

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
<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)?
1	<p>Section 9(a) Information to be included in incorporation application</p> <p>Clubs New Zealand believes it would be useful for the application to provide the number of members at the time of application in order for the Registrar to determine eligibility to be incorporated.</p> <p>We note that MBIE propose that each officer's name, contact address and email address must be provided with the application. It is unclear to Clubs New Zealand what purpose the Registrar has for collecting this personal information and how it would be used. Clubs New Zealand submits that unless a clear purpose is provided for collecting the personal information, it is sufficient to only require the name and role of the officer (i.e., President, Committee).</p> <p>We note that the proposal as written within the consultation document refers to the Incorporated Societies Act 2026.</p> <p>Section 109(2) The information that must be contained in a society's annual return</p> <p>Clubs New Zealand notes that MBIE propose that as part of the annual return, societies will need to provide the names and physical addresses of the society's officers. Similar to our comments regarding Section 9(a) it is unclear to Clubs New Zealand what purpose the Registrar has for collecting officers contact addresses and email and how this information would be used. Clubs New Zealand submits that it is sufficient to only require the name and role of the officer (i.e., President, Committee).</p> <p>Section 192(c) The information that must be contained in an amalgamation proposal</p> <p>Similar to Section 9(a) Clubs New Zealand believes it would be useful for the amalgamation proposal to provide the number of members at the time of the proposed amalgamation in order for the Registrar to determine eligibility to be incorporated.</p> <p>Clubs New Zealand is concerned that proposed information to be included within the amalgamation proposal includes the personal details (contact details) of the contact person and the officers of the proposed amalgamated society. There is potential for privacy breaches and security concerns as Section 193 of the Act requires that the amalgamation proposal be sent to each member of the society and every secured creditor. Clubs New Zealand submits that it is sufficient for the purposes of Section 192(c) to only require the contact person and officers' names and roles (i.e., President, Committee).</p> <p>We note that the proposal as written within the consultation document refers to the Incorporated Societies Act 2026.</p>

	<p>Sch 3 cl(3)(b) Information that must be included in a reregistration (conversion) application</p> <p>As the proposed regulation intends to require the same information as required under section 9(a) Clubs New Zealand submits for consistency that it would be useful for the application for conversion to provide the number of members at the time of the conversion in order for the Registrar to determine eligibility to be incorporated. Additionally, it is unclear to Clubs New Zealand what purpose the Registrar has for collecting officers contact addresses and email and how they would be used. Clubs New Zealand submits that it is sufficient to only require the name and role of the officer (i.e., President, Committee).</p> <p>We note that the proposal as written within the consultation document refers to the Incorporated Societies Act 2026.</p>		
2	<table border="1" data-bbox="244 629 1401 779"> <tr> <td data-bbox="244 629 496 779"><i>Prescribing the manner in which things must be done</i></td> <td data-bbox="496 629 1401 779">Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(b)?</td> </tr> </table> <p>Section 185(1)+(2) Manner in which a person may make an application for a society to be restored</p> <p>Clubs New Zealand note that the proposal as written within the consultation document reads “..., requests to restore a society from the register...” this should be amended to read “..., requests to restore a society to the register...”</p> <p>Section 186(2) Manner in which Registrar must give notice of proposed restoration</p> <p>Clubs New Zealand submit that notice under section 186(2) also be given to the society concerned. This is particularly pertinent if the restoration request was made by officers or creditors.</p> <p>Section 11(3) Manner in which a society gives its consent to a new society using a similar name</p> <p>Clubs New Zealand agrees that consent must be given in writing, however, to ensure clarity and consistency Clubs New Zealand submits that the regulations should also prescribe how that consent should be delivered to the registrar, i.e., online through the Internet site designated by the Registrar.</p>	<i>Prescribing the manner in which things must be done</i>	Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(b)?
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3	<table border="1" data-bbox="244 1375 1401 1594"> <tr> <td data-bbox="244 1375 496 1594"><i>Authorising the Registrar to determine the manner in which things must be done</i></td> <td data-bbox="496 1375 1401 1594">Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 254(1)(c)?</td> </tr> </table> <p>Clubs New Zealand agrees that there does not appear to be a strong case for delegating regulation making powers to the registrar currently.</p>	<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)?
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Declaring persons to be, or not to be, officers

Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?

