



22 November 2022

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

By email: societies@mbie.govt.nz

Consultation on regulations for the Incorporated Societies Act 2022

The Australasian Society of Association Executives (AuSAE) 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, AuSAE (or the “Association of Associations”) has over 350 association professionals as members who represent almost every aspect of Aotearoa’s communities, society and the economy. A list of our members is attached as Appendix A.

As such, almost all of AuSAE’s members are structured as incorporated societies and it is on that basis that we make the following submission.

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

Question: Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(a)?

Section 9 (a)

under the regulations, the application should also include:

- ***each officer’s name, contact address (which can be but need not be their residential address) and email address***

AuSAE has serious concerns with respect to the privacy of officers when providing their contact address, particularly where this is likely to be the officer’s residential address. AuSAE believes that it should be sufficient for officers to provide their name and email address only. 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.

Section 109 (2)

a certification that:

- ***the membership figure included in the annual return is accurate;***

AuSAE does not agree that the regulations should require the society's membership figure at the time of filing to be disclosed".

Our objection to this is that there is no useful purpose for MBIE to collect the information; and because membership figures can be calculated in different ways and are therefore open to interpretation.

For example, in a society like AuSAE which has a mix of individual and corporate members, the definition of membership can be open to interpretation. A franchise or Cooperative may be a corporate member of our society. The individual members of that franchise may consider themselves to be members, but a group membership fee may be paid. In this case, is MBIE considering the members to be the individual firms (whose details we may not necessarily hold), or the group membership? In other cases, there may be no group membership, but we could have dozens of franchise members individually holding their own memberships.

It is unclear as to the reason why MBIE would want this information, and there is significant scope for interpretation with the result that the figures are not particularly useful.

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."

2. Matter: Prescribing the manner in which things must be done.

Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(b)? - Communications with the registrar

Section 9 (a) + (f) + (g) - Manner in which application for incorporation must be made. Except with the leave of the Registrar given in his or her absolute discretion, applications for incorporation must be made online through the Internet site designated by the Registrar.

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

Section 111 (3) Manner in which a society must notify the Registrar of a change of registered office Having noted that s.109 does not set out a deadline by which a notification of a change in registered office must be filed, we also propose setting such a deadline through regulations made under section 254(1)(b). That deadline should be within 20 working days.

AuSAE acknowledges that 20 working days is aligned with the Companies Act 1993, however due to the fact that many associations and societies are run by volunteer officers and their meetings may be held irregularly, we recommend that this deadline should be extended to be 40 working days to make it easier for them to action these requests.

Section 172 (2) (b) Manner in which a notice by the Registrar (that he intends to remove a society) must be given.

We propose that the notice also be:

- given to the public by being published:

- in the Gazette; and

- on the Companies Office website for not less than 20 working days

AuSAE has no concern with this proposal.

- 3. Matter: Authorising the Registrar to determine the manner in which things must be done.**
Question: Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?

AuSAE has no concern with this proposal.

- 4. Matter: Declaring persons to be, or not to be, officers.**
Question: Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?

AuSAE agrees that no regulations under this section should be made however wishes to point out that some associations have employees who also have a say in the way the society is run who should also be considered to be officers of the association.

- 5. Matter: Prescribing circumstances related to independent committee members.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)?

48 We are not aware of any other classes of incorporated society that are required to have a majority of 'independent' committee members, although that does not mean that in future such requirements will not exist.

AuSAE is concerned that the fundamental point for the existence of associations or societies is that they are membership bodies and therefore a society's committee should not include a majority of independent members so that it remains representative of the views of members. AuSAE supports the inclusion of some independent committee members if societies so wish as a means to good governance but can see no situation where a membership body would wish to have a majority of independent committee members. AuSAE therefore recommends that this should be protected either through regulation or the respective constitutions of individual societies.

- 6. Matter: Prescribing jurisdictions whose officer disqualifications we will recognize.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?

52 / 53. We propose that the Governor-General make regulations under section 254(1)(f) prescribing Australia. This reflects the fact that:

a. most foreign officers in incorporated societies are from Australia; and
b. the Companies Office has systems in place to check the registers of the Australian states for disqualifications.

if someone has been banned from being an officer in jurisdictions other than Australia (e.g. Cook Islands, Samoa, Fiji and/or Tonga), then they should also be disqualified from being an officer in New Zealand

AuSAE agrees with the proposal to prescribe Australia as a jurisdiction whose officer disqualifications are recognised in New Zealand. However, we recommend that this should be extended to all other visa waiver countries in line with the Companies Act 1993.

