

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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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)?
	No	
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)?
	No	
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 that no regulations should be made at this time.	
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)?
	Agree that no regulations should be made at this time.	
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	
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	

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	
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)?
	Agree that no regulations should be made at this time.	
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)?
	Attendance at AGMs is not always practicable for all Society members. As such, it is only fair to the membership to allow a delegate to attend in the place of a member who is unable to, and for delegates to carry proxy votes on matters that concern the membership of the Society.	
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)?
	No	
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)?
	<p>Agree that no regulations should be made at this time.</p> <p>But submit that when regulations are drafted that a reasonable period of grace is provided for filing, particularly to small societies – to reflect that these are not commercial entities but volunteer organisations whose purpose is to promote activities which have social utility (language, culture, music, sport etc.)</p>	

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?
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Submit that the regulations further delineate within the class of small societies a further sub-class, that of **“very small society”** which would include small incorporated societies whose total assets were \$10,000 NZD or less. This sub-class would have an even lower standard of financial reporting, to reflect its limited resources.

Also, from a pragmatic view, such societies may have significant social utility and cultural value but simply do not have sufficient assets for it to be worth the Government’s time to pursue for compliance. The degree of harm from mismanagement or financial malfeasance is disproportionate to the effort and resources necessary to monitor, prevent and/or prosecute – although there is scope, under the duties imposed on officers, to sanction actual malfeasance or serious negligence, but the society should not bear additional costs as a result. In this sense there is an avenue for very small societies to address wrongdoing themselves, through the aforementioned imposed duties.

Rather, the Act and regulations should contemplate directing resources towards enforcing strict administrative compliance from societies with significant financial assets, where the degree of harm from mismanagement, negligence or malfeasance is proportionate to the resources expended to monitor, prevent and/or prosecute.

<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>13</p>	<p>Submit that the regulations should contemplate significant degrees of leniency for compliance to small societies – which may not have the personnel or resources to always maintain perfect compliance with the regulations. Submit that the sub-class of society mentioned [supra] of “very small society “ (i.e. with less than \$10,000 NZD total assets) should be exempt from infringement penalties.</p> <p>Instead, the Act and the Registrar should consider an approach which represents the spirit of the enactment. While the Act is intended to regulate such societies, implicit in the Act at s3(a) is an understanding that Incorporated Societies are of benefit to the Aotearoa/New Zealand society itself. Small, incorporated societies are amateur institutions that preserve and promote language, traditions and activities that have cultural value to the citizens of Aotearoa/New Zealand.</p> <p>Instead, the facility should exist for the Registrar and the Ministry to provide guidance and training to a small society to assist it with achieving compliance with financial reporting and other legislative requirements.</p> <p>As such, a provision should also exist for the Registrar to have discretion to elect not to proceed in a punitive manner against a small society which is non-compliant on the basis that the public interest served by the small society outweighs the interest of conformity to the legislation.</p>
<p>14</p> <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>
<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>15</p>	<p>Yes . That the regulations should contemplate the limited resources of small societies. As such, the time frames for objections to be raised and the formality of the process should reflect the nature of small societies i.e. time frames for objections should be significantly longer than for non-small societies, and the objection process should be less formal</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)?
	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)?
	Agree that no regulations should be made at this time.	
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)?
	Submit that the Act should contemplate that for small societies that many of the registered addresses will be residential properties, as such service should not merely be complete upon delivery to the physical address.	
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)?
	Again, as small societies are generally run by volunteers that the regulations contemplate that the manner of service be as practicable as possible for the small society's personnel to be both likely to receive and accept service (e.g. a letter sent via physical mail to a single address may not be sufficient).	
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
	<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		<p>Submit that the fees should reflect the size of the society involved. A far lower level of fee should be required from small societies, to reflect the lower level of financial resources available to them.</p> <p>As mentioned above, the Registrar should have the discretion to not impose fees, or proceed against small societies for the recovery of fees.</p>
	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
23		<p>Submit that the fees should reflect the size of the society involved. A far lower level of penalty fee should be required from small societies, to reflect the lower level of financial resources available to them. As such, late fees should not be imposed on small societies.</p> <p>As mentioned above, the Registrar should have the discretion to not impose fees, or proceed against small societies for the recovery of fees.</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		<p>Submit that existing registered small societies should not be charged a fee for re-registration, as this may place undue hardship on their financial and personnel resources.</p>

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)?
		Agree that no regulations should be made at this time.

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 that no regulations should be made at this time.		
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)?
Again, submit that the regulations should contemplate a degree of discretion, leniency and an overall lower standard of compliance for small societies (or as mentioned above “very small societies”)		

Other comments

	<p>As mentioned above, the Act should contemplate the creation of a sub-class of small society, the “very small society” which has total assets of less than \$10,000 NZD.</p> <p>Such societies should be subject to a very minimal level of regulatory compliance – in recognition that they too contribute a social good, but their level of finances is disproportionate to the resources which would be expended in monitoring and enforcing strict compliance.</p> <p>As such, the level of fees for such societies should be far lower than for other societies – particularly punitive fees, and that the Act contemplate not imposing penalties for late filings or failure to strictly adhere to administrative requirements (we note that serious negligence or actual malfeasance could be adequately dealt with via the duties which are imposed on officers)</p> <p>The Act and regulations should also contemplate a discretion for the Registrar to not impose punitive fees/measures, and to waive strict adherence to regulatory compliance for very small societies.</p> <p>In plain speaking terms, it is simply not worth the Government’s time to strictly regulate very small societies – many of which are completely run by volunteers and never handle significant finances.</p>
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