

# Submission on *Consultation on regulations for the Incorporated Societies Act 2022*

## Your name and organisation

<b>Name</b>	Fiona Brennan ( Contributor 2) and Garth Nowland Foreman ( Contributor 1)
<b>Organisation (if applicable)</b>	Auckland North Community and Development Inc ( Contributor 2) and LEAD ( Contributor 1)
<b>Contact details</b>	[REDACTED]

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## Responses to questions

### Part 2 of the discussion document: section 254

	Matter	Question
1	<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>While we appreciate that the requirements to provide additional identifying and contact information does not seem onerous, our concern is that most – 92% of incorporated societies do not have paid staff and have a turnover of officers given the high voluntary nature of the leadership</p> <p>These very small community-based organisations that do not have high levels of written documentation and administration systems in place. This is because this is seen as an impediment to “getting the work done” which is why they volunteered to join the organisation</p> <p>We are concerned that mandating the provision of personal physical addresses is a risk and may be a barrier for some to join boards. We have experienced board with members who work in organisations to combat illegal activities and also organisations that are led by refugees and political asylum seekers will not provide such information. Recent history has shown such records are not 100% safe from outside hacking and accidental release.</p> <p>We are concerned about the brief period to prepare and support organisations with training and information to develop and implement policies and procedures to support the requirements to provide additional information.</p>
2	<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>We have a concern about all submission of information and communication being carried out online- in our experience many small community-based organisations have low levels of technological literacy. We would want to see a very simple and clear system for gaining exemption to the online process that is clearly communicated. This is particularly poignant given the proposed fines for late or non-filing of information. This is setting some organisations up to fail and will result in the winding up of groups.</p> <p>We fully endorse any regulations that provide notice to the society re its registration before public notification. In fact, we would prefer to see regulation regarding societies being fully consulted with and supported to comply before such action is taken.</p> <p>We support LEAD's comments on the provision for online submission of information only. Lack of digital equity is an issue faced by many community organisations and their committees.</p> <p>The fines for late or non-filing of information appears to be out of proportion, overregulated and overly punitive. We anticipate that many incorporated societies and their grass roots members will find the regulations bewildering. Furthermore, the cost of ensuring compliance does not add value to the sector.</p> <p>Given the previous requirement being suggested to record personal addresses of member then it would seem reasonable to suggest communication by post/ paper forms should be allowable</p>	
3	<p><i>Authorising the Registrar to determine the manner in which things must be done</i></p>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(c)?</p>
	<p>We do not agree and there should be further consultation with the community sector.</p>	
4	<p><i>Declaring persons to be, or not to be, officers</i></p>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?</p> <p>We do not agree no action should be taken and would like to see the definition of officer revisited. The Charities Act definition can be too widely interpreted, a risk which will be seen as a constraint when recruiting board members and other senior staff.</p> <p>We support LEAD's remarks. The wide definition of an officer requires clarification. Advisors, pro bono consultants and businesses who bring essential knowledge, expertise and experience to organisational boards would be unfairly implicated and this would discourage them from offering volunteer support. These services are likely to be essential for organisations who would not have the means to pay for such services.</p>

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>While we understand the desire to enable independence at a board level, we strongly advocate that board members have a connection and commitment to the cause that they are leading. If they are not willing to be members of a society that furthers this cause then this is questionable in terms of their commitment and reason for seeing office.</p> <p>We also do not support creating specific regulation for specific sectors. This seems both simultaneously punitive and exclusionary. It also assumes no other sectors face issues similar to the sporting sector.</p> <p>We support LEAD's comments on this matter.</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 do not see the sense in this. It implies that only Australian citizens and residents are to be held to account and ignores the many individuals from other countries who would not be suitable in officer roles in societies. We do not see accessibility to information as a reason for creating a specific criterion for a regulation.</p> <p>We support LEAD's comments and encourage either widening the criteria to include a range of other countries or abandoning the provision entirely. In the current format it appears discriminatory.</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)?
	See comments under section 254(1)(a).	
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 agree with this proposal.	

	<p><i>Prescribing societies that can restrict general meeting attendance to delegates</i></p>	<p>Do you have any suggestions regarding regulations that should be made under section 254(1)(i)?</p>
<p>9</p>	<p>Again, we would have concern if a certain sector e.g., unions were identified. There are groups who operate under a federation model to which this may impact. E.g., Māori Womens’ Welfare League and the Public Health Association.</p> <p>The provision should apply to all societies. In general, we believe Societies should make their own arrangements with the agreement of their members rather than being overly prescriptive with this suggestion. MBIE could recommend the arrangements be agreed on and either included in their constitution and/or minuted as a resolution in their board meetings/ EGM/ AGM.</p>	
	<p><i>Defining the term ‘total current assets’</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(j)?</p>
<p>10</p>	<p>We do not endorse the redefining of total assets. We think all terminology relating to finances should align with the XRB to eliminate confusion. In addition, it is very unlikely a Board can always confidently predict decision to be made in the future.</p> <p>We agree with LEAD that final decisions on this should align with decisions made on the XRB reporting standards which we provided submission feedback on as an organisation.</p> <p>We disagree with the proposed definition that current assets should include assets that might be sold 12 months after the balance date.</p> <p>Defining total current assets by what they are not (fixed assets) is confusing and unnecessary.</p> <p>Expecting incorporated societies when preparing their financial statements to be in a position to judge whether a fixed asset was – on that balance date – likely or not likely to be sold is unrealistic and unnecessary. Even if an asset is sold it can be reported on at the next 12-month balance date.</p> <p>Furthermore, the value of the asset would potentially change on the future date it is sold and this cannot be necessarily predicted. Future reporting at the next balance date should reflect the value of the asset sold.</p>	
<p>11</p>	<p><i>Prescribing additional requirements for the financial statements of small societies</i></p>	<p>Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 254(1)(k)?</p>

