

Submission on Consultation on regulations for the Incorporated Societies Act 2022

Your name and organisation

Name	Joanna Pidgeon – Property Law Committee
Organisation (if applicable)	Auckland District Law Society
Contact details	[REDACTED]

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Responses to questions

Part 2 of the discussion document: section 254

Matter	Question
<p><i>Prescribing information that must be included or provided</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(a)?</p>
<p>1</p>	<p>These proposals generally set out the expected requirements.</p> <p>References to ‘contact person’ are taken to include all contact persons appointed by societies.</p> <p>S192(c) – on amalgamating incorporated societies the proposal should also set out the name of the nominated entity that will receive surplus assets on liquidation.</p> <p>Sch 3 cl (3)(b) In terms of which societies will be listed in the Regulations will there be an opportunity for statute based incorporated societies to ask to be included as an option?</p> <p>There is still some uncertainty as to the interface of the Incorporated Societies Act 2022 and its application to statute based societies without conversion. Some statute based societies are registered currently under the 1908 Act and it appears from s257 that under the 2022 Act if they are listed in the regulations they may decide to convert. There is no reference to what happens to existing statute created societies which had already registered under the 1908 Act – they will presumably have to reregister, or face automatic obsolescence - or do they continue as a statute based society? For those statute based societies who choose not to convert there is a presumption that they are not an IS and are therefore not subject to the 2022 Act.</p> <p>There is no requirement for the statute based society seeking to convert to ensure it is keeping the same essential purpose as under the statute – as long as the majority of the members vote it can incorporate whatever constitution it requires. Should there be a requirement for say an Attorney General sign off on the proposed conversion?</p>
<p><i>Prescribing the manner in which things must be done</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(b)?</p>
<p>2</p>	<p>S185(1) and (2) – the regulations when referring to the society seeking to be restored – these will need to be worded to address the issue that the society will no longer be in existence and the officers will no longer be officers once the society has been removed from the register.</p> <p>Thought will also need to be given as to whether removal has been due to a past officer or contact person leaving and not passing on login information as to how the application can be made if the person with the authority has moved on (that is, removal arising out of a ‘technical default’ rather than a legal deficiency).</p> <p>S177(2)(b) – the notice should be given to the contact persons and the officers.</p> <p>S186(2) – the notice should be given to the contact persons and the officers.</p> <p>We do not agree with the proposal that no regulations be made in relation to prescribing the manner in which a committee should notify members of a conflict of interest. Failure to prescribe regulations will greatly weaken the effects of the conflict of interest provisions in the legislation or could lead to ineffective notification. There should be a requirement to notify in writing at the members’ last email addresses and could also be on the society’s website. However posting on the website alone is insufficient as many society’s websites are quite static and members don’t have frequent interaction with their websites.</p> <p>S193(c) – notifying the public of amalgamation – posting on the website (if the society has one) should be addition to publishing in the local newspaper.</p>

3	<i>Authorising the Registrar to determine the manner in which things must be done</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(c)?
We agree.		
4	<i>Declaring persons to be, or not to be, officers</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?
We agree that no regulations are required at this stage.		
5	<i>Prescribing circumstances related to independent committee members</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(e)?
<p>Fundamentally there is a principle that Societies exist for and are governed by their members. We can however sometimes see the benefit of having experienced governance on a committee when the members do not have the requisite skills, particularly when they are dealing with larger sums of money and national and regional sporting and recreation societies.</p> <p>We propose the ability to appoint if either criteria is met, rather than having to meeting both criteria.</p> <p>In our view members should be required to be the majority of the Committee to ensure that Members ultimately retain control and that independent committee members do not outnumber members. An exception can be made for the Veterinary Professional Insurance Society Incorporated and any societies which have similar independence requirements but these should be the exception.</p>		
6	<i>Prescribing jurisdictions whose officer disqualifications we will recognise</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?
<p>We agree with Australian disqualifications and, while it may be more difficult for the Registrar to police Pacific and jurisdictions including but not limited to Cook Islands, Samoa, Fiji and Tonga, we agree that if an officer, whether appointed or in the process of being appointed, is listed on a register (to which section 47(3)(b) to (f) would apply if the register was in New Zealand) and has been banned in one or more of these jurisdictions, s/he should be banned from being an officer of an incorporated society in New Zealand. We can also see the merit in extending the search to English-speaking jurisdictions such the United States and Commonwealth countries, on the basis that a significant number of officers may have emigrated from one of these jurisdictions.</p> <p>We accept that the Registrar may not have easy access to some of these jurisdictions but the goal is the protection of the members and the society's assets.</p>		
7	<i>Prescribing the types of changes in officer information that must be notified</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(g)?
These proposals set out the expected requirements.		