Clubs New Zealand submits that in the case of small societies, regulations should provide that the societies constitution can include or exclude a certain class or classes of person from being officers for the purposes of the Act i.e., the Secretary who performs a more administrative function as opposed to a governance function within the club (a member of the committee cannot be excluded). Additionally, Clubs New Zealand submits that the regulations specify that persons who hold roles within sub-clubs or hold temporary positions such as "scrutineers" are not officers of the society by virtue of holding such position.

Training requirements for Officers

In its submission to the Economic Development, Science and Innovation Committee on the Incorporated Societies Bill, Clubs New Zealand submitted that it "would like to see within the Bill or Regulations a requirement for society officers to complete some form of training within 12 months of becoming an officer." Section 3 of the Incorporated Societies Act 2022 outlines the purposes of the Act which include:

3(b) provide a legislative framework that promotes high-quality governance of societies

3(d)(ii) societies should operate in a manner that promotes the trust and confidence of their members

3(d)(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

Clubs New Zealand submits that the most effective means of ensuring that the purposes of the act are realised, is to promote and support the personal and professional development of officers via training.

It is acknowledged that no regulations have been made under equivalent provisions, however, this is a precedent setting opportunity that will ensure that New Zealand's society officers and emerging leaders learn about the complex role and responsibilities of an officer, as well as the important aspects of good corporate governance.

In New South Wales Part 6 of the Registered Clubs Regulation 2015 details the general training requirements for club governing bodies, club secretaries and managers of club premises. These regulations provide that specific training modules covering governance and finance are detailed within the regulations and must be completed by officers within 6 months of assuming office. Exemptions do exist under the Registered Clubs Regulation 2015 for "small clubs".

Clubs New Zealand again submits that regulations be made requiring officers to complete training within 12 months of becoming an officer. With the training aimed at:

- The development of governance skills, ensuring that officers understand their responsibilities and obligations under the Incorporated Societies Act 2022, including understanding of financial concepts and reports, monitoring the financial performance and Financial Reporting under the Incorporated Societies Act 2022.

Clubs New Zealand strongly believe that officers who complete training are better equipped to serve their societies, and have a better understanding of their duties, responsibilities, and liabilities than those that do not complete training.

<p><i>Prescribing circumstances related to independent committee members</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(e)?</p>
<p>5</p>	<p>Clubs New Zealand supports the proposal to allow an exception for national and regional Incorporated Societies whose main purpose is sport or physical recreations.</p> <p>In regard to specified thresholds, Clubs New Zealand submits that focusing on operations above a specified threshold is too narrow and fails to take into account the complexities and individuality of societies.</p> <p>Clubs New Zealand’s membership for example, is made up of 317 clubs. Our members vary in size from small societies with 30 members right up to what we would deem a large club with excess of 5,000 members. Our clubs often hold licences under the Sale and Supply of Alcohol Act 2012 or the Gambling Act 2003, both of which call for specialised knowledge and governance.</p> <p>Focusing solely on the “financial size” of the society to establish and exemption for 45(3) limits the ability to attract and recruit officers where it may be required to meet obligations under other pieces of legislation or regulations, or where it is deemed necessary to successfully govern the society.</p> <p>To address this Clubs New Zealand submits that regulations be made under Section 254(1)(e) providing exceptions for:</p> <p>“Where it is provided for within the societies constitution”</p> <p>The rationale for this is that a societies constitution must be approved at a general meeting by a resolution passed by the relevant majority, this means that the relevant majority have determined that there is a need to bring in “independent” officers or officers with specific skills and knowledge, which may or may not lead to the majority of the committee being “independent”.</p> <p>Where the majority of members are bodies corporate and/or other society types</p> <p>Section 45(3) of the Act does provide that a majority of officers on the committee must be made up of members of the society or representatives of bodies corporate that are members of the society. In the case of Clubs New Zealand Incorporated, all 317 members are bodies corporate or Friendly Societies (there are no natural persons who are members). At present, representatives of Friendly Societies would not be given preference until a majority of representatives from bodies corporate was established, this may be despite a friendly society representative being the preferred committee member.</p> <p>To address the above concerns Clubs New Zealand submits that regulations be made under Section 254(1)(e) providing exceptions for:</p> <p>National and regional incorporated societies whose membership includes societies that are not bodies corporate.</p> <p>Additionally, Clubs New Zealand supports the inclusion of a definition of “representative” i.e., a representative is anyone authorised by the society to represent the society irrespective of whether that person is a current officer of the society.</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)?
	N/A	
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)?
	<p>Clubs New Zealand has submitted that it is unclear what purpose the Registrar has for collecting personal information for each officer and how it would be used. Regarding an application for incorporation, annual returns, amalgamation proposals and conversions Clubs New Zealand have submitted that unless a clear purpose is provided for collecting the personal information, it is sufficient to only require the name and role of the officer (i.e., President, Committee).</p> <p>With the above in mind, Clubs New Zealand submits that the following information changes that must be notified are:</p> <ul style="list-style-type: none"> • Any change to an officer's name and role (including the dates of the change); • Any change to an officer's status as an officer e.g., resignation, disqualification, death etc. (including the date of the change). 	
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)?
	Clubs New Zealand is supportive of not convoluting the requirements by allowing certain exceptions at this stage.	
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)?
	<p>As a National Body representing New Zealand's chartered club industry, Clubs New Zealand's membership is made up entirely of societies (either incorporated or friendly). Our members have a collective membership in excess of 300,000 people. Clubs New Zealand submit that regulations be made allowing a society to provide in its constitution that "a right to attend an annual general meeting applies only to delegates or other representatives of members", where the majority of members are bodies corporate. In the case of Clubs New Zealand this would allow the constitution to specify that the right to attend AGM only applies to delegates or representatives of our members as opposed to members of our members.</p>	

