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24 July 2023

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**CONSULTATION ON DRAFT REGULATIONS  
AND PROPOSED INITIAL FEES**  
under the  
**INCORPORATED SOCIETIES ACT 2022**

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This submission is from the New Zealand Amateur Sport Association Inc., (2669211), (NZBN: 9429046103086), (the Association). It is approved by the Association's Board and has been reviewed by Succeed Legal Limited.

The Association can be contacted [Privacy of natural persons](#)

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## 1.0 Overview

1.1 As a preamble to our detailed comments which follow, the Association would like to remind Officials and Government of key matters raised in the Association's submission dated 22 November 2022, specifically:

- a. It should not be assumed that incorporated community sport organisations (ICSOs) are fully cognisant of (and compliant with) their obligations under the 1908 Act, as a foundational stepping-stone toward an ICSO's understanding of its requirements under the 2022 Act, and in respect of the proposed regulations;
- b. the Association notes (based on its interaction with ICSOs nationally) that the gap between ICSOs' actual and assumed understanding and compliance, is much wider than what Officials and Government assume, with the associated risk is that for many ICSOs, the gap between the 1908 Act and the 2022 Act will be considered too daunting to bridge, with voluntary (or involuntary) dissolution an outcome to be anticipated, with the risk of "an extinction-event" for ICSOs unwilling (or unable) to comply;
- c. we also note that while the 2022 Act (and the proposed regulations) are based on rubrics contained in the Companies Act 1993, ICSOs (which are largely operated by volunteers on a not-for-profit basis for community benefit) do not operate like companies, with those responsible for their operations often lacking the requisite knowledge, competence, time and skill to fulfil the legislative obligations which would otherwise be required in a regulated corporate environment for good governance; and
- d. the Association would also like to highlight that (in considering the draft regulations), whereas remediation of involuntary ICSO non-compliance was simpler to resolve in respect of the 1908 Act, it is now more complex with adverse financial and social consequences; therefore, Officials should therefore give careful consideration to the consequential risks associated with ICSOs that involuntarily do not re-register and continue to operate irrespective of the new legislation in an unincorporated manner.

## 2.0 Comments

<b>1</b>	<b>Title, Commencement And Part 1 – Preliminary Provisions</b>	
	Do you have any comments to make in relation to regulations 1-4?	
	Regulation 1 :	The Association has no comment to make.
	Regulation 2 :	<p>The Association suggests that the regulations should only be finalised and come into force when Government is satisfied that their implementation will not result in unintended consequences for incorporated community sport organisations (ICSOs), arising from the enactment of the Incorporated Societies Act 2022.</p> <p>We note that the long transitional period to enable compliance with the new Act and regulations, while appropriate given the magnitude of the change process, does not infer law or regulation which (in its current form) is suitable for ICSOs, who are the Association's stakeholders.</p> <p>Moreover, we note that we have not had an opportunity to consult with community sport stakeholders as a result of the 10 business-day consultation window, (which admittedly is an improvement on the Government's initial position of no consultation at all).</p> <p>We note that 10 business-days is insufficient time to undertake consultation with all stakeholders, noting that most are volunteers and that half of the consultation period expired during the July school holidays. Therefore, this submission should not be considered an exhaustive commentary on the draft regulations.</p>

