

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

## Your name and organisation

Name	Melissa Dawson on behalf of Fiona Allan
Organisation (if applicable)	Paralympics New Zealand
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)?
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)?
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)?
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)?

1. We strongly support the proposal for regulations that provide exceptions to the rule in s 45(3) of the ISA 2022 requiring a majority of a society's committee to be members of the society and/or representatives of body corporate members of the society.

2. The rule in s 45(3) cuts across the principle recognised under s 3(d)(iii) of the ISA 2022 that societies are private bodies that should be self-governing in accordance with their constitutions, any bylaws, and their own tikanga, kawa, culture and practice and should be free from inappropriate Government interference. The rule also detracts from purpose of the ISA 2022 set out in s 3(b), to provide a legislative framework that promotes high-quality governance of societies.

3. Regulations providing exceptions to the rule in s 45(3) should, to fullest the extent practicable, give effect to the above principle and purpose in relation to societies' self-determination of the appropriate composition of their committees, in a manner that takes into account and balances the further principles recognised under s 3(d) of the ISA 2022 relating to societies' members having the primary responsibility to hold societies to account and societies operating in a manner that promotes the trust and confidence of their members.

4. In light of the above, we submit that, at a minimum, the prescribed circumstances in which s 45(3) of the ISA 2022 would not apply should cover both sport/recreation societies and larger societies, as suggested in the consultation document but with some modifications as outlined below:

- a) Sport/recreation societies: The regulations should cover any society that is a national, regional or district organisation or agency for sport and/or recreation – including any society responsible for one or more sports or codes for New Zealand as a whole or for any region or district (however described) of New Zealand, and any society that is an umbrella organisation or agency for sport and/or recreation in New Zealand.

This would cover not only the national and regional sports organisations for various sports/codes that are commonly referred to as NSOs and RSOs but also district or similar sport and/or recreation organisations and umbrella or pan-sport organisations, such as Paralympics New Zealand and the New Zealand Olympic Committee (both of which are incorporated societies).

We do not consider it necessary or appropriate to refer to the Sport and Recreation New Zealand Act 2002 in this context, because that Act (of which many of the provisions have been repealed) does not actually define or elaborate on terms such as “physical recreation and sport” or “physical recreation and sport organisations”, and therefore would not assist users of the regulations in relation to determining their application.

However, if reference to that Act is retained, then the regulations could refer to “national, regional, and local physical recreation and sport organisations”, which is a phrase/description used in that Act.

If it were considered necessary to exclude smaller, grassroots sport/recreation societies from this aspect of the regulations, then this could be done by excluding, for example, any sport/recreation society that is a “small society” for the purposes of subpart 7 of Part 3 of the ISA 2022 (or possibly any sport/recreation society that is a “specified not-for-profit entity” under that subpart).

- b) Societies that are not small: The regulations should cover any society of sufficient size to indicate that its members could reasonably determine that it would be appropriate to have a committee with a majority of ‘independent’ officers elected or appointed in accordance with the society's constitution, instead of having a majority of members/member representatives.

The consultation document suggests very high size thresholds (\$1.1m or \$3m of annual operating expenses) based on thresholds for requiring registered charities and societies'

accounts to be audited that have no direct relevance to a society's determination of the appropriate composition of its committee. A much lower threshold should instead be adopted – for example, the regulations could cover any society that is not a “small society” for the purposes of subpart 7 of Part 3 of the ISA 2022 (or possibly any society that is not, and on reasonable grounds does not expect to become, a “specified not-for-profit entity” under that subpart).

Such an approach would be consistent with, and would promote, s 3(b) and (d)(iii) of the ISA 2022 (and it may also remove the need for separate, specific regulations for sport/recreation societies, discussed above).

In relation to any size threshold used in this context, it is also critical that it can be determined in relation to a new society, rather than requiring a period or periods of operation before it can be determined. An advantage of using the “small society” threshold under subpart 7 is that s 103(2) to (4) provide a way of dealing with this issue.

5. For completeness, we note that the above circumstances for excluding the rule under s 45(3) of the ISA 2022, while justified and reasonable as a way of ameliorating the potential adverse impact of the rule on various societies, are somewhat arbitrary. Societies operating in other sectors, not just sport/recreation societies, and also small societies, not just larger societies, may well have just as strong a case for not being subject to the rule under s 45(3) of the ISA 2022.

6. Accordingly, we also submit that, outside of the regulations consultation process, MBIE should be recommending and advocating the repeal of s 45(3) of the ISA 2022, on the basis that the provision is unnecessary and that it cuts across the principle recognised under s 3(d)(iii) of the ISA 2022 and detracts from purpose set out in s 3(b) of the ISA 2022. If the members of a society consider it appropriate to have a committee with a majority of ‘independent’ officers elected or appointed in accordance with the society’s constitution (which the members can of course change, if they wish to do so), they should not have to fall within existing regulations or seek new regulations in order to be able to choose that option for themselves.

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)?

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)?
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

	<b>Matter</b>	<b>Question</b>
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

	<b>Matter</b>	<b>Question</b>
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)?

#### Other comments

<p>We support the principle that all organisations should be able to make Governance arrangements that are for the best outcomes for the organisation and that may mean members want independent directors and should have the ability to make that happen.</p> <p>We believe that members should always have the right to decide via a voting or appointment mechanism who the best governance group is.</p>
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