	<i>Defining the term 'total current assets'</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(j)?
10	Clubs New Zealand believe that any definition of total current asset needs to be consistent with other legislation and the generally accepted definition stated by the Chartered Accountants Australia & New Zealand (CAANZ). We often find that where separate pieces of legislation attempt to redefine well established concepts our members encounter issues.	
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)?
	N/A	
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?
	N/A	
13	<i>Setting infringement fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?
	N/A	
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)?
	N/A	
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)?
15	Clubs New Zealand is concerned that the period set for objections under 177(2)(a) and 186(3) is quite small. Clubs New Zealand submit that this be increased to 30 working days to allow officers time to meet and discuss the notice.	

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)?
	N/A	
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)?
	N/A	
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)?
	N/A	
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)?
	N/A	
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)?
	N/A	
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)?
	N/A	

Part 3 of the discussion document: section 254

	Matter	Question
	<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)?
22		<p>In its submission to the Economic Development, Science and Innovation Committee on the Incorporated Societies Bill, Clubs New Zealand submitted that it would oppose the creation of any fee that is payable when notifying the Registrar of appointments and other changes relating to officers.</p> <p>Clubs New Zealand’s concern is that the Act significantly enlarges the role of the Registrar of Incorporated Societies. Any enlarged role will have to be paid for and given the nature of incorporated societies (i.e., not for profit) there could be issues if the societies are expected to fund this enlarged role for the Registrar and supporting staff.</p> <p>Clubs New Zealand understands that a system-wide assessment of what fees and possibly levies should be payable by all registered entities, and it is potentially argued that it costs the same amount to update a record for a company as it does a society. However, Clubs New Zealand submits that careful consideration must be given to the nature of societies and their not-for-profit status when setting fees rather than solely looking at the action being undertaken.</p>
	<i>Setting late fees</i>	Do you have any comments on MBIE’s proposals regarding regulations under section 255(1)(b)?
23		<p>Covid-19 and the various restrictions imposed throughout 2020-2022 meant that many societies were unable to comply with notification requirements. Clubs New Zealand submits that regulations should be made authorising the Registrar to refund or waive, in whole or in part any fee issued under section 255(1)(b). Conditions for which fees may be waived should include pandemic, instances where the Registrar’s designated internet site may be unavailable etc.</p>
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)?
	N/A	

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)?
	N/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)?
	N/A	
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)?
	<p>Clubs New Zealand acknowledge that there will be a significant cost for the Registrar to re-register 24,000 societies, however, the societies we have spoken to were shocked that the initial proposal is to pass this cost onto the societies, when in effect they are being "forced to re-register" to remain incorporated.</p> <p>Clubs New Zealand submits that the Government fund or subsidise the re-registration on the basis that incorporated societies are Not-for-Profit.</p> <p>With regard to the application for reregistration Clubs New Zealand submit for consistency that it is unclear to Clubs New Zealand what purpose the Registrar has for collecting this personal information and how it would be used. Clubs New Zealand submits that unless a clear purpose is provided for collecting the personal information, it is sufficient to only require the name and role of the officer (i.e., President, Committee).</p>	

Other comments

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