

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

Your name and organisation

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Responses to questions

Part 2 of the discussion document: section 254

	Matter	Question
1	<i>Prescribing information that must be included or provided</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(a)?

What societies' constitutions must contain: disputes process

We would like to see further clarification in the regulations about the information that must be included in constitutions in relation to dispute resolution procedures.

Section [254\(1\)\(a\)](#) of the Incorporated Societies Act 2022 empowers the Governor-General to make regulations prescribing information that must be "included or provided for the purposes of the Act". In the consultation document, officials have identified all the provisions in the Act where they believe such information is envisaged and have indicated their initial thoughts on what that information should be. While the provisions relating to dispute resolution procedures have not been included, we believe there is still a lack of clarity that creates uncertainty for our organisation, and we suspect for others also.

In our [submission](#) on the Incorporated Societies Bill, we expressed strong support for the requirement for organisations (societies) to have in place natural justice procedures for dealing with disputes, misconduct, complaints and grievances. However, we asked for organisations to be allowed to choose to have the detail of these procedures sit outside the constitution, on the basis that the constitution would refer to these procedures and the requirement that they are consistent with the rules of natural justice. The reason for our request is that a requirement to include the detail of our dispute resolution processes inside the constitution is untenable for incorporated societies like ours.

We have a layered structure with flow-on accountabilities and appeal mechanisms through to the national body. We also have strong interrelationship between the rights and responsibilities of members and the obligations of members in relation to the delivery of our service. This means our dispute resolution processes are well-developed and robust, but also lengthy. We have a separate Complaints Policy, Volunteer Grievance Policy, Volunteer Misconduct Policy, and then also a review system for CAB's membership of the national body, CABNZ. If we were to include our dispute resolution procedures in our constitution, this would overwhelm the document and limit our ability to be responsive when there is a need to change procedures, given our interconnected organisational structure and mechanisms for altering our rules.

We are disappointed that these issues have not been directly responded to or addressed despite our having raised these points on a number of occasions.

Section [26\(1\)\(j\)](#) of the Incorporated Societies Act 2022, requires the constitution to contain "procedures for resolving disputes, including providing for how a complaint may be made" and refers to sections 38 to 44 for further details about these procedures. Section [39](#) states that "The procedures in a society's constitution for resolving disputes must be consistent with the rules of natural justice." The Act then goes on to provide a safe harbour option for societies if they use the procedures in Schedule 2, but makes it clear they do not have to do so.

We would like to see further clarification in the regulations that the requirements relating to dispute resolution procedures can be met either by including the full procedures in the constitution or by including in the constitution a reference to the procedures and the requirement that they adhere at all times with the rules of natural justice. The detailed

	<p>procedures could then sit separately within the organisation’s policy and procedure documents.</p> <p>We believe this approach would be consistent with the purposes of the Act in section 3, which include to:</p> <p><i>(d) recognise the principles that -</i></p> <p><i>(i) societies are organisations with members who have the primary responsibility for holding the society to account; and</i></p> <p>...</p> <p><i>(iii) societies are private bodies that should be self-governing in accordance with their constitutions, any bylaws, and their own tikanga, kawa, culture, and practice, and should be free from inappropriate Government interference;</i></p> <p>If it is not possible to address this in the regulations, we would like to see guidance provided to address this issue. We are happy to work with officials on this.</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>
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>
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>

Who is captured under the definition of ‘officer’

Another issue we would like the regulations to clarify is in relation to who is and is not deemed to be an ‘officer’ under the Act. It is important for individuals and organisations to understand who falls under the definition of an officer, as the role comes with statutory obligations.

The uncertainty lies in section [5\(1\)\(a\)\(ii\)](#) of the Act where it states that an officer includes someone who is “a natural person occupying a position in the society that allows the person to exercise significant influence over the management or administration of the society (for example, a treasurer or a chief executive) ...” The fact that the legislation uses the example of ‘a chief executive’ causes immediate confusion for many societies such as ours, where the role of chief executive is relevant only at the national level.

We are unclear whether the definition in the Act includes staff and volunteers in CABs around Aotearoa who occupy manager, coordinator, or other roles but who are not also members of their CAB’s governing body (committee). We need to be clear on this matter so we can advise CAB staff and volunteers accordingly.

We note the proposal in the regulations consultation document for no regulations to be made at this stage on the question of who is and who is not an officer, pointing to the fact that the Charities Act - which defines an officer in the same way - has no regulations on this.

We support consistency between the Charities and Incorporated Societies Acts, but are of the opinion that where regulations can address uncertainties created by lack of clarity within the legislation – especially where it relates to who has obligations under the legislation - they should do so.

We ask that organisations are given further guidance about who is intended to be captured under the definition of an officer within the Act. Our preference is for the guidance to be included in the regulations, but if not possible, that it is provided to organisations in some other form. We would be happy to work with officials to assist with the development of such guidance.

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)?
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)?

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)?
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)?
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)?
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)?
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)?
12	<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?
13	<i>Setting infringement fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?

14	<i>Prescribing the information to be included in infringement and reminder notices</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(n)?
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)?
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)?
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)?
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)?
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)?
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)?

21	<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)?

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	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
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)?

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)?
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)?
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)?

Other comments

Thank you for the opportunity to make a submission on the regulations for the Incorporated Societies Act 2022. If you require any further information, please do not hesitate to contact us.