	Regulation 2 :	Overall, we note that our comments in response to the Consultation Paper should not be inferred as an endorsement of the regulations in principle, or that the proposed commencement date is appropriate.
	Regulation 3 :	The Association has no comment to make.
	Regulation 4 :	We note that Schedule 1 states that there are no transitional, savings or related provisions in the draft regulations, however we note the proposal to roll-over current fees under the 1908 Act while a system-wide review of fees is undertaken.
2	<b>Part 2 – Incorporation Of Societies</b> Do you have any comments to make in relation to regulations 5-7?	
	Regulation 5 :	<p>With reference to r 5 (a), we note that the “physical address” of a “registered office” for an ICSO will (more often than not) be a residential address of an ICSO member, which is either owned (or rented) by that member. As the role of a “registered office” is to create a physical location for statutory enforcement purposes, a member may be reluctant to offer their “physical address” for this purpose.</p> <p>Moreover, we note that an ICSO member may move their residence from time to time, prompting a requirement for an ICSO to meet the obligations of r 19. Should the member whose “physical address” (which is also the address of the “registered office”) move residence, there is a reasonable risk that this obligation is not met, (or is not met in a timely manner).</p> <p>For this reason, we recommend that a post office box (which can be accessible to numerous members simultaneously), be used as the address of an ICSO’s registered office. While this may not be consistent with other legislation, it is a good example of where this legislation fails to meet a practical consideration of ICSO stakeholders.</p> <p>We also propose that an ICSO is able to list/name other societies or organisations as part of its application that it is affiliated with, (including their “physical address”). For example, Charities Services allows for a “group” to be created, so that entities can be searched individually, but also if they are part of a wider body. Per our comments to follow in respect of other proposed regulations, this will establish a link between an ICSO and the NSO (or RSO) to which it is affiliated. This may mitigate the need for an ICSO to have a “physical address” for a “registered office”.</p> <p>Similarly, with reference to r 5 (d) the requirement for an officer to provide a “physical address” which they “use”, (again for statutory enforcement purposes), is likely to be a disincentive for a person to offer themselves as an officer of an ICSO, notwithstanding that it will not be made public (for good reason) on the register maintained by the Registrar.</p> <p>With reference to r 5 (e) and r 5 (f), the regulations are silent on the form of confirmation that an officer is required to make. We note that the officer, to give effect to these clauses, has only to “consider” (rather than “certify”) that the requirements have been met.</p> <p>As “consider” is a potentially fallible subjective assessment rather than an objective test, we question where liability falls should “consideration” not satisfactorily fulfil an ICSO’s statutory obligations?</p>

	Regulation 6 :	<p>With reference to r 6 (1), on the assumption that the Registrar is able to create online-forms on a secure internet site, we recommend all not-for-profit societies (including ICSOs) are provided with a Help Desk service from the Companies Office to navigate potential issues in completing these forms.</p> <p>With reference to r 6 (2), we assume that “another manner” means the use of paper-based forms (presumably designed by the Registrar), which can be lodged with an agency appointed by the Registrar for the purposes of meeting the relevant regulatory obligation.</p> <p>We suggest that such lodgement, (noting the geographically diverse nature of ICSOs) is able to be made through a government (or through a government-authorised) agency which is located in the proximate area where an ICSO is located.</p>
	Regulation 7 :	<p>With reference to r 7 (1), this regulation infers that where there are two ICSOs with similar names, the ICSO registered first (as part of the required re-registration process) has the pre-emptive right to refuse the registration of the second ICSO.</p> <p>We are aware of ICSOs to which this scenario might apply and suggest that natural justice ought to apply where all ICSOs are required to re-register under the new Act and these regulations. The regulations should therefore allow a second ICSO the same prerogative as the first, within the transitional period.</p>
3	<b>Part 3 – Administration Of Societies: Officers</b> Do you have any comments to make in relation regulations 8-12?	
	Regulation 8 :	The Association has no comment to make.
	Regulation 9 :	The Association has no comment to make.
	Regulation 10 :	<p>With reference to r 10 (1), we recommend that an ICSO, (where affiliated with a NSO (or RSO) and registered with the Registrar accordingly), is able to make application through the NSO (or RSO) in a manner which preserves the confidentiality (and any associated privacy issues) of the officer for whom a waiver of disqualifying factors is being sought.</p> <p>We note that unlike Company Directors, officers of ICSOs are likely to be volunteers closely engaged with their local sporting communities, with any applications to be managed sensitively to avoid unintended consequences in relation to the public reputation of the proposed officer.</p> <p>With reference to r 10 (2), we refer to our comments in respect of r 6 (2).</p>
	Regulation 11 :	<p>With reference to r 11 (a) and r 11 (b), if an officer fails to advise the society that they have changed their name, or their physical address, is the officer liable to the Registrar directly, or is the society responsible to the Registrar for the failure of the officer to provide the required advice?</p> <p>We recommend that the words, “if known” are added following the words “... is given to the Registrar”, (as per r 13).</p>
	Regulation 12 :	We refer to our comments in respect of r 6 (2).

