

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

## Your name and organisation

Name	[REDACTED]
Organisation (if applicable)	[REDACTED]
Contact details	[REDACTED]

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I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

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## Responses to questions

Part 2 of the discussion document: section 254

Matter	Question
<p><i>Prescribing information that must be included or provided</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(a)?</p>
<p>1</p>	<p>Do not need to have details of each officer. Name alone should be sufficient. Some members do not have email addresses. Note that a physical address may be mobile, as officers change at least annually in Rotary Clubs and volunteers may not always update details immediately.</p> <p>The contact details of the contact person should be left to the society to determine (e.g. email, phone or address)– as some are anxious about providing details which can be used by others. One single element of contact should be sufficient. This is in line with the Companies Act 1993 which recognises that this requirement is overly onerous and adversely impacts on the personal privacy of directors as it would do if it was a requirement for officers of incorporated societies.</p> <p>Not clear why NZBN is necessary. Societies will register for NZBN if it offers benefit. Otherwise it is another imposition, unnecessary for the purposes of the IncSoc Act.</p> <p>Register of Members.</p> <p>The Registrar has only one purpose for membership numbers: to ensure a minimum number regardless of whether corporate or individual. Therefore, additional information is not appropriate and should not be required; it adds to compliance burden.</p> <p>Many clubs will not have details of when each member became a member (some Rotarians have been members for 30, 50 years or more). So this will not be pragmatic to apply immediately (other than perhaps state a year). In practice, the payment of a levy should constitute evidence of membership, which is the purpose of the Act. If MBIE is endeavouring to establish whether a society meets the minimum membership threshold, we recommend that it simply ask the question: "Do you meet the minimum membership numbers to remain registered as a society."</p> <p>86(2) agree.</p> <p>109 (2). Reservations as above re contact details, especially for officers; and requirement for a NZBN.</p> <p>192 ( c) Reservation re contact details as above.</p> <p>193 (b). It should be clarified that the Society need send advice that two or more societies are intending to amalgamate and that anyone wishing further information should contact (named officer). Amalgamation proposals may be multipage and it becomes cumbersome and costly to send documents to all creditors. Another route which should also be acceptable is to publish notice of a proposed amalgamation in a local newspaper. The Act's intent to is provide pragmatic routes to good governance for all types of societies, including small ones. This links with 193 (c) action for an amalgamating society.</p>

	<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)?
2	<p>A significant concern is digital disadvantage, especially when so many clubs /societies are run by volunteers with limited knowledge of or access to internet services. This includes many in more rural locations where connectivity is not widely available. While this may change over time, and likely in fairly quick fashion, discretion should be allowed for the time being. The wording should indicate a preference rather than an absolute requirement subject to leave being sought. Post should always be an option.</p> <p>111 (3). Number of working days is unrealistic for volunteer societies which may hold irregular meetings (including of their committees). This should be aligned with annual report schedule, or at a minimum some months (90 days minimum, even 6 months).</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)?
<p>Agree. This should be reviewed after 3 years of operation to ensure that societies have not been disadvantaged by inability to be flexible at Registrar end.</p>		
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>Each Society should have discretion to determine via its constitution which roles are to be declared offices of the society.</p>		
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)?
<p>Each Society should have discretion, via their constitution, to appoint independent members and to determine how many relative to society members. It can be assumed that this will allow societies to make judgement on when non-members should be appointed to governance positions. If it becomes apparent that this is not working, perhaps after some years of operation under the new Act, then the regulations can be changed at that point. We do not foresee a majority of independent members as this would be counter to the purpose of inc soc. This should be protected via regulation, as well as constitutions of each society.</p>		



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)?
	<p>Agree with the prescribing of Australia, given similarity of laws.</p> <p>The regulations may require that any person banned from being a director in another jurisdiction should declare such and the circumstances and time, at time of consideration for appointment to the Board of an IncSoc. This will allow members to make judgements of suitability.</p>	
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)?
	<p>These changes will significantly impact the societies, especially those such as Rotary which have annual changes of membership of officers. It is not clear why such information needs to be updated immediately (to whose benefit?); such updates as may be required should be aligned with annual reporting. Annual Reports usually indicate when officers are changed during the year. It is not clear what officers – are these solely the officers detailed in the constitution of the society to hold offices of the society? We continue to have reservations about digital exclusion or disadvantage; and the level of contact detail that may be required (a central point should be sufficient, especially for smaller societies). Members of clubs such as Rotary join to undertake the activity of the society; compliance tasks should be minimised to solely satisfy the intent of the Act.</p>	
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)?
	Agree. Societies should retain discretion in their constitution.	
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)?

