarded as detrimental to the association, but then again, the harm may be that which comes to whistle-blowers who in the long run are doing the cause good.

On the other hand, the sort of infiltration that some environmental groups have suffered should be sanctioned, and is dishonest and would presumably be caught by such a general provision. But this may not be strictly "committee" members. Is there some other way of phrasing this which would make dishonest practices such as infiltration, reporting on, and other such by someone to some other party a crime?

Such practices are not only damaging to the organisation but also to trust and decency, to the open society and can damage, and be calculated to damage, both the organisation and trust in wider communities.

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?

We are unsure how often such powers would be useful. We'd be concerned that such powers could be misused by governments with scant regard for civil society rights. Any such powers would have to be very tightly controlled to relate to significant misuse of public money or something of that kind, but we would worry that a creative government could misuse powers to shut down dissent.

Such powers as discussed in 3.27 seem to relate to major misuse of money, and since few organisations have much money to misuse, perhaps some threshold or other test is required? Overall the concern seems to be with an extreme end of the incorporated societies and we are unconvinced that the political risk of misuse would be warranted by the actual amount of the misbehaviour envisaged.

Q27 Would enabling the Registrar to take actions on behalf of the society to recover compensation or seek an account of profits be appropriate?

This would be a much less politically risky way forward and would be preferred by us. However, it might be assets rather than profits per se that would have to be protected.

Financial Reporting:

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 on the society, and how ought that size be judged?

We are not at all convinced that there needs to be the reporting that is envisaged in your discussion. We know a number of organisations that are ticking over with activity but not spending - the Wellington Environment and Community Association, WECA a small local organisation, keeps having to submit annual accounts even though it mostly has only about $100 in the bank and only spends money occasionally if an RMA case appears in the locality, at which point members chip in, but that is only every few years. In between time and official attention is lost with submitting annual accounts. We consider that there should be some form of threshold under which no accounts have to be furnished.

Auditing is expensive and though ECO does retain an auditor, many of our member groups do not. We consider that requiring compliance with complicated standards and auditing is expensive and make-work for accountants and is unwarranted. We have an accountant who is trained as well as operating MYOB, but his view is that the newer more onerous proposed standards will make it difficult for volunteers to keep up with accounting requirement. For small organisations the requirement for onerous accounting conditions are not required.

The suggestion that groups with $40,000-$5m should have to submit to the same standards as apparently is suggested by the government is in our view an absurdity and quite out of scale for groups <$150,000. We do not believe government or professional accountants should make rules for organisations that are essentially voluntary and small. Such a move would almost certainly be modelled on companies, fit the voluntary sector badly and be likely to simply drive many organisations to operate as unincorporated associations, which in our view would be counter-productive.

If size-related variation in standards is adopted, then we suggest that there be consideration of the source of income. Thus member-based subscription type income, should not be considered, and auditing only required for the provision of public money over a certain level or for organisations with high levels of donations.

What is not clear from your paper is why there should be all this control on the voluntary sector, unless there is some form of public money or public donations involved.

Chapter Four: 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?

ECO can see no reason why companies have the powers and privileges of a natural person when incorporated societies do not.

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?

This is rather outside of the competence of those writing our submission, but probably the Companies Act mechanism is preferred, so long as there is a means for members to restrict organisations to their purpose.

Chapter 5: Resolving disputes between members and their societies:

ECO strongly endorses the cited "guiding principle of current New Zealand case law is that incorporated societies should, by and large, govern their own affairs, and that judicial interference should be an exception." (p32 para 5.1).

We agree that clear rules may make recourse to courts less likely, and that disputes resolution mechanisms should be in constitutions or rules. We consider low-transactions cost dispute resolution mechanisms should be provided for, and that perhaps an Ombudsman type person could be available to

associations, provided by the state as part of the insurance of social capital, rather than on a cost recovery basis which will put it out of reach of most societies.

All of the routes listed in 5.3 would be beyond the means of most of ECO's members with perhaps only two of our 55 or so member bodies likely to be able to afford any of the mechanisms cited.

We agree other mechanisms are needed, and consider that disputes resolution rules should be provided in the rules of an association.

We are not familiar with the gory details of the Australian Wilderness Society's recent travails but we are aware that things went awfully wrong between a whole range of parties involved, from the board and CEO v staff to various branches against each other, and against the board and CEO or staff and so on. We know a great deal of agony was suffered by the organisation and those embroiled: it would be good to find means to avoid such horrors. Lack of money and resources is difficult but there are moments when we can be grateful for such being removed as an object of contention!

5.6 -5.9 We agree that disputes should be dealt with by other means than the courts if humanly possible: we would like to see as well as dispute resolution provisions in constitutions, other low cost fora for resolving disputes, like the Small Claims Tribunal, but with more of a focus on resolving conflict than simply adjudicating.

Judicial Review

We consider that judicial review is an inappropriate mechanism in the affairs of societies, particularly if outsiders can take such action. Court action is a mechanism that could then be used to bankrupt societies or to distract them from their primary objectives.

