

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

Your name and organisation

Name	Julie Morrison – Group Manager, Strategy, Policy and Investment
Organisation (if applicable)	Sport New Zealand
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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 support the proposals.</p> <p><i>S 193 (b) - Other information that must be sent to creditors</i></p> <p>We agree with the proposed requirement to send information to secured creditors. A related point (not necessarily for regulations but for guidance material or FAQs) is that some smaller societies may not have knowledge of what constitutes a secured creditor. Request that there is a helpful explanation in guidance material or FAQ of what constitutes a “secured creditor” as differentiated from a “creditor”. The definition in the Act means a person entitled to a charge on or over property. Entitlement to a charge is potentially a wider inquiry than someone who currently has a registered charge (such as a registered mortgage or a general security agreement recorded on the Personal Property Securities Register (PPSR)).</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>We support the proposals regarding ‘Communications with Registrar’ and ‘Communications by Registrar’. We acknowledge that there may be a small number of societies which do not have access to online services, and these societies can be accommodated by an exception granted by the Registrar.</p> <p><i>S 11(3) – Manner in which a society gives its consent to a new society using a similar name.</i></p> <p>It would be helpful if there was either an example of a form of wording (in guidance material or FAQs) or a specified form that is acceptable for this purpose. This will give societies the confidence that the form of and manner of signing of such consent will be accepted by the Registrar.</p> <p><i>Ss 65(1), 66 – Manner in which a society’s committee must notify members of the society of a failure to comply with conflict-of-interest provisions.</i></p> <p>MBIE is not proposing to prescribe the manner in which a society’s committee must notify members of a failure to comply with the conflict-of-interest provisions. We are conscious to strike the balance of promoting transparency in governance (as well as one of the purposes of the Act that societies should operate in a manner that promotes the trust and confidence of their members), while not wishing to increase the burden on committees. We agree there should be flexibility in the manner that the Society complies. Examples of a range of methods of notifying members which Societies could consider could be given in Guidance Material or FAQs.</p> <p><i>S 177 (2) (b) – Manner in which a notice by the Registrar (of intent to remove a society) must be given.</i></p> <p>Consider whether this should be consistent with the approach involving secured creditors under s 193(b). If so, this notice should go to “secured creditors” not just those security holders registered on</p>

	<p>the PPSR. A secured creditor interested in an amalgamation is likely to also be keenly interested in being notified of potential removal of the society from the register.</p> <p>193 (c) – <i>Manner in which committee must give public notice of proposed amalgamation.</i></p> <p>The location of the registered office will affect the practical usefulness of any notice published in a newspaper circulating in the area in which the registered office is located. The Act states that the registered office can be anywhere in NZ, but if the purpose of the notice is to notify persons interested in or affected by the matter, the registered office should be in a location in which the society actually operates so that the notice might be seen by an interested person. This is a general observation arising from a permissive definition in the Act which we consider can be addressed by guidance material or FAQs for societies to consider when choosing the location of a registered office.</p>				
3	<table border="1"> <tr> <td data-bbox="245 611 496 835"><i>Authorising the Registrar to determine the manner in which things must be done</i></td> <td data-bbox="496 611 1401 835">Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 254(1)(c)?</td> </tr> <tr> <td colspan="2" data-bbox="245 835 1401 904">We agree.</td> </tr> </table>	<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)?	We agree.	
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	<p>we do not see significant risk or downside in allowing societies to determine what is best for them. For that reason, we think the threshold should be less restrictive.</p> <p>In the sport sector, some clubs may have large and more complex governance needs akin to those of NSOs and RSOs. We consider the opportunity should be available at the lower threshold aligned with the Charities Act audit threshold of annual operating expenses for two years straight.</p> <p>There should also be a significant run-off period to allow the chosen committee model to continue even if operating expenses in subsequent years fell under the threshold. This is because governance appointment processes cannot easily be changed on a year-by-year basis. It takes years to plan for and work through changes in committee structure. We consider that the ideal position is that once a society qualifies it should be allowed to continue to access the exception if it wishes to do so, irrespective of later falling under the qualification threshold.</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>We agree with the proposal to include Australia.</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>We agree with the proposal.</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>We support the proposal. We endorse the view that societies have the discretion to specify in their constitution what amounts to a conflict of interest, and what does not.</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>We do not see a need for any additional restrictions other than unions.</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>We are concerned about small volunteer-based societies which may not have the expertise available to them to make the assessment to calculate total current assets in accordance with the MBIE proposed</p>

definition. As it is now, smaller societies struggle to find people to serve on their committees and especially someone to take on the role of a treasurer. Where possible we should avoid unnecessary confusion or uncertainty for them. We believe that the assessment required as to whether fixed assets are expected to be sold or not within 12 months after balance date is potentially confusing.

We also consider that the definition of total current assets should exclude long-term investments (term deposits, shares not held for sale, etc), which are often held as general reserves or reserves to support specific initiatives.

We suggest an alternative definition of total current assets as follows:

“total current assets means total assets excluding:

- (a) long-term investments which are not intended to be converted in unrestricted cash within 12 months of balance date (e.g., term deposits, shares not held for sale and other investment portfolios), and
- (b) fixed assets (items of property, plant and equipment).”

Having taken external accounting advice, we consider the alternative definition above is more in line with the commonly known current asset definition except that our alternative definition does not consider any fixed assets which are expected to be converted to cash within 12 months. The reason for this exclusion is that it will remove a source of confusion for small societies. We also consider that even where they do sell significant fixed assets, societies might often invest the cash in long-term investments. The effect of this is that they will likely become a small society again in future reporting periods, so why exclude them for two years.

