

24 July 2023

Corporate Governance and Intellectual Property Policy  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment

By email: [societies@mbie.govt.nz](mailto:societies@mbie.govt.nz)

### **Consultation on Regulations 2023 for the Incorporated Societies Act 2022**

The New Zealand Forklift Industry Association Inc. (NZFIA) is grateful to the Ministry of Business, Innovation and Employment (MBIE) for the opportunity to make a written submission on the issues raised in the Consultation Document: Consultation on regulations for the Incorporated Societies Act 2022 (the Consultation Document).

By way of background, New Zealand Forklift Association Inc (NZFIA). Is three years young and are just getting going. Massive growth coming, we currently are at 50 members but expect that to be in the hundreds in a few years time. We 3 membership tiers, full member, being a sales, hire, lease, servicing company of forklifts. Supplier member, being a company who sells parts, consumables, attachments etc to full members. And lastly, User members, being those companies that have an interest in improvements to safety, technology, training and standards and run a forklift or a fleet of them.

As such, NZFIA on behalf of it's members have a vested interest in the Act, that we make the following submission.

NZFIA is deeply concerned about the brief consultation period of only 11 working days to respond to regulations of such significant importance to incorporated societies. We believe this limited timeframe severely hampers our ability to engage with our membership, for their thoughts. We would like to strongly emphasise that since the regulations significantly impact incorporated societies and their business models, it is imperative that a more substantial duration be allotted for consultation.

**1. Matter: Prescribing information that must be included or provided.**

**Question: Do you have any comments to make in relation to regulations 1-4 - Preliminary Provisions (Title, commencement, and Part 1)**

NZFIA has no concerns with these proposed regulations.

**2. Matter: Part 2 – Incorporation of societies (Regulations 5-7).**

**Question: Do you have any comments to make in relation to regulations 5-7?**

***Section 5 (d) Application for incorporation: prescribed information***

- ***for each person named as an officer, a physical address used by that person:***

NZFIA expresses significant apprehension regarding the privacy of officers especially when disclosing their contact address, particularly if it happens to be their personal residential address. NZFIA firmly believes that officers should only be required to provide their name and email address, aligning with the provisions of the Companies Act 1993. Imposing such an additional requirement for officers of incorporated societies, as currently proposed, not only poses a potential breach of the Privacy Act 2020 but also places an excessive burden on personal privacy for officers of incorporated societies.

***Section 6 (2) Application for incorporation: prescribed manner.***

- ***However, the Registrar may accept an application made in another manner if the Registrar considers it would be unreasonable to refuse the application.***

NZFIA acknowledges that leveraging the internet and technology is the way forward. However, it is important to recognize that in New Zealand, numerous societies face barriers to access, whether due to their geographical location or limited computer accessibility. Therefore, it is crucial to establish a more robust provision that facilitates the application process for incorporation while ensuring inclusivity and accessibility for all societies.

***Section 7 (2) consent to use of identical or almost identical name.***

- ***The consent may be given on behalf of the society, company, or body corporate by a person acting under express or implied authority of the society, company, or body corporate.***

NZFIA is deeply concerned about the provision stating that consent on behalf of the Society can be given by a person under implied authority. We believe this is inaccurate since a person lacking express authority should not have the ability to grant consent. Instead, it should be clarified that consent can only be given by a person acting under express authority. Making this change ensures that the appropriate authority is employed in this situation.

**Section 7 Additional comment:**

NZFIA maintains that there should be a designated timeframe for the process of complying with requirements related to identical names. We propose a timeframe of 20 working days as a suitable duration.

**3. Matter: Part 3 – Administration of societies (Regulations 8-28).**

**Question: Do you have any comments to make in relation regulations 8-12? (Officers)?**

***Section 11 (b) Notice of change in information relating to officers.***

- ***a change in an officer's physical address notified to the Registrar and the date of the change.***

As discussed above in regard to section 5(d) NZFIA expresses grave concerns regarding the privacy of officers when disclosing their physical contact address details, which may potentially constitute a breach of the Privacy Act 2020.

**4. Matter: Members (Regulations 13-14).**

**Question: Do you have any comments to make in relation to regulations 13-14? (Members)?**

***Section 13 (a), (b) Register of members***

- ***For the purposes of section 79(2)(d) of the Act, the register of members kept by the society must contain, if known, —***
  - (a) the name of each former member of the society; and***
  - (b) the date on which they ceased to be a member.***

NZFIA believes that maintaining a register of former members of the society, including their cessation dates and any related information, may potentially breach the Privacy Act 2020. It is our position that once a member's membership ceases, their respective data records should not be retained by the association, aligning with appropriate data collection and storage practices under the Act.

**5. Matter: Financial reporting (Regulations 15-16).**

**Question: Do you have any comments to make in relation to regulations 15-16?**

NZFIA has no concerns with these proposed regulations.