	<p>The fixed asset definition should reflect the known status of the assets on the balance date, not at the time of presenting the accounts to members or lodging the accounts. The definition of ‘total current assets’ needs to be kept as simple as possible to allow for the variety of incorporated societies operating in New Zealand and the varying levels of knowledge of the people running them.</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>
	<p>Agree</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>The proposed regulation appears reasonable. Each Society has the ability to require audit or review, in its constitution. The amount under the regulation should be adjusted periodically, to allow for inflation and also should experience indicate a systemic need to adjust the sums. Rotary Clubs often have a Charitable Trust associated with the Club. As required by law, these are not under the control of the Club. This distinction should be made clear.</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>Agree with the proposals to set nominal infringement fees, however we recommend that the deadline for the payment of these infringement fees should be either in line with their registration date and/or 40 days after their balance date. (Preferably 90 days minimum).</p> <p>Regulations should also take into account the reason for failure to report; often related to:</p> <p>(a) the health of one of more officers. In such cases the infringements will likely be multiple across multiple years</p> <p>(b) the actions of past officers.</p> <p>While the Act provides that a hearing may be requested and the Registrar may revoke infringement notices that does not provide any incentive, particular for a Society to appoint new officers that can act to rectify as there is no ‘safe harbour’ or ‘immunity’ in the Act that would allow a Society that is attempting to rectify past failures. An opportunity to rectify will encourage new officers to accept appoint and fix any issues. This could be achieved by</p> <p>(a) providing that the Infringement could be issued on a basis that recognises a first notice opportunity to rectify at a nominal fine , say \$10 which could be paid without triggering unnecessary hearings and/or</p> <p>(b) the grounds on which a revocation can be considered by the Registrar</p>	



	<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)?
14		<p>The three categories of seriousness seem reasonable. The amounts are debateable. Concerns: the time allowed for the actions is critical, especially given volunteer societies. The proposed 20 working days for example is not practicable. We prefer minimum of 90 days.</p> <p>Further, the accumulation of such offences (it may be rare to have just one offence) may well be an insurmountable financial burden particularly on smaller clubs; so the registrar should have discretion to apply penalties on which offences.</p> <p>When an offence becomes known, to the Club or to the Registrar, there should be a notice period during which remedial action can be taken. Only after this period should enforcement be taken. This will ensure focus is on good practice rather than unnecessary penalising.</p> <p>The infringement notice appears to provide a path to safe harbour or immunise a defaulting Society in the Further Action 4a) section. We do not see how this accords with the Revocation power under Section 163. If the intention is to permit an opportunity for rectification then the following suggestions are made:</p> <p>(a) that the section in the Notice in 4 a) be removed and that before Payments an appropriate call to action provide explicit advice on obtaining a safe harbour agreement and revocation</p> <p>(b) that that section recognise the burden on officers due to the often sporadic nature of the societies activities and/or the reliance on volunteer officers that may have through health or absence failed.</p> <p>In short more carrot/less stick to promote rectification.</p>
15	<i>Removal and restoration of societies from the register</i>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(o)?</p> <p>Concerns about digital exclusion/disadvantage; and the impractical timelines e.g. of 20 working days. Both these matters can lead to unnecessary actions by the Registrar which can disrupt civil society organisations. Further, it is important for compliance that there are several stages to enforcement prior to penalisation (see above).</p>
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)?

		Rotary Clubs have a standard constitution prescribed in part by Rotary International. It is consistent with many other inc soc in New Zealand – namely that upon closure of a club, any surplus assets are moved to the control of the Rotary District (other societies have a rule such as removal to a society with similar objectives to the closing society). This type of removal must be maintained. The constitution of a club should detail what happens in the event of closure or amalgamation. It would be useful for national regulations to reinforce such requirements.
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)?
	Agree	
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)?
	Largely agree. Re digital exclusions however, we recommend that documents are served by two methods. Agree with para 146.	
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 comments 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)?
	See comments relating to NZBN, above.	
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)?
	NA	

Part 3 of the discussion document: section 254

Matter	Question
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	<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)?
22	Fees are a tax on volunteering. Fees should be kept light, to not discourage people forming and maintaining inc soc, which are an essential element of a functioning civil society. If set too high societies will not register and will run their entities under no legislation which defeats the purpose of the Incorporated Societies Act.	
	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
23	<p>The timelines may be appropriate for companies, but are not so for volunteer-run inc soc. They need to be considerably extended. Officers of clubs do not undertake a certain number of hours per week, and many have other activities. The intent of the Act is to encourage good governance and transparency (for members and wider society). Timelines aligned with annual reporting, or at most 6-monthly, is more appropriate. It is not clear who benefits from much stricter reporting timelines.</p> <p>There should be reference to an allowance for leniency in the imposition of these and consideration of reasonable reasons provided as to why the lateness has occurred.</p>	
	<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)?
24	Agree	

#### 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)?
	Agree	
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)?
	Agree	
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)?



Our previous comments apply re digital exclusion/disadvantage; timelines which are impractical for many societies; tiered enforcement process, with penalisation as a last resort.

As a transition matter, there should be no fees for a society to re-register under the Incorporated Societies Act 2022 as imposing such a fee would be a disincentive for a society to re-register.

As this is a transitional regime it will be expected that existing societies will:

(a) retain their current filings

(b) only have to provide the further information as set out above which mirror the Companies Act process.

Treating all societies as effectively de-registered seems to be counter-productive.

The regulations in our view should recognise and provide for grandfathering and simply implement during the first AR cycle.