4	<b>Part 3 – Administration Of Societies: Members</b>	
	Do you have any comments to make in relation to regulations 13-14?	
	Regulation 13 :	It is unclear whether or not this regulation applies to a society prior to being re-registered under the 2022 Act. In other words, in respect of r 13 (a), does this regulation relate to members of a society previously registered under the 1908 Act?  The words “if known”, if only applicable to a society registered under the 2022 Act, would indicate that the intent of s 79 (2) of the Act is not a strict liability requirement.
	Regulation 14 :	The Association has no comment to make.
5	<b>Part 3 – Administration Of Societies: Financial Reporting</b>	
	Do you have any comments to make in relation to regulations 15-16?	
	Regulation 15 :	With reference to r 15 (2), we note that many ICSOs will hold funds on term deposit for periods of 12 months or more, with such deposits “laddered” so that funds are potentially accessible on an ongoing basis, with such funds (in aggregate) generally therefore “not restricted from being exchanged or used to settle a liability” within 12 months of an ICSO’s balance date.  With reference to s 103 (2) (ii) of the Act, we therefore believe that not including such deposits within the definition of “current assets” may unfairly penalise an ICSO which (in fact) is prudently managing its assets to meet its ongoing (current) liabilities and should for all intents and purposes be considered to be a “small society”.
	Regulation 16 :	The Association has no comment to make.
6	<b>Part 3 – Administration Of Societies: Annual Return</b>	
	Do you have any comments to make in relation to regulations 17-18?	
	Regulation 17 :	In respect of r 17 (1) and (2), refer to our comments in respect of r 6 (2).
	Regulation 18 :	In respect of r 18 (d), (e) and (f), refer to our comments in respect of r 5.
7	<b>Part 3 – Administration Of Societies: Other Matters</b>	
	Do you have any comments to make in relation to regulations 19-28?	
	Regulation 19 :	With reference to r 19 (1), (and also with reference to our comments in respect of r 5), the inference of the regulation is that an ICSO will have a “registered office” from which its operations are run.  The reality is that (more often than not) the “registered office” will be a private residence, over which an ICSO cannot create an obligation without comprising the sovereignty and privacy of the member who has made their home available to meet this purely statutory purpose.  Per our comments relating to r 5, as the role of a “registered office” is to create a physical location for statutory enforcement purposes, a member may be reluctant to offer their “physical address” for this purpose.

