



Consultation on regulations for the Incorporated Societies Act 2022

**Submission by the New Zealand Food & Grocery
Council**

22 November 2022

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the *Consultation on regulations for the Incorporated Societies Act 2022*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

OVERARCHING COMMENTS

3. NZFGC is generally supportive of the regulations to be made under *Incorporated Societies Act 2022* (“the 2022 Act”) proposed by the Ministry of Business, Innovation and Employment (“MBIE”). In a few areas we have alternate proposals:
 - a) We suggest a two category system with some requirements not applying to the smaller societies that do not meet the financial threshold for audited financial statements and those that do
 - b) The information about every other office holder under s9 should be limited to name, email and role as an officer in the society unless the society decides otherwise. Some office holders are protective of their privacy in terms of physical address and this should be respected.
 - c) Suggestions as to discretion for filing annual returns for smaller incorporated societies, timing for notification of a change in registered office and a change in contact person
 - d) NZFGC agrees with all the proposed infringement fees except that of \$200 relating to the failure of the society to give the registrar notice of a change in the contact person, that for small societies especially, this could be significant and the Ministry should reconsider this level of instant fine
 - e) In relation to Transitional Arrangements, we do not agree societies should fund this change mandated by Government.

DETAILED COMMENTS

Regulations under section 254

Section 254(1)(a)

Q1. Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(a)?

4. Maintaining continuity with the information that the Registrar currently requires under the *Incorporated Societies Act 1908* (“the 1908 Act”) is not a reason to continue collecting/requiring information. As noted at the outset under the heading ‘Objectives of the proposed regulations’ they should be subject to the same test of effectiveness and efficiency as all the proposed new regulations.
5. We suggest that the society’s proposed balance date might only relevant where the finances require auditing and this information requirement should be qualified accordingly.
6. The 2022 Act requires under s9(ii) the name and contact details of at least one ‘contact person’ and (iv) information about every person named as an officer. One contact person’s

name, role as an officer in the society, address and email meets requirements of section 9(ii). The information about every other office holder should be limited to name, email and role as an officer in the society unless the society decides otherwise. Some office holders are protective of their privacy in terms of physical address and this should be respected.

7. The 2022 Act places a requirement of making an annual return by societies and under s109(2) refers to information that must be contained in such a return. The proposed regulations require the society's balance date which we believe to be relevant only when a threshold is met and the "names and physical addresses of the society's officers". As noted above, and for the same reasons, information about every other officer should be limited to name and role as an officer in the society unless the society decides otherwise.
8. In relation to s192(c) of the 2022 Act, as noted above, and for the same reasons, information about every officer beyond the contact officer should be limited to name, email and role as an officer in the proposed amalgamated society unless the society decides otherwise.
9. Schedule 3, clause (3)(b) of the 2022 Act concerns information that must be included in a re-registration (conversion) application and the proposed regulations require the names and physical and email addresses of each officer in the conversion application. As with the above, information about every officer beyond the contact officer should be limited to name, email and role as an officer in the proposed amalgamated society unless the society decides otherwise.
10. We have no other comments on s254(1)(a).

Section 254(1)(b)

Q2. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(b)?

11. Under s109(1) of the 2022 Act, information about the manner in which a society must give its annual return to the Registrar is provided for. As some smaller incorporated societies might on occasions experience difficulty in filing their annual returns on time, it is suggested the Registrar should have a discretion to allow for late filing in circumstances where, in the Registrar's opinion, it is reasonable to do so.
12. Under s111(3) of the 2022 Act, information about the manner in which a society must notify the Registrar of a change in registered office is provided for. A change of registered office is more significant for societies that meet the financial threshold for audited financial statements than for those that do not. We suggest therefore that 20 working days be required of societies that meet the financial threshold for audited financial statements and 40 working days for societies that do not meet the financial threshold for audited financial statements. Alternatively, and for simplicity, this might 40 working days for all societies.
13. Under s116(2) of the 2022 Act, information about the manner in which a society must notify the Registrar of a change in contact person is provided for. We consider this could require a deadline as the contact person is an important conduit for information. As with the above, we suggest that 20 working days be required of societies that meet the financial threshold for audited financial statements and 40 working days for societies that do not meet the financial threshold for audited financial statements. Alternatively, as with the above, and for simplicity, this might 40 working days for all societies
14. We have no other comments on s254(1)(b).

Section 254(1)(c)

Q3. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(c)?

15. NZFGC agrees that no regulations need be made at this stage.

Section 254(1)(d)

Q4. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(d)?

16. NZFGC agrees that no regulations need be made at this stage concerning the definition of 'officers'.

Section 254(1)(e)

Q5. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(e)?

17. NZFGC supports regulations that provide for a majority of society members on boards but also allow for independent directors on boards. We also support having one threshold, but we suggest this cover all societies (not just those registered as charities) with the audit threshold from the Charities Act 2005 (\$1.1million). Having independent directors is still at the discretion of the society and more than one threshold is an unnecessary additional complexity.

