

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>Section 9(a) – we suggest the officer's contact details remain confidential as is the case for an application to incorporate a trust board. Some people will be put off participating if the details are made public.</p> <p>Section 79(2)(d) – we agree with your proposal. However, we suggest the regulations clarify that, for current members, the date the person became a member can be included as "before re-registration". This is because there will be many long standing societies that will have members who have been involved for many years. It will not be practical for them to try to now find the date a person became a member as it could be decades ago.</p> <p>Section 192(c) – we think examples of the method of member consent to the amalgamation proposal should be given, for example consent given by the members by way of a vote at a general meeting of the society.</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 9(a)+(f)+(g), along with other communications to be made online – we understand applying and giving notices online promotes efficiency, but internet access and the ability to navigate online platforms will be limited for some. This is especially so for societies made up of older members and officers. We suggest that the internet site be the primary means of making communications, with the secondary means being forms that are made available for societies to fill out and post or email.</p> <p>Section 111(3) – societies are often volunteer led, with officers that have other full time commitments beyond being an officer of the society. In light of this, we think the deadline by which a notification of a change in registered office should be increased to say 25 working days (with an explanation of the difference between days and working days so clear).</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)?
	No comment.	

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)?
	We do not agree with MBIE's proposal. The widening of the definition of officers in the new Act will be confusing for some societies, as it makes it unclear who falls within its scope. We think that for many societies, anyone other than those on the committee should not be officers. In particular, small societies have limited funds and means and volunteers to draw on, the broader definition may capture more of its members than intended and discourage people from being involved.	
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 comment.	
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 comment.	
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)?
	No comment.	
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)?
	No comment.	
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)?
	No comment.	

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)?
	We worry that many of those involved will not have experience with these terms or how to classify assets - although this is more of an accounting matter than legal. If 'current assets' is included, we suggest the definition be consistent with the XRB accounting standards.	
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)?
	No comment.	
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?
	No comment.	
13	<i>Setting infringement fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?
	We reiterate our earlier comment that incorporated societies are often volunteer led organisations, with many officers having other full time commitments. We suggest that the society is given a warning and time to remedy the infringement before the fine is imposed. Our suggestion is applicable to s 160(a), (b), (c), (f), (g), (h) and (j).	
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 comment.	
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)?
	Section 177(1)(a) – We think notice should also be given to the society's registered address. This is to ensure the society receives the notice, as the society may have failed to update the register with the correct details for its contact person.	

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 comment.	
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 comment.	
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)?
	No comment.	
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)?
	See above.	
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 comment.	
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 comment.	

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)?

	No comment.	
23	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
	We reiterate our comment that societies are often volunteer run, with officers having other full time commitments. Accordingly, we think the initial 25 working day period should be increased to at least 30 working days.	
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)?
	No comment.	

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)?
	No comment.	
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)?
	No comment.	
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)?
	Section 5(3)(e) – We suggest the reregistration application be free for small societies. This is because the reregistration process up until this point could be costly for small societies, for example legal fees in updating the society's constitution or the cost of hiring facilities to hold additional meetings.	
	Section 9(3)(b)(ii) – We suggest a majority vote at a special general meeting, or other general meeting, is offered as an alternative. This is because the timing of the annual general meeting may not work out for societies.	
	Section 9(5) - We reiterate our comment that societies are often volunteer run, with officers having other full time commitments. Accordingly, we think the 25 working day period should be increased to at least 30 working days.	
		Section 10(2)(a)(ii) – As above, we suggest a majority vote at a special general meeting, or other general meeting, is offered as an alternative. This is because the timing of the annual general meeting may not work out for societies.

Other comments

	<p>We suggest that regulations be made allowing societies to transition from an incorporated society to a charitable trust more easily during the transition period. This re-registration process is a great opportunity for societies to look in the mirror and consider whether the incorporated society structure is right for them. In doing so, some societies are finding that the incorporated society structure is no longer right for them, and they are looking to transition to a charitable trust. As an example, some societies were started decades ago with say 150 members but today there are only 5 or 6 active people involved. A charitable trust model would suit them better.</p> <p>Clauses 8 and 9 of schedule 1 of the new Act allow societies to update their constitution and reregister under the new Act more easily, especially in situations where a society's amendment procedures are onerous or non-existent. We suggest similar processes be made available for societies who want to transition to a charitable trust. This is because we have found some constitutions are so outdated that they would need to use clause 8 or 9 of schedule 1 to amend their constitution, then reregister under the new Act, then transition to a charitable trust.</p>
	<p>Having liaised with several hundred stakeholders through zoom meetings each month for the last 7 months, the matters below were also raised:</p> <ol style="list-style-type: none"><li data-bbox="300 913 1385 1384">1) It would be helpful to clarify whether young people and children can be members of an incorporated society. Both the Act and the Law Commission's report are silent on the issue, only talking about the age of officers. The old act said that a minor can be a member of a society, but under the Contract and Commercial Law Act 2017 a contract is unenforceable against the minor (unless the Court says otherwise) but otherwise has effect as if the minor were of full age. This answer is unsatisfactory – what if the child is 4? And if the contract is unenforceable (being the contract between the member and the society, the terms of which are set out in the constitution), then how can the member enforce the constitution against the society or vice versa – whether that be dispute resolution, fees, enforcement in the courts and so forth? We suggest the definition of “members of the society” be clearer and address this point.
	<ol style="list-style-type: none"><li data-bbox="300 1406 1385 1451">2) It would be helpful to clarify if an officer may also be an employee of the same organisation.
	<ol style="list-style-type: none"><li data-bbox="300 1473 1385 1563">3) It would be helpful to clarify whether members need to reside in New Zealand as the Act is silent on this matter.
	<ol style="list-style-type: none"><li data-bbox="300 1585 1385 1742">4) It would also be helpful to clarify the obligations for when an officer resigns during the year, for example, is an SGM needed to elect another officer, could it be done at a normal meeting, or could the board/committee do so internally? We understand this will generally be provided for in a society's constitution, but that isn't always the case.