

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

Your name and organisation

Name	[REDACTED]
Organisation (if applicable)	[REDACTED]
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>It is not clear the purpose(s) for which an Officer's "contact address" is required in relation to either an application, annual return, proposal to amalgamate, or application for conversion.</p> <p>Sufficient contact details are already available such as the Society's registered office, physical address and/or address for service, and the "contact details" of at least one "contact person".</p> <p>While the meaning of "contact address" proposed does not require an Officer's residential address, the wording implies a physical address by use of the words "...and email address" rather than "...or email address".</p> <p>As proposed, this definition of "contact address" also differs from the definition of "contact details" in s5(2) and the definition of "address" in s90 and s92 of the Act which may cause confusion. In line with other modern legislation, the Act recognises online and electronic communications throughout, so requiring an Officer's physical or residential address seems at odds with this.</p> <p>The Act requires a "contact person" (or persons) who must be ordinarily resident in New Zealand, however no residential or physical address is required by the Act or proposed Regulations for this person. This appears to be at odds with requiring an Officer's physical or residential address where (unlike the Companies Act 1993) no residency requirement applies.</p> <p>Even if a legitimate purpose for collecting an Officer's "contact address" can be established, it is not clear what this address would be used for, or when/where it might be disclosed. This may raise Privacy Act concerns as it has in relation to Directors' details being disclosed on the Companies Register. For example, Officer details (including date of birth and residential address) are collected by Charities Services but are not made publicly available, and the Incorporated Societies Register does not disclose Officer address details currently, nor does s233 of the Act require the Register to disclose Officers' address or other personal details.</p> <p>In addition, at paragraphs 150 and 152 of the consultation document the proposed regulations regarding service in legal proceedings or other contexts refers to "the Officer's residential address or address for service". This implies that an Officer's residential address will be made available in some way. (Refer to Question 19).</p> <p>An Officer's residential or other physical address should not be required to be disclosed under the Regulations.</p> <p>If residential addresses are to be required for Officers (or "contact person(s)"), the purpose and intended use or disclosure must be clear in order to comply with the Privacy Act.</p>

2	<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)?
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)?
	<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)?
4	<p>Agreed.</p> <p>While Secretaries would not be considered Officers in many Societies, the threshold of "significant influence" in the Act is sufficient and flexible enough to deal with the vast variation among Societies. For example, in some smaller Societies there may be combined roles such as Secretary/Treasurer which would likely be classified as an Officer under the Act. Depending on the nature of the organisation, and their delegated authorities, a position title may not necessarily indicate the degree of influence.</p>	
	<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)?
5	<p>While I fully support the logic and rationale for having more independent committee members (and submitted in support of this at Select Committee), I do not support the proposal to make a special case for sporting and recreational bodies. There are many Societies who could benefit from more independence and governance expertise, especially given the more onerous duties under the new Act and modern compliance obligations generally. The need to lift governance capability is not limited to sport and recreation bodies.</p> <p>There is better logic to enabling Societies with operations over a specified threshold to take advantage of a wider pool of potential committee officers, but ultimately Society Members are best placed to determine the composition of their Committee via their Constitution and through the election/appointment (and removal) process. In addition, Officers will be required by s54 of the Act to act in good faith and in the best interests of the Society, so members' interests will be protected.</p> <p>The Regulations should allow greater discretion if a Society considers this is in its best interests.</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)?
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)?
		Agreed. No Regulations are necessary at this stage. Individual Societies are so varied that they are best placed to determine what is or is not a conflict.
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)?
	<p>Refer to Question 1 regarding Officers' residential/physical address concerns.</p> <p>An Officer's residential address should not be required to be provided under the Regulations.</p> <p>If residential addresses are to be required for Officers, the purpose and intended use or disclosure must be clear in order to comply with the Privacy Act.</p>	
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)?
	<p>I support the provisions in the Act and Regulations enabling conversion into an Incorporated Society under the new Act.</p> <p>I propose that a similar pathway is developed for existing Incorporated Societies who wish to amalgamate upon reregistration (see Part 4 below).</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	<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)?
	<p>I propose that a transition pathway is developed for existing Incorporated Societies wishing to amalgamate upon reregistration under the new Act, and that the provisions of Subpart 2 of the Act be enacted early and Regulations developed to enable this.</p> <p>The requirement to reregister under the new Act will trigger a number of existing Societies to review their governance arrangements and potentially consider amalgamation with other Societies. Without a clear pathway to amalgamate upon reregistration an inefficient 2 step process with accompanying resources, costs etc will apply which may be a barrier to reregistration and/or cause some smaller Societies to cease operating.</p>	
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)?
	(Refer to Question 25 above).	

Other comments

Disclosure: I am an independent Board member on an Incorporated Society.
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