- 7. Matter: Prescribing the types of changes in officer information that must be notified.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(g)?

AuSAE agrees with the recommended changes.

8. Matter: Regulating constitutional provisions on conflicts of interest.

Question: Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(h)?

AuSAE agrees with the proposal that no regulations should be made relating to conflicts of interest.

9. Matter: Prescribing societies that can restrict general meeting attendance to delegates.

Question: Do you have any suggestions regarding regulations that should be made under section 254(1)(i)?

AuSAE agrees that societies should be able to make provision in their constitution for attendance at annual general meetings to be limited to delegates or other representatives and / or stakeholders.

10. Matter: Defining the term 'total current assets'.

Question: Do you have any comments on MBIE's proposals regarding regulations under section 254 (1)(j)?

AuSAE firmly believes that 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.

11. Matter: Prescribing additional requirements for the financial statements of small societies.

Question: Do you agree with MBIE's proposal that no regulation should be made at this stage under section 254(1)(k)?

108. 254(1)(l) prescribing that the kinds of societies that must ensure their financial statements for a given accounting period are audited by a qualified auditor are:

Those societies not registered as charities for which, in each of the 2 preceding accounting periods, the total operating expenditure of the society and all entities it controls (if any) is \$3 million or more

AuSAE agrees with this proposal however recommends that the regulation should also state "or as requested by the committee".

12. Matter: Determining the class of society that must have its financial statements audited.

Question: 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?

AuSAE agrees with these proposals.

13. Matter: Setting infringement fees.

Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?

AuSAE agrees 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 up to 40 days after their balance date.

- 14. Matter: Prescribing the information to be included in infringement and reminder notices.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(n)? For example, do you agree with the proposed forms set out in Annexes 1 and 2?

AuSAE agrees with the proposals but, once again, requests that a timeframe of up to 40 working days be allowed to comply.

- 15. Matter: Removal and restoration of societies from the register.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(o)?

AuSAE agrees with these proposals.

- 16. Matter: Prescribing certain matters relating to surplus assets.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(p)?

AuSAE agrees with these proposals.

- 17. Matter: Prescribing procedural requirements for surplus asset 'resolutions'.**
Question: Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(q)?

AuSAE agrees that no regulations should be made.

- 18. Matter: Prescribing how documents must be served on a society.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?

AuSAE agrees with these proposals as they align with the Companies Act 1993.

- 19. Matter: Prescribing how documents must be served on a person.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(s)?

AuSAE agrees with these proposals.

- 20. Matter: Prescribing matters relating to the incorporated societies register.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(t)?

AuSAE agrees with these proposals.

- 21. Matter: Specifying matters concerning conversion into an incorporated society.**
Question: Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(u), (v) or (w)?

AuSAE agrees with these proposals.

22. Matter: Setting fees for the performance of functions or the exercise of powers.

Question: Do you have any suggestions on regulations that should be made under section 255(1)(a)?

AuSAE's only concern in regard to setting fees is that if they are too high societies will not register and will run their entities under no legislation which defeats the purpose of the Incorporated Societies Act.

23. Matter: Setting late fees.

Question: Do you have any comments on MNIE's proposals regarding regulations under section 255(1)(b)?

AuSAE recommends that, with respect to the setting of late fees, that there is some mention of an allowance for leniency in the imposition of these and consideration of reasonable reasons provided as to why the lateness has occurred.

24. Matter: Setting other fees.

Question: Do you agree with MBIE's proposal that no regulations should be made at this stage under section 255(1)(c)?

AuSAE agrees with this proposal.

25. Matter: Providing that certain rules apply.

Question: Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(a)?

AuSAE agrees with this proposal.

26. Matter: Providing that certain legislative rules do not apply.

Question: Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(b)?

AuSAE agrees with this proposal.

27. Matter: Prescribing matters for the purposes of Part 1 of Schedule 1.

Question: Do you have any comments on MBIE's proposals regarding regulations under section 256(1)(c)?

AuSAE recommends that 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.

Thank you again for the opportunity for AuSAE 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.



Brett Jeffery, CAE
GENERAL MANAGER NEW ZEALAND
m 027 249 8677 e brett@ausae.org.au