

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>We do not agree with the proposals regarding requirement for and use of contact details.</p> <p>Our concerns are:</p> <ul style="list-style-type: none"> As drafted the Regulations propose that an application (among other things) include "each officer's name, contact address (which can be but need not be their residential address) and email address". The Incorporated Societies Act 2022 defines "Contact details" as a physical OR electronic address AND a telephone number. PNZ recommends that the same definition of contact details from the Act is used for the regulation to avoid confusion. We share the concerns expressed by the Australasian Society of Association Executives (AuSAE) that including residential addresses does raise Privacy Act concerns especially given the lack of clarity of how this information is being stored and used. This should be really clear before the Regulations are formalised We note that the Charities Act does not require a residential address for officers, although the Companies Act does for Company Directors. PNZ recommends some consistency in the sector.
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)?
		<p>PNZ believes the definition of "Officer" in the Act covers who is, or is not, an officer.</p> <p>We believe the test of a person who can "exercise significant influence" also provides a suitable threshold for determining officer status – for roles such as "Secretary"</p>

	<p><i>Prescribing circumstances related to independent committee members</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(e)?</p>
<p>5</p>		<p>PNZ, like many Incorporated Societies, has benefitted from independence and outside governance expertise. Given the higher threshold/duties for Officers under the 2022 Act it's even more important to have governance experience on the Committee. Also, s54 requires officers to act in good faith and in the best interests of the society leading to greater protection. We do not see that this is restricted to sports and recreational bodies and can see no logic for this group to be singled out.</p> <p>Independent members can raise governance standards for voluntary organisations. An added benefit for New Zealand as a whole is that the not-for-profit sector provides a good pipeline for future directors, both members in governance who go onto other Boards and for independent members.</p> <p>The purpose of an Incorporated Society is to act for a group of members with shared interests. Fundamentally PNZ believes that the governance group for a membership society should contain a majority of members; with independent members being a minority. There are alternative legal structures for groups that are not made up of members – such as Charitable Trusts.</p> <p>Ultimately the Constitution/Rules for an Incorporated Society define how Committee members are elected/appointed (s26) and the members must vote to approve the Constitution, leaving control with the members.</p> <p>While we acknowledge the logic inherent in the proposed size threshold, we stress that members can and should determine this through their Constitution/Rules, and even small organisations may choose to have independent members.</p>
<p>6</p>	<p><i>Prescribing jurisdictions whose officer disqualifications we will recognise</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?</p>
<p>7</p>	<p><i>Prescribing the types of changes in officer information that must be notified</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(g)?</p>
<p>8</p>	<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>

	<p>We agree that no regulations or conditions are required at this stage regarding conflicts of interest. The Act already prohibits financial gain. With the huge variation in size and structure of Incorporated Societies PNZ believes that the individual societies are best placed to determine what might be considered a conflict for their specific circumstances.</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>
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>
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>
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>Given the very large crossover in the not-for-profit space between organisations that are registered under the Charities Act and those under the Incorporated Societies Act PNZ would recommend that the same thresholds are used for the Incorporated Societies Act as are used for the Charities Act. Most medium to large groups are determining for their own reasons whether to invest in a full audit or a financial review.</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>No comment on the setting of the infringement fees but not certain how this will be monitored and assessed.</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>

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)?

We see value in ensuring that the appropriate structure (charity/incorporated society) is right for the organisation and support any moves that allow for an easy transition between the structures.

PNZ has recently completed a major transition programme with 23 groups merging to create one incorporated society and the transition programme, especially for the two groups who had been registered as charities was onerous.

Given the number of groups around the country that are in current amalgamation plans PNZ recommends that a pathway for amalgamation prior to re-registration under the new Act be considered. This might be Charity to Incorporated Society, but is equally likely to be from one Incorporated Society to another. The PNZ recent experience was 23 groups of which 2 were charities, 15 were incorporated societies and 8 were either unincorporated societies or had been struck off for non-filing.

This would save, time, money and resources if a society that was working through an amalgamation process did not have to re-register as an Incorporated Society and then initiate de-registering within 12 months. One mechanism that would allow this would be to allow the provisions of Subpart 2 of the Act to come into force early.

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)?
See response to Q 21 above		

Other comments

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