Regulation 20 :	<p>We note that volunteers may be less inclined to offer themselves to be a “contact person” if in doing so, they become known to the Registrar for statutory purposes and may (in doing so) experience possible public opprobrium or censure for a failure by an ICSSO to meet its statutory obligations.</p> <p>In respect of this regulation, it is unclear what liability the contact person may have if their name or contact details change and they omit to inform the society (and by inference the Registrar) of this change.</p>
Regulation 20 :	With reference to r 20 (2), we refer to our comments in respect of r 6 (2).
Regulation 21 :	With reference to r 21 (2), we refer to our comments in respect of r 6 (2).
Regulation 22 :	<p>While we note that the person carrying out/requesting the service will determine the “method of service” undertaken in respect of r 22 (2), we note (with reference to our comments in respect of r 23 below) that some of the options proposed (a) to (e) may be problematic when executed in respect of an ICSSO.</p> <p>In the case of r 22 (2) (c), we suggest that advice be offered to ICSSOs that it will be advantageous to embed within their Constitution, details of NSO (or RSO) affiliation which will enable them to nominate their NSO (or RSO) to receive documents served by the court or the Registrar, (if that is what is intended by this clause).</p>
Regulation 23 :	<p>We refer to our comments in respect of r 22 above.</p> <p>In respect of r 23 (d), we note that ICSSO e-Mail mailboxes are often unattended for long periods of time (i.e., throughout a sport’s off-season), with the likelihood of a document being served in this manner not being attended to by the ICSSO in a timely manner, (if at all).</p> <p>As one recent e-Mail auto-response to a message sent by the Association to an ICSSO stated, “all of our committee have full-time jobs and families and our club is currently operating without a secretary.” We suggest that this is a common state for ICSSOs (i.e., where an ICSSO effectively becomes “dormant” when out-of-season), which is not catered for by the Act, or by the draft regulations.</p>
Regulation 24 :	<p>We refer to our comments in respect of r 22 above.</p> <p>In the case of r 24 (2) (d), we assume (in accordance with our earlier submission) that an ICSSO will be able to constitutionally (or in another manner) nominate a NSO (or RSO) for the purposes of receiving documents served by the court or the Registrar on its behalf. If so, the regulations should acknowledge this appropriately.</p> <p>In respect of r 24 (3), we note that notwithstanding the intent, the addresses used in respect of r 24 (3) (b) and (c) will, more often than not, be the same address.</p>
Regulation 25 :	<p>We refer to our comments in respect of r 22 above.</p> <p>In respect of r 25 (f), as noted above, ICSSO e-Mail mailboxes are often unattended for long periods of time (i.e., during a sport’s off-season), with the likelihood of a document being served in this manner, not being attended to by the ICSSO in a timely manner, (if at all).</p>

	Regulation 25 :	In respect of r 25 (2), we note that notwithstanding the intent of this clause, the address used in respect of r 25 (2) (c), (f) and (j) will, more often than not, be the same address as r 25 (b) and (e).
	Regulation 26 :	<p>With reference to our comments in respect of r 23 and r 25 (and with reference to r 26 (2) (b)), we note ICSO e-Mail mailboxes are often unattended for long periods of time (i.e., during a sport's off-season), with the likelihood of a document being served in this manner, not being receipted to by the ICSO in a timely manner.</p> <p>In respect of r 26 (4), no indication is provided as to how a person must prove non-receipt through "no fault on their part", or "who" makes the determination of the acceptability of the proof.</p>
	Regulation 27 :	The Association has no comment to make.
	Regulation 28 :	Under the 1908 Act (and with reference to r 28 (b)), an officer (for privacy reasons) can elect not to have their name published on the public register. We submit that this should continue to be the case, with any application for disclosure of withheld information made to the Registrar.
<b>8</b>	<b>Part 4 – Removal From Register, Amalgamation, Liquidation, And Other Processes</b> <b>Removal From, And Restoration To, Register</b> Do you have any comments to make in relation to regulations 29-38?	
	Regulation 29 :	With reference to r 29 (2), we refer to our comments in respect of r 6 (2).
	Regulation 30 :	<p>We refer to our comments in respect of r 23.</p> <p>With reference to r 30 (d), we note that the Registrar will advise the Commissioner of Inland Revenue, presumably to ensure that all income tax obligations of the ICSO are met following removal and/or dissolution?</p> <p>Does this infer that Inland Revenue will then contact the ICSO directly? Should the ICSO have unpaid tax obligations, are the officers (and/or the members) of the ICSO liable on its dissolution for those obligations?</p> <p>We are aware that not all ICSOs are up to date with their undertaking (or their understanding) of their income tax obligations, (with few having exemptions under CW46 of the Income Tax Act 2007).</p>
	Regulation 31 :	<p>We refer to our comments in respect of r 22 (2) (c) and suggest that a nominated NSO (or RSO), be provided with a copy of the notice at the same time as the notice is made in respect of r 22 (a) and (b).</p> <p>In terms of the notice envisaged by r 31, is this intended to be made contemporaneously with the notice envisaged under r 30, or following the date specified in s 177 (2) (a) of the Act?</p>
	Regulation 32 :	<p>With reference to our comments in respect r 31, we suggest that there is a total of 40 days, (two months), between the notice of intention for an ICSO's dissolution and the actual date of its dissolution.</p> <p>We believe that this is a reasonable period, should an ICSO wish to resolve matters to the Registrar's satisfaction, for such resolution to occur.</p>