The alternative definition avoids some potential loss of continuity of simplified accounting for societies which have small and reasonably constant low operating payments and low assets apart from a building, but which may intend to sell the building in the following 12 months (but subsequently don't sell or do sell but reinvest long-term). In that case they are outside the total current assets definition in that first year (and then also necessarily outside for the following year) but they are immediately back within the definition in the year after that. We consider in such circumstances they should maintain continuity of small society status.

We can provide further detail if clarification is needed.

<p>11 <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>We support this proposal.</p>	
<p>12 <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>We support the MBIE proposed definition and the threshold of \$3m or more per year.</p>	

	It may be useful if there is guidance material or FAQs regarding the test as to what entities a society will be considered to control.	
13	<i>Setting infringement fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?
	<p>We support the proposals and endorse the view that the infringement fees should not be set any higher due to the financial impact of the pandemic and the not-for-profit nature of many societies, especially in the sport and recreation sector. The increased administrative burden of the new Act must also be considered, acknowledging the large number of societies that are run by with few or no staff and mainly by volunteers.</p> <p>We consider that fees should in general be limited to apply to infringements (here) or late compliance (Question 23) and not be applied to filing within the required time limits of annual returns and for re-registration processes. This is because societies are compelled to do these things and have no choice, whereas late fees and infringements are within their control.</p>	
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)?
	<p>We make the following comments on the example forms:</p> <p>The reminder notice (s 167) refers to payment by posting a cheque which of course is not now an option.</p> <p>The notice sometimes states something should be done, for example paragraph 4—the letter “should be signed” while in other cases, for example paragraph 6 states that a request for a hearing “must be in writing and signed by you”. Clarify whether the requirement is different or be consistent and use “must”.</p> <p>If e-mail is the method of communication, clarify if an electronic signature is acceptable, and is there the same need for signing at all when it is sent by e-mail.</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)?
	We agree.	
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)?
	We agree.	
17	<i>Prescribing procedural requirements for</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(q)?

	<i>surplus asset 'resolutions'</i>	
	We agree.	
18	<i>Prescribing how documents must be served on a society</i>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?</p> <p>Regarding 'Service in legal proceedings' we consider that any service by or behalf of the Registrar (such as in your example of s 125 (2) (in paragraph 134(b) of the Consultation Document) should be to the contact person/persons. The purpose of having a contact person for a society is that they are the point of contact between the Registrar and the society. A society may also have up to three contact persons.</p> <p>We do not support service to officers or employees. Although the legislation requires that changes to officers details be notified to the Registrar, history and experience suggests that societies will continue to struggle to keep these up to date.</p> <p>We question whether the inclusion of fax is useful.</p> <p>Notice by email should not be deemed received if the sender receives a bounce-back or non-deliverable message.</p> <p>The nature of some sport organisations is that their sport and operations are seasonal, not year-round. A registered office might be a clubroom that is not frequented for weeks at a time during an off-season. Leaving documents at a registered office could be unsatisfactory. The answer to this problem is within the control of the club as it can ensure that it does not have a registered office at location which may be unattended for weeks at a time. Guidance should be given to societies as to practical points they should consider in choosing the registered office.</p> <p>In paragraph 146 of the Consultation Document, question whether a failure to visit a registered office (e.g., clubrooms) for several weeks will be satisfactory proof of non-receipt within the time specified of documents left at the clubrooms.</p>
19	<i>Prescribing how documents must be served on a person</i>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(s)?</p> <p>We do not support that service is made to an officer by leaving it at the society's registered office as it may prejudice the officer in terms of their ability to respond if the notice is not passed on to that officer by the society promptly.</p> <p>We do consider that MBIE should specify how documents in legal proceedings are served on members and creditors.</p> <p>Our comments made in response to Question 18 of this Submission above regarding fax, email and seasonal club operations are all applicable in this Question 19 also.</p>
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)?

	We agree.	
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 agree.	

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)?
	<p>We would ask that MBIE consider the financial and administrative burden of re-registering under the Act to small societies. We do not consider there should be a fee for normal compliance.</p> <p>Fees for lateness or infringements will serve to incentivise compliance behaviours.</p> <p>See also our comment in response to Question 13 of this Submission.</p>	
23	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
	We agree.	
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)?
	We do not agree with a fee for re-registration. This is a statutorily imposed requirement which will deliver benefits to the community generally. We do not agree that individual societies should incur cost for this.	

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)?
	We 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)?

	We agree.	
	<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)?
27	<p>We do not agree that there should be a re-registration fee for reasons as earlier stated in this Submission.</p> <p>Schedule 1, clause 9(3) – <i>Manner in which a society must approve an amendment to its existing rules, as an alternative to a majority vote at an AGM</i></p> <p>We recommend that other manners are provided for, including a majority vote at a special general meeting and by a written resolution signed by all members. The latter option would only be feasible for societies with a small membership base.</p> <p>Schedule 1, clause 10(2)(a) – <i>Manner in which a society must approve a new constitution, as an alternative to a majority vote at an AGM</i></p> <p>We repeat our recommendation above that other methods are provided for, including a majority vote at a special general meeting and by a written resolution signed by all members.</p>	

Other comments

	Sport NZ has consulted with over 30 NSOs and the position set out is supported by them.
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