

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

Your name and organisation

| | |
|------------------------------|---|
| Name | Craig Fisher |
| Organisation (if applicable) | RSM Hayes Audit - Chartered Accountants |
| Contact details | [REDACTED] |

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

The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [\[Insert text\]](#)

Please check if your submission contains confidential information:

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.

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)? |
| | | <p>Regarding the requirement for each officer's contact address and email address being required in an application; will this be made public? If so, I suspect this may cause negative reaction issues from some inc socs as regards privacy.</p> <p>As regards the annual return; is there any way to prepopulate information from that already contained on the Register about the society? This is to avoid causing the mass administration frustration (and time cost in every incorporated society) of having to submit it all again every year. In that way any changes required could be quickly identified and addressed rather than every incorporated society getting frustrated at having to supply some core information they have already supplied all again.</p> <p>Re Amalgamations (192(c); clarification of the standard of proof regarding the certification that the majority of members of each amalgamating society could be useful. I can envisage this being contentious in some circumstances.</p> <p>Re other information to be sent to secured creditors 193(b); guidance may be required as to what is defined as a secured creditor for some incorporated societies.</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>9(a)+(f)+(g) and other communications required to be made online: While we appreciate the desire for efficiency for MBIE's processing, digital access and exclusion is potentially an issue for some. We make this observation given the very small size and the nature of some incorporated societies.</p> <p>Deadline for filing annual return alignment with deadline to file annual financial statements makes sense.</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)? |
| | | Agree as cannot see strong case for alternative treatment. |

| | | |
|---|--|--|
| 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)? |
| | <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)? |
| 5 | | <p>As a general observation, in our experience and as is supported by research, there is considerable value in the involvement of independent directors appointed on a skills and experience basis. The value of independent directors to governance does not always require them to be in a majority position.</p> <p>It is not clear, other than some recent high-profile cases in the media, as to why national or regional organisations involved in recreation and sport should be singled out above other types of incorporated societies? The same logical case appears to be able to be made for other types of incorporated societies also.</p> <p>Your suggested thresholds appear to assume that the issue of independence in governance relates solely to financial operating scale of the society. While we agree that the larger the financial scale of an entity generally the more the requirement for professionalism in governance, we are unclear as to why that should be the only criteria.</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 prescription of Australia as suggested.</p> <p>However, the logic of your approach appears to be "because we can relatively easily do this for Australia" rather than addressing the actual ill, i.e. that someone is banned elsewhere is de facto evidence that they are not a fit and proper person to hold this role in New Zealand.</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)? |
| | Agree | |

| | | |
|----|--|---|
| | <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)? |
| 8 | <p>Agree.</p> <p>Albeit given the problems that arise in relation to conflicts of interest and perceived conflicts of interest in societies we strongly suggest that guidance and access to educational resources is provided where possible. This could be via highlighting other existing guidance resources such as that produced by the Office of the Auditor General, or the Institute of Directors in this area.</p> | |
| | <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)? |
| 9 | <p>Struggle with the logic of any potential restriction of members from attending an AGM. Even more so now that online access is relatively easy for most organisations. I find s84(4) to be inappropriate in restricting rights if a union is truly wanting to give voice to and represent its membership.</p> <p>This provision of the legislation feels very much like the carry over from a past and outdated mode of operating. From a pure policy perspective, it also appears to go against the democracy of a member driven organisation.</p> | |
| | <i>Defining the term 'total current assets'</i> | Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(j)? |
| 10 | <p>Given that the XRB is the independent Crown Entity responsible for setting accounting standards in New Zealand, it would seem appropriate that their definition of current assets is used. To start to try and alternatively explain this in regulations potentially raises more scope for confusion and misalignment of definition.</p> | |
| | <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)? |
| 11 | <p>Agree.</p> <p>Albeit the fundamental issue here is protection of the members interests in the assets of the organisation, and then secondly protection of the general public in dealing with a small society. If small societies struggle with even the most basic of accounting record keeping, then one has to question whether they should be involved with handling funds on behalf of others.</p> <p>The challenge for any regulator is at what level is small – if taken in the context that a loss of that amount would not result in a major public outcry when it turns up on the front page in the media.</p> | |

| | | |
|----|--|---|
| | <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> |
| 12 | | <p>If one looks at this question from a perspective of the primary principles of the Act then that would provide a reasonably strong case for leaving the decision of audit to the members of the society. This assumes of course that the society is not also a charity or otherwise already required to have their financial statements audited.</p> <p>External funders and donors generally have the ability to request an audit as a condition of their support.</p> <p>Additionally, a society can always choose to have an audit for reasons such as it believes this enhances its public accountability and confidence in it.</p> <p>I am not convinced by the gymnastics of percentage comparisons to Companies or Charities both of which have different primary stakeholders and accountability implications, to come up with an arbitrary percentage.</p> <p>As such suggest any decision regarding audit should be left to those primarily impacted (i.e. members) and could be voted on in the AGM.</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>We are not convinced that the levels suggested would be sufficient to deter offending from any incorporated society where the officers are willing to ride roughshod over these key functions of accountability to their members. However, part of the issue there is the legislated limit of \$1,000.</p> <p>This is also difficult to contextualise as the financial resources of incorporated societies is such a wide range.</p> <p>As an aside, your looking to the 1908 Act for guidance as to setting the level of infringement fees provided a rare element of comic relief in completing this 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> <p>No</p> |
| 15 | <p><i>Removal and restoration of societies from the register</i></p> | <p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(o)?</p> <p>No</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)? |
| | Alignment with other existing legislation such as in the case of the Land Transfer Act would appear to be sensible. | |
| 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)? |
| | This appears sensible albeit with the caution that due to variations in technology used, firewalls, spam filters, antivirus software etc that caution may need to be taken to just relay on email alone as service. | |
| 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)? |
| | As 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 | |
| 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 | |

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, other than there will need to be due appreciation and consideration of the large variance in size and financial resources of incorporated societies. Many are small or micro in size and are NFP in nature and accordingly fees may be considered proportionally significant for some. | |
| 23 | <i>Setting late fees</i> | Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)? |
| | No | |
| 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)? |
| | | |
| 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)? |
| | <p>I suspect that any fee for re-registration will result in cries of unfairness by many small incorporated societies with the logic that they did not request this change being imposed on them by the Government.</p> <p>5(3)(f): See earlier submission comments regarding possible digital exclusion issues/difficulties that may be experienced by a minority.</p> <p>9(3)(b)(ii): Would it not also make sense to allow a majority vote via a SGM as an alternative to an AGM. I have some concern that despite best endeavours at awareness raising by MBIE and others that some incorporated societies may leave this re-registration process to a very late stage and this may cause issues relative to usual AGM timing.</p> <p>Not clear what Act "the 1920 Act" is referring to?</p> | |

Other comments

| |
|--|
| |
|--|