8	<i>Regulating constitutional provisions on conflicts of interest</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(h)?
We support no regulations enabling the negation, limitation or modification of the conflicts of interest rules.		
9	<i>Prescribing societies that can restrict general meeting attendance to delegates</i>	Do you have any suggestions regarding regulations that should be made under section 254(1)(i)?
We do not think there should be the provision for constitutions to limit members from attending annual general meetings although some national representative organisations (where regional members are deemed members of the national organisation) may need to carefully consider how delegates might be entitled to vote at a national meeting. Membership societies should be transparent.		
10	<i>Defining the term 'total current assets'</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(j)?
We support the proposed definition of total current assets.		
11	<i>Prescribing additional requirements for the financial statements of small societies</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(k)?
We agree that at this stage there is no need for additional requirements for smaller societies.		
	<i>Determining the class of society that must have its financial statements audited</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(l)? For example, do you agree that focusing on the proportion of societies that should be captured is appropriate?
12	<p>S42(c) of the Charities Act 2005 allows for review instead of an audit for smaller organisations, and that should be an option for smaller societies here.</p> <p>These regulations would determine mandatory auditing thresholds but Societies must of course still be able to have in their constitution the ability to require at a lower threshold if desired. We are supportive of the mandatory threshold of \$3 million or more expenditure. Individual societies and their members may still choose to be subject to audit or review if under that threshold.</p> <p>We do not believe that assets is a useful measurement mechanism of itself. Some very old societies may have a significant asset base that has accumulated (and grown in value, if property-based) over time, yet annual income may be low. We propose that income is more important than assets in determining whether a society should be subject to review or audit and, for that reason, we believe that the tier system adopted for charities is sensible and workable.</p>	
13	<i>Setting infringement fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?
These infringement fee proposals are set at appropriate levels.		

<p>14</p> <p><i>Prescribing the information to be included in infringement and reminder notices</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(n)?</p>
<p>Payment of the infringement fee should be working days rather than ordinary days, and a slightly longer period allowed, as if a society has had a change of officers and so on it may take time to organise, arrange changes of signatory etc to access bank accounts.</p>	
<p>15</p> <p><i>Removal and restoration of societies from the register</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(o)?</p>
<p>Given that societies are usually run by volunteers we would encourage the notice periods to be slightly longer such as 30 working days to give the officers/contact persons time to deal with matters</p> <p>S177(1)(a) – notices should go to all contact persons and officers should be advised also.</p>	
<p>16</p> <p><i>Prescribing certain matters relating to surplus assets</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(p)?</p>
<p>While section 216(1) makes it clear that a liquidator is bound by section 26(1)(l) and can only distribute surplus assets in accordance with the constitution (essentially, at the direction of the members) – a principle with which we agree – we would like to see this reinforced in the regulations.</p> <p>In order to comply with section 216(2)(b), the regulations should prescribe a process whereby a majority of members may request the Registrar to distribute surplus assets of the society. Note that this is different to the application of section 208 (where members may resolve to put the society into liquidation) – there may be instances where a society wishes to divest itself of surplus assets but does not wish to take the terminal decision to liquidate the society.</p>	
<p>17</p> <p><i>Prescribing procedural requirements for surplus asset ‘resolutions’</i></p>	<p>Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 254(1)(q)?</p>
<p>There doesn’t seem to be a need for further prescription of procedural requirements at this stage.</p>	
<p>18</p> <p><i>Prescribing how documents must be served on a society</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(r)?</p>
<p>These methods of service are similar to other legislation and we support the extension of postal period due to delays in post</p> <p>Note 140(d) on page 37 of the ‘Consultation Document’ should be a reference to a society rather than a company. Note 140(c) refers to facsimile, a method of transmission which is quickly losing favour in the commercial environment. We suggest delivery (ie courier), post or email are relevant and (more so than fax) somewhat future-proofed methods of communication.</p> <p>We query how regularly some “info@incorporated society” emails may be checked for some voluntary organisations. It may be better to have service with email as an additional requirement.</p> <p>We support an additional regulation where a document is not deemed to be served or delivered if the party can prove that through no fault of their own the document hasn’t been served.</p>	