	Regulation 33 :	With reference to r 33 (c), we note that a person with an “undischarged claim” against an ICSO may apply for its restoration, (as distinct from a “creditor”). If not a payment due for the provision of goods and services, what sort of claim might be considered as warranting restoration of an ICSO?
	Regulation 34 :	With reference to r 34 (2), we refer to our comments in respect of r 6 (2).
	Regulation 35 :	In the event that the application was made by any person, other than a person defined in r 33 (a), we recommend that (in accordance with our earlier submission of November 2022), notice also be provided to a NSO (or RSO) with which the ICSO was affiliated at the time of its dissolution by the Registrar, if that affiliation has been notified to the Registrar by the NSO (or RSO).
	Regulation 36 :	We refer to our comments in respect of r 32 and r 35 and recommend that the same time period applies in this situation.
	Regulation 37 :	We refer to our comments in respect of r 33.
	Regulation 38 :	With reference to r 38 (2), we refer to our comments in respect of r 6 (2).
9	<b>Part 4</b> <b>Removal From Register, Amalgamation, Liquidation, &amp; Other Processes: Amalgamations</b> Do you have any comments to make in relation regulations 39-41?	
	Regulation 39 :	We refer to our comments made in respect of r 5.
	Regulation 40 :	The Association has no comment to make.
	Regulation 41 :	With reference to r 41 (b) (ii), we note the requirement for a “certificate” to be provided to the Registrar, but no guidance is provided as to the form that this certificate must take. (For example, a statutory declaration may be required by the Registrar, or envisaged under this regulation?)
10	<b>Part 4</b> <b>Removal From Register, Amalgamation, Liquidation, And Other Processes</b> <b>Removal Or Liquidation Of Societies</b> Do you have any comments to make in relation to regulations 42-44?	
	Regulation 42 :	With reference to r 42 (b), we assume that the ICSO must still be registered (i.e., not removed from the Register) at the time a request for distribution of surplus assets occurs, to ensure the member requesting the distribution is not a “former member”.  We recommend that the Registrar provide guidance as to the wind-up process which an ICSO must follow, given the likelihood that a number of ICSOs will not choose to re-register under the new Act and are likely to be in the situation which this regulation is intended to enforce.
	Regulation 43 :	With reference to r 43 (2), we refer to our comments in respect of r 6 (2).
	Regulation 44 :	The Association has no comment to make.



11	<b>Part 5</b> <b>Societies And Entities Incorporated Under Other Or Former Acts</b> <b>Reregistration Of Existing Societies As Societies Under 2022 Act</b> Do you have any comments to make in relation to regulations 45-46?
	Regulation 45 :      We refer to our comments made in respect of r 5.
	Regulation 46 :      With reference to r 46 (2), we refer to our comments in respect of r 6 (2).
12	<b>Part 5</b> <b>Societies And Entities Incorporated Under Other Or Former Acts</b> <b>Reregistration Of Specified Entities And Incorporated Branches</b> Do you have any comments to make in relation to regulations 47-52?
	Regulation 47 :      The Association has no comment to make.
	Regulation 48 :      The Association has no comment to make.
	Regulation 49 :      The Association has no comment to make.
	Regulation 50 :      The Association has no comment to make.
	Regulation 51 :      The Association has no comment to make.
	Regulation 52 :      The Association has no comment to make.
13	<b>Part 6 – Infringement Fees &amp; Other Fees</b> Do you have any comments to make in relation to regulations 53-57?
	Regulation 53 :      Infringement offences and associated fees should be considered in context, i.e., in relation to the nature of the society, its social function, its financial resources and the scope of its operations.  We suggest that consideration should be given to the circumstances where a statutory failure occurs and if the issue of an infringement notice is in the best interests of the community which an ICSO serves.  For example, many ICSOs' financial turnover may be minimal, with the impost of a \$500 fine for not filing a financial statement (for example) potentially a financial cost beyond the capacity of the ICSO to easily meet.  This is not to say that the statutory obligation should not be met, but a better way might be (for example) where an ICSO is a "small society" affiliated to a NSO (or RSO), that the NSO (or RSO) takes on an obligation at the direction of the Registrar for the remediation of the identified failure, directly with the ICSO.  Secondly, if an infringement notice is issued and the failure is not remediated, what will be the next step of the Registrar? For example, will the Registrar issue a further notice, or progress to remove/dissolve the ICSO?