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?

In a limited way, yes we do agree, but the Victorian model as cited includes, as cited by your paper:

"The Victorian statute was amended in 2009 to include a remedy for oppressive conduct defined in the following way in section 14C:

(a) oppressive conduct, in relation to an incorporated association, includes conduct that is—

(ii) contrary to the interests of the members of the incorporated association as a whole; and …"

Given that in many cases of environmental organisations, the interests of members, even as a group, is not the objective of the organisation, some other form of words that relate to the purpose of the organisation is needed.

Thus we suggest that (ii) in para 5.26 be reworded to be
"(contrary to the ~~interests of the members~~ **purpose and goals** of the incorporated association ~~as a whole~~; and…"

In other respects we agree with the proposals in Q31.

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?

Yes, we agree, but consider it should not be styled as "disciplinary procedures", rather, "disputes procedures".

We can see that there may need to be disciplinary procedures for those associations that are professional standards organisations, but this will not apply to the majority of societies.

Q33 Should there be any limits on the types of cases with which a court can deal? If so, what types, and why?

We consider that scale is of the essence, with non-court processes to be used if at all possible. Further, it should be a matter of last resort.

Q34 Should the new legislation include provision for derivative actions by society members, similar to section 165 of the Companies Act?

We would have some concerns over how such powers could be used, for instance by parties hostile to environmental protection or whatever the purpose of the society to tangle an organisation in actions. Mostly when there is dissatisfaction with a society, people use "voice" and "exit". This, as with a number of other issues then raises the question of the extent to which the society has a monopoly on some certification or other function, as with professional certification organisations. If there is some monopoly power, then there may need to be different rules compared to when people can use disputes procedures and then leave if they are in serious disagreement.

It may be that if derivative actions are permitted, that this be restricted to members, not outside parties. Moreover perhaps some threshold should be required so that a single dissident cannot tangle the society up in tendentious actions. Bear in mind that most groups are run by volunteers, busy people doing things in their own unpaid time, so the cost of taking time out for such tangled actions is very high both for individuals and the organisations.

Q35 Do you agree that a general remedial power should be given to the court to do what is "just and equitable"?

Yes, but some sense of scale may be needed.

Q36 Have the current provisions about branches created any problems, and how might the provisions be altered to avoid those problems?

See answer to 37.

Q37 Is there still a need for branch societies?

Yes, we think so – given that they exist, as for instance with Forest and Bird, there may be good reasons for both a central organisation and some degree of local autonomy.

Chapter 6: The liquidation and Dissolution of Societies.

Q38 Have you experienced problems with the liquidation or dissolution provisions?

We know that the continued requirement to file annual accounts is often a burden when trivial changes are involved. We know too of organisations that have been deregistered simply because notices did not get through to the organisation because of turn-over of members or secretaries. We consider that annual returns for many groups are unnecessary, particularly if they are low-budget, watching brief organisations like WECA, referred to above. In our view some degree of tolerance or threshold should be introduced to allow organisations to decide not to file returns without being de-registered for apparent lack of activity.

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?

We do not have experience in these areas. The double meeting requirement would seem like a useful safeguard against action that is ill considered. It also allows the organisation to ensure that it is not being dominated by a disaffected faction.

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?

The issue of public benefit is fairly clear for environmental organisations, but we can imagine other organisations where looking after members may have public benefit. An example might be looking after people with particular diseases or disabilities, or people such as refugees who need help, but in so doing, society is helped too. There might be not two, but three types of organisations:

1 Those with public benefits;
2 Those with both private and public benefits
3 Those solely for member benefits (eg industry advocates).

Public benefits can be in the eye of the beholder. ECO considers preventing mining in conservation land to be a public benefit – Straterra probably disagrees.

As to the distribution of assets on dissolution, it is our view that the assets should go to organisations with similar purposes or a successor organisation, not to the state.

Q42 Should there be a provision for mergers of societies?

Only with the agreement of both – there should not be hostile takeovers. We are mindful of the dispute between members of the Destiny Church and the Maori Women's Welfare League, which was an attempt at an internal takeover, but the same could presumably happen for groups that are already separately working on matters.

Q 43 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?

If the law is changed, then re-registration should be costless to the societies and automatic, but with a time limit for re-writing constitutions – at least 2 or 3 years, given usual required notice periods for constitutional changes.

Q 44 How can we minimise the costs for societies in the transitional period?

Not charging for re-registration, providing sample rules that can be adopted, having advisors on hand that are not charged for. A range of model rules to assist organisations would also help. Also consultation with major stakeholder groups like ECO would help to smooth the transition.

Many thanks for the extension provided for us to make this submission.

4.0 Our Contacts

Please contact ECO at eco@eco.org.nz tel 04385-7545 and copy in ecowatch@paradise.net.nz and Cath.Wallace@paradise.net.nz for any arrangements about this submission.

Sincerely,

Cath Wallace, Barry Weeber,
Co-chairs of ECO.