**6. Matter: Annual return (Regulations 17-18).****Question: Do you have any comments to make in relation to regulations 17- 18.*****Section 17 (3) Annual returns: prescribed manner***

- ***However, the Registrar may accept a return made in another manner if the Registrar considers it would be unreasonable to refuse to accept the return.***

NZFIA is concerned that connectivity is not widely available in rural areas therefore making it difficult for rurally based societies to apply for incorporation online. NZFIA therefore recommends that the regulations should provide for other ways for societies to apply for incorporation including by post.

***Section 18 (f) Annual Returns: prescribed information***

- ***the name of, and a physical address used by, each officer of the society:***

NZFIA expresses significant concern regarding the privacy of officers and finds the requirement to include their contact address in the annual return to be burdensome and unnecessary, considering that this information is already collected by the Society's office. This is especially so when an officer's contact address, particularly if it is their residential address, is disclosed, which raises substantial apprehension. NZFIA firmly believes that officers should only be required to provide their name and email address, in accordance with the provisions stated in the Companies Act 1993 for company directors. Imposing an additional requirement for officers of incorporated societies, as currently proposed, not only carries the potential for breaching the Privacy Act 2020 but also places an excessive burden on the personal privacy of officers of incorporated societies.

**7. Matter: Other matters (Regulations 19-28)****Question: Do you have any comments to make in relation to regulations 19-28? (Other matters)*****Section 22 (a – e) Service of documents on society and legal proceeding***

- ***If a court has not provided directions as to service of documents, a document in a proceeding may be served on a society by—***
  - (a) delivering it to an officer or employee of the society at the society's registered office; or***
  - (b) leaving it at the society's registered office; or***

- (c) serving it in accordance with an agreement made with the society; or***
- (d) serving it at an address for service given in accordance with the rules of the court having jurisdiction in the proceeding or by such means as a solicitor has, in accordance with those rules, stated that the solicitor will accept service; or***
- (e) in the case of service by the Registrar only, delivering it to a contact person of the society.***

NZFIA considers the current regulation requirement to be lacking in suitability for the work environment, as it fails to align with modern practices. For instance, the provision to leave documents at a society's registered office is problematic, especially considering the increasing number of employees working remotely from home. This approach may lead to delays in document retrieval. Furthermore, the regulations do not adequately account for technological advancements, such as electronic communication facilities, which have become commonplace in today's workplace environment. NZFIA believes that provisions should be made to accommodate such technological enhancements and facilitate efficient communication in the modern work setting.

#### ***Section 23 (f) Service of documents on society other than legal proceedings***

- ***sending it by fax to the society's registered office; or***

NZFIA recommends that since facsimile machines are no longer a commonly used communication device in today's workplace, this requirement should be updated to a more technology-neutral regulation condition.

#### ***Section 25 (i) (j) Service of documents on officers other than in a legal proceeding***

- ***(i) sending it by fax to the officer's residential address; or***
- ***(j) sending it by fax to the society's registered office.***

NZFIA recommends that since facsimile machines are not a commonly used communication device in today's workplace, this requirement should be updated to a more technology-neutral regulation condition.

***Section 26 (1), (2), (3) receipt of documents***

- (1) applying to regulations 22 to 25.***
- (2) A document Street is received, -***
- (3) improving the serving of the document***

NZFIA firmly believes that several regulations within the current framework are outdated and no longer aligned with modern practices. One such example is the requirement stating that a document is considered delivered after five working days from the date of posting. This timeframe fails to account for the present circumstances where delivery times often exceed 10 working days, especially with the evolving postal systems and logistical challenges.

Another area of concern is with the regulations pertaining to facsimile communication. Facsimile machines have become significantly less prevalent in today's workplaces, being largely replaced by more advanced and efficient digital communication technologies. Therefore, NZFIA advocates for a comprehensive revision of this section to embrace a more updated and technology-neutral approach.

The need for reworking these regulations is evident. It is crucial to adapt to the realities of the contemporary world, where digital communication methods have become the norm. By embracing a more modern and technology-neutral regulatory framework, it would ensure that the regulations remain relevant, effective, and reflective of the current work environment. NZFIA strongly encourages the relevant authorities to undertake a thorough review and revision of these outdated regulations to foster a more adaptable and forward-thinking regulatory landscape.

***Section 27 contents of register (a)***

- ***a copy of the certificate of incorporation;***

NZFIA believes that including the certificate of incorporation in the register is unnecessary, considering that it is issued by the Registrar itself. Therefore, requiring its inclusion in the register only adds to compliance costs without providing any substantial benefits.

**Section 28 (a) (b) Search of register**

- ***In addition to the criteria listed in sections 237(2)(a) to (d) of the Act, the register may be searched by reference to the following criteria:***
  - (a) the former names of a society held by the society while incorporated under the Act:***
  - (b) the name of a former officer of the society while incorporated under the Act.***

NZFIA firmly believes that retaining the names and details of former officers constitutes a violation of the Privacy Act 2022. Consequently, we advocate for the exclusion of this section from the regulations. However, if the Society's office deems it necessary to retain such information, we recommend implementing a statute of limitations of at least 6 to 7 years. This ensures a reasonable time frame for data retention while still respecting the privacy rights of former officers.