## Other comments

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

## Your name and organisation

<b>Name</b>	Graham Evans, Treasurer This is a supplementary submission [REDACTED] – due to my being ‘digitally unavailable’ for the last week. These comments are focused on some of the financial aspects that are of significant concern to us and were not covered in the original submission
<b>Organisation (if applicable)</b>	Rotary International District 9940
<b>Contact details</b>	graham@breakerbay.co.nz

[Double click on check boxes, then select ‘checked’ if you wish to select any of the following.]

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I would like my submission (or identified parts of my submission) to be kept confidential because... [\[Insert text\]](#)

## 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)?
	See original submission	
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)?
	With small societies changing their executive every year as in Rotary, Lions etc, notifying a change of address within 20 days will be almost impossible to comply with, especially with the penalties proposed for non-compliance.	
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)?



	<p>Rotary has a recently brought in a new club model in one District to meet a particular problem for small clubs who are failing or might not meet the 10 minimum members that effectively has most officers who are not members of the society. This model involves providing what is effectively a 'head office' group that picks up the executive functions of president, secretary and treasurer and provides accounting services, and the 'chapters' (being clubs that would fail to meet the new membership requirements and other reasons) continue to do their fund-raising, community work etc under the umbrella of the new club, without the hassle of meeting the regulatory requirements. Allowance should be made for such clubs to have majority non-member officers. In our view, the model has potential for all sorts of organisations outside of Rotary.</p>	
6	<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>no</p>	
7	<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>See original submission</p>	
8	<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>yes</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>
	<p>no</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>

		<p>The definition of 'small' is of extreme concern to Rotary. Rotary clubs' raison d'être is to raise money for charitable and other good purposes. Rotary clubs (uniquely in NZ) re-organised themselves in 2007/8 as a result of our assessment of the implications of the Charities Act 2005 by separating out their charitable activities into a separate charitable trust managed by trustees appointed by the club. This dual structure with 2 different reporting regimes and regulators makes it quite complicated enough for clubs to manage, especially with falling membership.</p> <p>Many clubs raise significant monies from fund-raising events for purposes of insurance, liability and operational efficiency within their clubs, and then pass those funds to their associated charitable club trust or other donee or other entities once the accounting has established the net profit from the event/s.</p> <p>Hence it might be that clubs might only hold those assets temporarily and if held over the balance date, could well impose a 'not small' condition on them, which is not in our view appropriate. The definition should be at least <b>net</b> current assets, ie allowing for current liabilities, whereby the society can allow for those expected distributions.</p> <p>There are also some clubs that have built up significant funds or have received bequests, donations from members and so have significant funds. But the clubs themselves are still just Rotary clubs with philanthropic intentions. I am not suggesting that they be treated as "small", but do think that you need to consider these in how you might treat them in any regulations introduced.</p> <p>Very few clubs hold Fixed assets of any value</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> <p>yes</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>Very few, probably zero Rotary clubs would be caught by the \$3m threshold. Most larger clubs have their accounts reviewed as a matter of course.</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>See original submission</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>

	See original submission	
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	
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	
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)?
	See original submission	
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	
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)?
	no	
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	
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	



	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)?
	Many groups setting up need the protections that an incorporated society offers. Often they have very little money when setting up. We believe that the fees should be minimal so as not to be a barrier to groups wanting to set up under the IS regime.	
23	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
	As noted previously, we think that the regime should not be based around financial penalties, but by encouragement and support. Inc Socs are established to help NZ society in charitable, environmental and other situations where the collective is a far better structure and so these should be encouraged, not face potentially disastrous consequences for non-compliance of reporting insignificant details.	
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)?
	See original submission	

#### Other comments

Our greatest concern is the annual changeover of club executives and the real lack of knowledge as to what is actually required of them by the regulator. Hence the penalties for non-advice of changes in the board, contact changes, late filing etc are a real issue for us. Our view is that it won't achieve its purpose as a learning action, as next year it's potentially a completely new group that is involved.

Rotary and similar service organisations raise significant charitable funds and may be excluded from the 'small' regime. There should be a 'better' methodology applied to allow them to stay within that group.

There is no discussion as to what form the accounting requirements are to be. To force the societies into the Tier regime similar to charities will impose an absolutely huge burden and potential cost on societies that we believe is not appropriate. Most societies and clubs have a reporting that is designed to give members the information in a format that groups income and expenditure that is unique and meaningful to them. The Tier format absolutely removes that clarity and should not be imposed. Yes, 2 sets of accounts might be prepared, as they are for many charities, but again, why? Make it easy for them, not harder.

In our view, the legislation/regulations should be drafted to encourage entities who work for the good of the community, not to make it more difficult, to perhaps the extent of them finding it all too hard and so ceasing their good work in and for their communities.

Finally, I support the thought that re-registration under the new Act should be by grandfathering, not de-registering and forced re-registration. Inc Socs are overwhelmingly run with volunteer labour and the imposition of the new Act must be made as simple as possible so as to further encourage them to keep on with their good work, and not have to be overly concerned with the regulatory requirements.