Section 254(1)(f)

Q6. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?

18. NZFGC agrees with regulations being made that prescribe 'Australia' for the purposes of recognising any disqualifications of a person from holding office in an incorporated society. However, we would note that in an increasingly diverse society, there are many countries from which an incorporated society's officers might come and in which disqualifications might have been unjustified due to political pressure. An additional provision might therefore be made that if a society wants someone as an officer who was disqualified other than in New Zealand or Australia, then application with reasons might be made to the Registrar to permit this to happen. We also consider that disqualifications from any visa waiver countries be recognised in line with the *Companies Act 1993*.

Section 254(1)(g)

Q7. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(g)?

19. In relation to types of information that must be notified to Registrar, since we do not agree that contact address be mandated, we consider the information that must be notified to the Registrar when an officer changes is name, email and role in the society.

Section 254(1)(h)

Q8. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(h)?

20. NZFGC agrees that no regulations need be made relating to conflicts of interest and that any circumstances could be included in the society's constitution.

Section 254(1)(i)

Q9. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(i)?

21. NZFGC does not consider that attendance at an AGM should be limited to delegates other than for Unions.

Section 254(1)(j)

Q10. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(j)?

22. NZFGC has no comment to make on fixed and current assets of a society.

Section 254(1)(k)

Q11. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(k)?

23. NZFGC agrees that no regulations need be made relating to additional requirements that might be placed on the financial statements of small societies.

Section 254(1)(l)

Q12. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(l)?

24. In relation to audit requirements, NZFGC supports the proposal that regulations be made that those societies not registered as charities for which, in each of the 2 preceding accounting periods, the total operating expenditure of the society and all entities it controls (if any) is \$3 million or more.

Section 254(1)(m)

Q13. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?

25. NZFGC agrees with all the proposed infringement fees except that of \$200 relating to the failure of the society to give the registrar notice of a change in the contact person. Other than to comment that such a failure is a serious one, no other justification is set out. We consider that for small societies especially, this could be significant and the Ministry should reconsider this level of instant fine. We do not consider that the Registrar's discretion in relation to the taking of enforcement action (which might need to be exercised for some smaller incorporated societies) should be relied on.

Section 254(1)(n)

Q14. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(n)?

26. NZFGC agrees with the draft forms provided in the Consultation document at Annex 1 and Annex 2 for the form of infringement and reminder notices respectively.

Section 254(1)(o)

Q15. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(o)?

27. In relation to the removal and restoration of societies from the register, NZFGC has no comments.

Section 254(1)(p)

Q16. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(p)?

28. NZFGC agrees with the proposed mechanism for matters relating to surplus assets.

Section 254(1)(q)

Q17. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(q)?

29. NZFGC has no comments on prescribing procedural requirements for surplus assets 'resolutions'.

Section 254(1)(r)

Q18. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?

30. In relation to prescribing how documents must be served on a society, NZFGC agrees with the proposals.

Section 254(1)(s)

Q19. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(s)?

31. In relation to prescribing how documents must be served on a person, NZFGC agrees with the proposals.

Section 254(1)(t)

Q20. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(t)?

33. NZFGC has no additional comments on prescribing matters relating to the incorporated societies register.

34. Section 254(1)(u), (v) and (w)

Q21. Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(u), (v) and (w)?

35. In terms of matters concerning conversion into an incorporated society (mainly affecting charities) NZFGC has no comments.

Regulations under section 255

Section 255(1)(a)

Q22. Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(a)?

36. NZFGC notes that s255 of the 2022 Act concerns fees and other amounts payable to the Registrar. We have no suggestions regarding the amounts that should be payable but suggest provision should be made for fees on a sliding scale to recognise the size variability of incorporated societies.

Section 255(1)(b)

Q23. Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(a)?

37. In terms of matters concerning the setting of late fees, it should be possible for some discretion to be exercised where small societies have difficulty in fulfilling their obligations.

Section 255(1)(c)

Q24. Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(c)?

38. NZFGC agrees that in terms of setting other fees, no regulations need be made at this time.

Transitional regulations under section 256

Section 256(1)(a)

Q25. Do you have any comments on MBIE's proposals regarding regulations under section 256(1)(a)?

39. NZFGC notes that MBIE proposes no specific rules need apply to incorporated societies concerning transitional arrangements.

Section 256(1)(b)

Q26. Do you have any comments on MBIE's proposals regarding regulations under section 256(1)(b)?

40. NZFGC notes that MBIE proposes no legislative rules need apply to incorporated societies concerning transitional arrangements.

Section 256(1)(c)

Q27. Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(c)?

41. NZFGC notes that reregistering involves administrative costs (for government and potentially for incorporated societies). However, this raises the issue that as the obligation to reregister is imposed by the new legislation, the argument can be made that absent that change, there would be no such obligation and therefore the cost of reregistering should fall on government, not on existing societies.