**8. Matter: Part 4 – Removal from register, amalgamation, liquidation, and other processes (Regulations 29-44)**

**Question: Do you have any comments to make in relation to regulations 29-38? (Removal, amalgamation, liquidation, and other processes)**

NZFIA has no concerns with these proposed regulations.

**9. Matter: Amalgamation (Regulations 39-41)**

**Question: Do you have any comments to make in relation regulations 39-41? (Amalgamation)**

**Section 41 Registration of amalgamation: prescribed information (b) (ii)**

- ***For. Each person named as an officer, -***
  - a certificate from that person is confirming the person is not disqualified from being elected or appointed or otherwise holding office as a society.***

NZFIA suggests that instead of issuing a certificate, a declaration should be utilized to verify that a person is not disqualified from being elected or appointed to a certain position. The use of a declaration allows for a clearer understanding of the individual's eligibility, as opposed to relying on an unfamiliar certification. This approach ensures transparency and provides a straightforward confirmation of an individual's qualification for the role without the need for an additional certificate.

- 10. Matter: Other matters relating to removal or liquidation of a society (Regulations 42-44)**  
**Question: Do you have any comments to make in relation to regulations 42-44? (Removal or liquidation)**

***Section 42 (b)***

- ***request for alternative distribution of surplus assets: persons who may make request (b) a member of the society.***

NZFIA believes that the current regulation stating that "a member of the society" may request the terms of distribution of surplus assets is overly broad. We suggest refining this provision to limit the scope to either an officer or an appointed person. This adjustment ensures that the request for the terms of distribution is made through authorised channels while still allowing for member input. It is important to clarify that while a member can suggest the terms, they must follow the appropriate procedures and protocols for their request to be considered.

- 11. Matter: Part 5 – Societies and entities incorporated under other or former Acts (Regulations 45-52)**  
**Question: Do you have any comments to make in relation to regulations 45-46? (Reregistration of existing societies)**

***Section 45 (e) (ii) Application for reregistration: prescribed information***

- ***for each person named as an officer, –  
(ii) a certificate from that person confirming the person is not disqualified from being elected or appointed or otherwise holding office as an officer of the society:***

NZFIA recommends using a declaration instead of a certificate to verify a person's eligibility for election or appointment. This approach offers clarity and transparency, providing a straightforward confirmation of qualification without the need for an unfamiliar certification.

- 12. Matter: Reregistration of specified entities (Regulations 47-51)**  
**Matter: Incorporated branches and groups of branches (Regulation 52)**

**Question: Do you have any comments to make in relation to regulations 47-52? (Specified entities and incorporated branches)**

NZFIA has no concerns with these proposed regulations.



**13. Matter: Part 6 – Infringement fees and other fees (Regulations 53-57)**

**Question: Do you have any comments to make in relation to regulations 53-57? (Infringement fees and other fees)**

NZFIA has no concerns with these proposed regulations.

**14. Matter: Part 7 – Transitional regulations for implementation of Act (Regulations 58-61)**

**Question: Do you have any comments to make in relation to regulations 58-61? (Transitional regulations)**

NZFIA has no concerns with these proposed regulations.

**15. Matter: Schedules**

**Question: Do you have any general comments regarding the regulations?**

NZFIA has no concerns with these proposed regulations.

**16. Matter: 3 Proposed initial fees**

**Question: Do you agree with our proposal to roll over the current fees under the 1908 Act to the 2022 Act to cover the period until the system-wide funding review is complete? If not, why not?**

***49 We are therefore proposing (and seek your views on) rolling over the current fees until the system-wide funding review is complete. That is, the following initial fees will be charged:***

- ***Application for incorporation of a society: \$88.89 (GST exclusive)***
- ***Restoration of a society to the register: \$177.78 (GST exclusive)***

NZFIA suggests that re-registration fees should be waived for societies under the Incorporated Societies Act 2022, as imposing such fees could discourage societies from re-registering. However, as a compromise to support smaller incorporated societies, we propose implementing a two-tier system. Under this system, societies with expenses under \$50,000 would have no registration fees, while societies with expenses exceeding \$50,000 would be subject to a rollover fee of \$88.89 (exclusive of GST). This approach aims to provide financial relief for smaller societies while maintaining a reasonable fee structure for larger societies.

Thank you again for the opportunity for NZFIA to make this submission on behalf of our incorporated society members. If there is anything further you wish to discuss, please do not hesitate to contact me.

Yours Sincerely,

Privacy of natural persons



Rodney Grant | CEO  
New Zealand Forklift Industry Association (Inc.)

Privacy of natural persons