<p><i>Prescribing how documents must be served on a person</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(s)?</p>
<p>19</p>	<p>The specified methods are based on similar legislation.</p> <p>We think it would be helpful to specify how members may be served. It might be useful to require members to update their addresses. Deemed service should be on their last email or postal address notified so that service may be deemed unless proved otherwise (similar rules are provided under members registers under the Unit Titles Act 2010).</p> <p>Most creditors would be companies or other legal entities but similar rules could be used as for officers.</p>
<p>20</p> <p><i>Prescribing matters relating to the incorporated societies register</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(t)?</p>
	<p>We are happy with current proposals.</p>
<p>21</p> <p><i>Specifying matters concerning conversion into an incorporated society</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(u), (v) or (w)?</p>
	<p>Conversion will take away the perpetual nature of these other statute based entities. While the entities do not have to repeal their statutes should it be clarified that they no longer need to comply with them? We aren’t aware of any other entities under this header.</p>

Part 3 of the discussion document: section 254

	Matter	Question
22	<i>Setting fees for the performance of functions or the exercise of powers</i>	Do you have any suggestions on regulations that should be made under section 255(1)(a)?
	<p>We would expect fees to be similar to the current level that apply to companies. We understand that a registration fee of around \$50 has been suggested – we concur with a fee around this level.</p> <p>Has thought been given to the costs of filing an annual return? If an incorporated society is a registered charity (which a significant number are) is it fair that the society have to pay two filing fees to two different Registrars? We would like to see an element of fairness be brought to this matter.</p>	
23	<i>Setting late fees</i>	Do you have any comments on MBIE’s proposals regarding regulations under section 255(1)(b)?
	These seem to be proposed at an appropriate level	
24	<i>Setting other fees</i>	Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 255(1)(c)?
	We aren’t aware of any other fees which should be prescribed at this stage.	

Part 4 of the discussion document: section 254

	Matter	Question
25	<i>Providing that certain rules apply</i>	Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 256(1)(a)?
	Yes, we agree.	
26	<i>Providing that certain legislative rules do not apply</i>	Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 256(1)(b)?
	Yes, we agree.	
27	<i>Prescribing matters for the purposes of Part 1 of Schedule 1</i>	Do you have any comments on MBIE’s proposals regarding regulations under section 256(1)(c)?
	We agree with the proposed approach to regulations.	

Other comments

We would strongly encourage prescriptive guidance for notification on conflicts of interest so that members are properly notified and don't lose the opportunity to take action about conflicts due to a weak method of notification being used. This is particularly important for incorporated societies formed by developers to look after common facilities who can enter into self-serving arrangements. We would further encourage a change of control or turnover control notification regime to members not too dissimilar to bodies corporate under the Unit Titles Act 2010 but this could be more focused on self-interested contracts and conflicts of interest arrangements entered into when the developer controls the society.

In our view statute based organisations should not be able to convert or liquidate without dealing with their empowering legislation.