

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
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>Under s 9(a), the proposed requirement for the registered office is fine and a requirement of the Act whereas there is no defined address for service. The latter is proposed to be a mandatory physical address. Given so many New Zealanders and businesses now prefer and/or almost exclusively digital, if an address other than the registered office is required it would make sense for that address to be a digital address. Similarly, it is fine requesting details of the officers, including email addresses, but those officers' physical addresses should not be mandatory. (i.e., "each officer's name, <i>contact address (which can be but need not be their residential address)</i> and email address", italicised text is meaningless since many will just provide the Society's registered address anyhow, especially if that would be information that is made visible on the register, which is then a potential privacy and security issue for officers.</p> <p>Under s 33(2), the requirement proposed to require inclusion of "the society's name", although benign, is redundant; the amended Constitution of the Society must contain its name (section 26(1)(a) of the Act requires the Society's name be the first thing in its Constitution).</p> <p>Under ss 109(2), 192(c), and Sch 3 cl(3)(b), the same comment in relation to officers' physical addresses applies (refer s 9(a), above). Those should not be required.</p> <p>We support not requiring any additional information in relation to ss 79(2)(d), 86(2), 193(a) or (b), 197(c).</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>Under s 177(2)(b) the notice should not only be "given" to the Society, but it should also be either receipted and, where there is no response, there should be a greater requirement to contact the Society at all know addresses (physical and electronic) before deregistration. The challenge is that most of the notices will go to places that most people are not even aware of (<i>Gazette</i> and Companies Office), so providing notices there is fine for lawyers and suchlike but is more of a box-ticking exercise rather than an effort to contact the Society.</p> <p>Under s 193(c), the notice "must be published in the <i>Gazette</i>" is fine providing the onus for doing so is not with the Societies themselves.</p> <p>The remainder of the thigs proposed appear fine.</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)?
	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)?
	No comments.	
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)?
	No comments.	
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)?
	Yes. The requirements may be appropriate for larger societies, but for smaller ones there is little value in requesting additional information more than what the Act requires by default. A bright line should be applied where only above that threshold is additional information required.	
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)?
	We have no suggestions.	
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)?
	The proposed definition appears to be appropriate to address the concerns about ambiguity surrounding "current assets".	
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. It is important to keep the financial obligations/requirements in relation to "small" societies as simple as possible.	
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?
	<p>The number of Societies captured by the mandatory audit requirement needs to be at a high threshold. Whether a \$1.5m p.a. (average over two years) operating expenditure bright line is appropriate is unclear, as is admitted in the analysis.</p> <p>The consideration should be less statistical (as the analysis provides); rather it should be a risk-reward measurement. The reward being the auditing benefits afforded to members in terms of identification of financial records management, competency, and ultimately fraud identification versus the costs and practicability of auditing.</p> <p>Certainly, we have no issue ourselves with the bright line proposed, though do wonder whether applying the risk-reward analysis a lower level, perhaps \$500,000 p.a., may be more appropriate.</p>	
13	<i>Setting infringement fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?

	<p>The matter of infringement fees appears to be being looked at from the wrong perspective. There is little in the way of consideration as to the policy position for applying infringement fees at all other than a generic statement in relation to the seriousness of the infringement. In relation to such fees, the aim should be to encourage compliance first, and punishment second. The current levels should be looked at with that lens. Further, there is little consideration of size of the society either. For smaller societies, the maximum proposed fees appear potentially quite substantial whereas for a large society a \$500 fine could be inconsequential.</p> <p>The overall policy aims, including encouraging societies of very different sizes and capabilities, should be done more thoroughly than what has been done in the consultation paper's analysis.</p>	
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)?
	No comments.	
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)?
	No comments.	
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)?
	No comments.	
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)?
	No comments.	
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)?

	<p>Yes. There should be more than negative assurance that any notice delivered in a passive form has <i>actually</i> been received. To illustrate, “a document posted or delivered ... is deemed to be received 5 working days...; c. a document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent; [and] d. a document sent by email is deemed to have been received on the working day following the day on which it was sent”, are all unreasonable insofar as there is an <i>assumption that the document has been received</i>. It should not be assumed that this is the case. For example, the Society’s email account may be temporarily inaccessible for a period of time. At the very least, the methods that do not involve assurance that the document has been received should be required in multiple forms to add to the likelihood that the document has, in fact, been received. Ideally, however, the document should be considered not delivered unless there is an affirmed receipt from the Society. The “proof” of receipt paragraph (145) should not be allowed to become the permitted means of <i>proving</i> a document has been received as it is very possible that it has not been.</p>	
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)?
	Similar points as those made in our answer to question 18, above, apply. There should not be permitted <i>assumptions</i> that notices have been received without active confirmation.	
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)?
	No comments.	
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)?
	No comments.	

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)?

	Fees should be proportionate to the size of entity and actual efforts expended in relation to societies. Hence there should be almost no fees for smaller societies, and certainly those that fall under the definition of small in relation to their financial statements should have very low, or even no, fees. Many such societies, even non-charities, are benevolent and benefit New Zealanders and that should be considered as the overriding consideration.	
23	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
	No comments.	
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)?
	<p>Yes.</p> <ol style="list-style-type: none"> In relation to the reregistration fee, the larger societies should pay a larger fee and smaller ones a very low fee. Although costs need to be recovered, it is inequitable to have a universal fee, so some form of banding should be applied. This would be consistent with fees, for example, financial services providers whereby entities such as small Managed Investments Scheme managers pay a much lower fee than larger ones. Regarding cl 9(3)(b)(ii), if the restriction is an <i>AGM</i>, that should be expanded to include any general meetings of the Society (which, from a skim read of the Schedule may be the case and it is only the consultation paper that is specifying that it must be an <i>Annual GM</i>?). 	

Other comments

Consideration could be given to requiring MBIE to provide guidance/worked examples of certain documentary requirements. Given the comments around the financial statements' quality (of lack of such), it would be beneficial to have more worked examples of anonymised and modified examples of high-quality financial statements. For example, there is the option to only provide "receipts and payments" financial statements (for small societies, section 104(a)(i)), so it would make sense that MBIE should have an obligation to provide examples of those, which would have a likely benefit of improving the quality of them too.

There may be other areas where mandated guidance / documentation could be provided for, though we have not considered those.