

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
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)?
	<p>Sch 3 cl (3)(b) said you must provide certification that a majority of the members have consented for re-registration. We believe a more practical approach to this would be to follow the voting structures per an organisations constitution. For example a majority resolution based on constitutional voting rights, or from an AGM (held within a timeframe such as: an AGM held between June 2022 and the end of the re-registration period). This would ensure consistency/alignment between the proposed voting structure for re-registration and the existing voting structure of the Inc Society, allowing delegates to provide consent rather than all members – a more pragmatic approach for large societies, and in line with the cases described in s254(1)(i). Getting the majority of members to agree is simply not practical for large societies.</p> <p>We also believe that when collecting officers' details, it should include their role (committee or board member/Chief Executive/Finance/Treasurer, for example). Larger societies will have a board but may have staff who are also considered officers, and we'd like to see that reflected.</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)?
	<p>Section 111(3) regarding notification for a change in address. This is currently proposed to be 20 working days. We believe the 20 working days should be extended to "no later than 40 working days" (essentially 2 months). This is based off our own experience moving office. It's a huge task and there's a number of things that need to be done during a very stressful time. We estimate that updating our registered address is a job we got to within 6 weeks of moving. It's important, but not the priority as you're unpacking and ironing out all the small things that need to be done in that time (and in a not for profit environment, many would be completing the move themselves, not paying someone else to make sure it's all set up correctly).</p>	
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)?
	Agree.	
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)?

	Agree.	
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>It is practical to allow national and regional sporting bodies to have majority independent committees, and we support this approach. We only note that the regulation refers to the Sport and Recreation New Zealand Act, but there is no clear definition in that Act of National and Regional Sports Organisations.</p> <p>While we believe National organisations to be clear, regional organisations are more grey. We want to ensure that regional organisations covers those entities, whether funded by Sport NZ or not, who provide services on a regional basis. This area is grey however as we have some societies in our system who we generally wouldn't class as regional, but who do provide services across a region to create efficiencies. We'd generally consider these "large" however many wouldn't meet the \$1.1m threshold.</p> <p>In regards to the thresholds for other societies, mentioned in paragraph 42, when it comes to this, we don't believe there should be any difference between a society registered as a charity, and one which is not. We therefore prefer the option of one threshold which is aligned with the charities act audit provisions of \$1.1m. A society operating at over \$1m is a business which requires the skill and expertise of independent committee members to ensure they operate efficiently and effectively. This would alleviate some of our concerns above regarding regional entities also.</p> <p>We do also note however that things can go poorly, no matter the size of the entity, if the right people are not on the committee/board. This is true not only of sport. The committee/board has a duty of care for a number of areas including health and safety, financial direction, strategy etc. To this point, we think you should reconsider the above, and allow far more entities to have independent directors. In many cases, members will be able to vote on their appointment.</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)?

	<p>We agree with these changes, provided;</p> <ul style="list-style-type: none"> - There is sufficient time to action and notify the changes. The removal or addition of an officer is more important to be notified than a change of address for instance. Ideally some of these updates would be done as part of the annual return process, rather than within 25 working days. - The public register holds only the officers name (as suggested under paragraph 56b of the discussion document), and perhaps their role as an officer (Committee/Board member, Treasurer, Chief Executive etc) but no address information (for privacy concerns). 	
8	<p><i>Regulating constitutional provisions on conflicts of interest</i></p>	<p>Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 254(1)(h)?</p>
9	<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>This section talks to unions, however we believe sporting bodies should also be captured under these regulations as a kind of society who can determine delegates or representatives attend AGM rather than members. Some sports organisations have large numbers of members who abide by the rules and regulations of the society, however for AGM purposes there are representatives/delegates who attend and who have voting rights on their behalf – the individual members themselves don’t have the voting rights. In our current situation, members can still attend AGM as an observer, but have no right to speak or vote – this is done by the delegates.</p> <p>We believe this should be available to any Sports society but particularly where members are represented by another body in the system. E.g. where an individual is a member of a club, the club represents that group at AGM of the society where they play. There may be some exceptions to the rule however, where some entities have a mix of both entities and individuals not represented by an entity as members.</p> <p>If this must rely on a threshold, then a threshold of 200 seems practical in the case of Sports organisations.</p>
10	<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>This needs to be as easy as possible for smaller societies. Small societies are likely the ones who do not have accountants in their entity, and therefore making this simple is important. Defining total current assets as what they are not, as recommended, is likely the most simple.</p> <p>The example provided regarding selling land several months after balance date is unlikely to be an issue very often if financial statements must be submitted within 6 months of balance date – in those situations they’re likely to be preparing them within 2-3 months of balance date – especially if being audited.</p> <p>Total current assets definition should be total assets excluding fixed assets and any other non-current assets as determined by accounting principles (this may include long term investments).</p>
11	<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>Agree that no further regulations should be imposed on small societies. Small societies we work with struggle to comply currently, and adding further burden will only make this worse. We are therefore in agreement with the proposed.</p>
12	<p><i>Determining the class of society that must have its financial statements audited</i></p>	<p>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> <p>Agree that capturing the top 1% of societies not already captured by the Charities Act is a pragmatic approach and a threshold of \$3m is a practical way to determine this. Many Sporting societies are audited to access Class 4 funding, and societies from this industry will likely still be audited in some form anyway (whether through funding audit, review or full audit).</p>
13	<p><i>Setting infringement fees</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(m)?</p> <p>it’s not clear whether these fines are one-off fines. Preferable to also add the notification timing to the table. We think that it’s important to also note at what point a society is struck off.</p>
14	<p><i>Prescribing the information to be included in infringement and reminder notices</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(n)?</p>

	<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	<p>To mitigate risk we think that one of the following two things should occur:</p> <ol style="list-style-type: none"> 1. the Officers should be informed in regards to section 177 (1)(a) removing a society from the register; or 2. Notice of removal is sent by both email and post to the contact person. <p>We envision that things like this could happen when there is a change of staff, and no clear handover of responsibilities. Ensuring that someone other than just the registered contact person at the society are informed will mitigate this risk. Receiving notice by post as well as electronic means, may be enough to support that view.</p>	
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)?

We are not in favour of a re-registration fee.

Many societies will be seeking legal and financial advice to abide by the new legislation and transition to the new Act. For some, these two things may be costly themselves. We also feel that many societies may have paid a registration fee when they first registered, and a change in legislation requiring re-registration is outside their control, meaning they're being unfairly charged to register again.

Other comments

Page 16 of the consultation document 177(2)(b) assumes that the Registrar is male ("that **he** intends to remove a society"). We would encourage the use of gender neutral terms such as **they** be used in the regulations where applicable.