

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)?
	The certification process in item 1 under s9(a) should also include the following "a majority of the members <u>or delegates or other representatives</u> of the proposed society have consented to the application." The underlined words are an addition to your proposal. Our delegates are the representatives of the wider membership and have voting rights at the AGM. Refer to comment below in item 9 below. Refer also to a separate attachment from the President of the Government Superannuitants Association of New Zealand	
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)?
	none	
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)?
	yes	
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)?
	yes	
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)?
	Our preference is option b because there is a difference between an incorporated society who is also a charity and a society that is solely an incorporated society	

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)?
	none	
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)?
	none	
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)?
	yes	
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)?
	Our national association is restricted to members who receive or will receive a retiring allowance from the defined benefit provisions of the Government Superannuation Fund or the National Provident Fund and which includes spouses/partners of members. Membership of 22,000+ members domiciled throughout NZ. There should be a class of societies, usually national associations with branches, in addition to unions that should be added to the regulations.	
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)?
	none	
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)?
	yes	

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?
	none	
13	<i>Setting infringement fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?
	none	
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)?
	none	
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)?
	none	
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)?
	none	
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)?
	yes	
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)?
	none	

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)?
	none	
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)?
	none	
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)?
	none	

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)?
	none	
23	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
	none	
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)?
	yes	

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	

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		
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)?
Reregistration should be free through govt funding		

Other comments

	Refer to additional attachment from the GSA President
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Submission on Regulations of the Incorporated Societies Act

Thank you for this opportunity to make this submission in the consultation on regulations under the Incorporated Societies Act 2022.

Background

The Government Superannuitants Association (GSA) was formed in 1920 for the purposes of safeguarding the provisions in the Government Superannuation Fund schemes and the removal of any deficiencies and anomalies therein. We represent some 24,500 Government Superannuation Fund and National Provident Fund defined benefit scheme annuitants and contributors. We were incorporated under the Incorporated Societies Act 1908 in 1933. We have always depended on the general meeting approval provisions of this Act to ensure full transparency and accountability in the governance of our Association for members and by members. The GSA is a *bottom-up* organisation with 19 Branches in New Zealand (NZ) with a strong NZ membership as well as members in 19 different countries around the world. For a century, nearly 90 years an incorporated society, we have made many advancements in fairness for our members. We have achieved contiguous good governance under the 1908 Act always ensuring full membership responsibility and accountability.

We would like to make the following submission in relation to question 1 of your consultation document. I wish to bring to your attention that the wording in S86 (1) provided below can be misinterpreted to prevent this section from achieving what it sets out to achieve and thus become ineffective. In the interests of this section achieving what it sets out to achieve and it being clearly consistent with the purposes of the Act I am recommending a clarification of this sub section. The problem is that the word “present”, in S86(1), can be misinterpreted to mean “report” only. Already there has been a legal opinion given to one Incorporated Society that this sub section does not give members at the AGM rights to approve the annual report or financial statements or move any motions related to the information that is required to be “presented”. in S86 (1). According to this legal opinion of this Sub Section, all a Committee is required to do is report to the AGM. and members have no further rights of approval/adoption at an AGM. This would leave the AGM members with no means to hold a Committee to account except by not voting the members of the Council back in.

However, this interpretation of the word “present” is not consistent with the context of the Incorporated Societies Act 2022 and the specific wording of its predecessor the 1908 Act. In the latter Act the requirement for a General Meeting to approve the Annual report and financial statements was clearly specified. It is also clear from the context of the 2022 Act that approval of the Annual Report and Financial Statements by members through an Annual General Meeting is required..

Responsibilities of Members and the AGM in the Incorporated Societies Act 2022

To be consistent with the purposes and other Sub Sections of this act it is critical that the presentation of the Annual Report and financial statements at the AGM is for the purposes of consideration and approval by members and not just pro forma receipt.

For Example

- Section 3 (d) of the new Act specifies that one of the purposes of the statute is to – recognise the principles that –
*“(i) Societies are organisations with members who have the primary responsibility for holding the society to account; and
(ii) Societies should operate in a manner that promotes the trust and confidence of their members;”*

Consistent with S3 (d)(i) and (ii);. S86 (1) of the Incorporated Societies Act 2022 specifies that

“(1) The committee must, at each annual general meeting, present the following information:

(a) An annual report on the operations and affairs of the society during the most recently completed accounting period:

(b) the financial statements of the society for that period:

(c) Notice of the disclosures, or types of disclosures, made under section 63 (disclosure of interests) during that period (including a brief summary of the matters, or types of matters, to which those disclosures relate)”.

For 116 years the legislation has required a society’s annual report and annual financial statements to be open for discussion and questions at a society’s annual general meeting, and for the annual report and annual financial statements to be adopted or approved by a general meeting. This is not in accordance with S3 (d)(i) and (ii) of the 2022 Act. In the case of Societies that are audited, this is also consistent with S106 (1) of the 2022, Act.

(1)The auditor of a society (if any) must make a report to the members on the financial statements audited by the auditor.

Thus the wording of the 2022 Act makes it clear that the annual report and financial statements are the means by which a society’s committee accounts to the society’s membership for the committee’s governance, management and administration of the society in the previous year. Also in the Incorporated Societies Model Rules NZ, sample rule 8 the wording makes it clear that a General Meeting decision is superior to a committee As underlined.

8.2 The Committee has all the powers of a Society unless the Committees power is limited by these rules or by a majority decision of the Society.

8.4 Decisions of the Committee bind the Society, unless the Committee’s power is limited by these rules or by a majority decision of the Society.

Furthermore, Section 90 of the Act stipulates that in lieu of an AGM any “Proposed resolution in lieu must be sent to members entitled to vote” This section, together with Sections 89, 91 and 92, makes it clear than any resolution must be approved by the members and not solely by the committee, even if the AGM is not held.

Conclusion

It is clear that the interpretation of the word ‘present’ in S 86 (1) to be consistent with the Act requires members to consider and approve the Annual Report and Financial Statements.

Recommendation

That the regulations specifically refer to S86 (1) and note that the Annual Reports and Financial Statements are “presented for approval” to members at the AGM.

We ask that you consider this issue and place the change (additional two words ‘for approval’) appropriately within the regulations.