	<p>As above, we support all financial reporting to align with the XRB and no additional mandated requirements.</p> <p>We agree with LEAD that all financial reporting should align with XRB reporting standards and that no additional regulations should be made. However, clarity on reporting standards will be required for compliance. We recommend that the definition of the threshold for small charities be raised, for further consultation.</p>		
12	<table border="1"> <tr> <td data-bbox="244 517 496 741"><i>Determining the class of society that must have its financial statements audited</i></td> <td data-bbox="496 517 1399 741">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?</td> </tr> </table>	<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?
<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?		
	<p>It is our experience that an audit is contained in an organisations constitution and fully endorse this practice continuing and would prefer this to be the first regulation option.</p> <p>We agree with LEAD’s comments on audit. Furthermore, we suggest that requirements for audit align with existing charities act reporting.</p>		
13	<table border="1"> <tr> <td data-bbox="244 987 496 1099"><i>Setting infringement fees</i></td> <td data-bbox="496 987 1399 1099">Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(m)?</td> </tr> </table> <p>We categorically do not support any schedule of fines for failure to file information. As noted above, many small societies who work at a local and grassroots level do not have the capacity to sustain administration processes. In addition, these organisations are funded through donations and fundraising, they do not have funds to pay such fines and will potentially have to rely on an individual donating the money to prevent winding down. Having compliance fines will also act as a deterrence to recruiting boards and senior leadership.</p> <p>Finally given the proposed emphasis on electronic communication coupled with the turnover of officers on small board, there is potential for compounding fines which will also result in winding down.</p> <p>We agree with LEAD’s comments and do not support infringement fees. We also believe that the cost of collecting this revenue outweighs any perceived benefits by the government for compliance purposes.</p> <p>We also agree that the turnover of officers and a lack of funds will make it extremely difficult to enforce and will not reflect well on the government in the wider public’s view of government.</p>	<i>Setting infringement fees</i>	Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(m)?
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	We do not support the regulation resulting in this proposal. The ability to appeal decisions and notices will be limited due to many incorporated Societies limited assets.	
15	<i>Removal and restoration of societies from the register</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(o)?
	We believe MBIE should allow a flexible approach in the 2026 - 2027 period for late compliance with the Act.	
16	<i>Prescribing certain matters relating to surplus assets</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(p)?
	We agree with the regulation.	
17	<i>Prescribing procedural requirements for surplus asset 'resolutions'</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(q)?
	We believe that it is important for Inc Societies to have written resolutions especially for distribution of assets on winding up to organisations with similar purposes. The definition of these should be clearly stated in the constitution of the organisation.	
18	<i>Prescribing how documents must be served on a society</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?
	We have no further comments except to point out the practicality of how documents are received given the voluntary nature of many incorporated societies and the potential conflicts of interest for those receiving such documents, as well as ensuring the documents are received by the person capable and in a position to organise a response to them.	
19	<i>Prescribing how documents must be served on a person</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(s)?
	Refer to previous comment.	
20	<i>Prescribing matters relating to the incorporated societies register</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(t)?
	We suggest that regulations and resource guidelines for this provision are made available.	

	<i>Specifying matters concerning conversion into an incorporated society</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(u), (v) or (w)?
21	<p>We suggest that regulations and resource guidelines for this provision are made available.</p> <p>We anticipate that many organisations will conversely choose to remain or convert to charitable trusts. This is partly due to enhanced compliance and infringement fees as well as the changing demographic of some societies. Organisations that have moved away from volunteer-led organisations to paid and professional staff may take the opportunity to convert to a Trust which better reflects their decision-making processes.</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)?
23	<p><i>Setting late fees</i></p> <p>Refer to section 254(1)(m)</p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?</p> <p>Additionally, we do not believe it's in the public interest or cost effective to engage in revenue collecting for fees for organisations already providing voluntary public benefit. Fees should be consistent across all similar organisations and are not currently collected under the Charities Act.</p>
24	<i>Setting other fees</i>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 255(1)(c)?</p> <p>We do not believe it's in the public interest or cost effective to engage in revenue collecting for fees for organisations already providing voluntary public benefit. In addition, fees should be consistent with those collected under the Charities Act.</p>

### Part 4 of the discussion document: section 254

	Matter	Question
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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)?
	We agree that no further regulations should be made at this stage.	
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)?
	We agree that no further regulations should be made at this stage.	
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 all of the proposals set out in 256(1)(c) except for 9(5) which references infringement notices. We have previously expressed our opinion on these regulations.	

## Other comments

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