	Regulation 54 :	We refer to our comments in respect of r 53 and r 57.
	Regulation 55 :	<p>We note that no example of the infringement notice is provided in the draft regulations. We recommend that that an infringement notice should be also sent to a parent organisation (NSO or RSO) to which an ICSO is affiliated, (if that affiliation has been provided to and recorded by the Registrar).</p> <p>Provision of a copy of the notice will not alter the obligation of the ICSO but will potentially prevent the situation where an ICSO does not receive the notice, through no fault of their own, (with reference to our comments in response to r 23 and r 26).</p> <p>We note that the failure to attend to an issued infringement notice will (presumably) become a matter to be dealt with through the relevant District Court.</p> <p>This is likely to be confronting to many volunteers who may not wish to be summonsed to appear in Court, (and may therefore not volunteer to become the nominated contact person for the ICSO).</p>
	Regulation 56 :	<p>We note that no example of the reminder notice is provided in the draft regulations.</p> <p>We recommend that that a reminder notice should be also sent to a parent organisation (NSO or RSO) to which an ICSO is affiliated if that affiliation has been provided to and recorded by the Registrar.</p> <p>Provision of a copy of the notice will not alter the obligation but will potentially prevent the situation where an ICSO does not receive the notice, through no fault of their own, (with reference to our comments in response r 23 and r 26).</p>
	Regulation 57 :	<p>It is probable that a penalty incurred by an ICSO under this regulation will relate to more than one of r 57 (1) (a) to (j). In other words, given the nature of the statutory failures described in this regulation, it is likely that if one failure occurs, there will be multiple failures. Bearing this in mind, is it intended that the proposed penalty fees payable are cumulative?</p> <p>If so, the total penalty fee payable may be \$250 if documents are delivered within 30 working days of notice being provided, or as much as \$1,000 if delivered more than 30 working days after the date it is required.</p> <p>We recommend that a cap of \$125 is applied to multiple failures in respect of r 57 (2) (a) and cap of \$250 is applied in respect of r 57 (2) (b).</p> <p>We suggest that for an ICSO operated by volunteers this is more reasonable approach to take, given the potential personal ignominy and opprobrium that may arise as a consequence of the failure(s).</p>
14	<b>Part 7 – Transitional Regulations For Implementation Of The 2022 Act</b>	
	Do you have any comments to make in relation to regulations 58-61?	
	Regulation 58 :	The Association has no comment to make.
	Regulation 59 :	The Association has no comment to make.
	Regulation 60 :	The Association has no comment to make.

	Regulation 61 :	The Association has no comment to make.
15	<b>General Comments</b>  Do you have any general comments regarding the regulations?	<p>In our submission dated 22 November 2022, prepared in response to the Discussion Document which proposed the regulations that will apply to societies once they are re-registered under the new Act, the Association identified and suggested solutions for a number of issues</p> <p>We note that (in response to our submission then), we have not been approached by Government or Officials to discuss these issues or the proposed solutions. Where relevant, we have cross-referenced items from our earlier submission to this submission and we invite Government to engage in further discussion, in the best interests of community sport.</p> <p>Overall (and with reference to our comments in response to r 5), the Association notes that many of the obligations created by the regulations are framed for an operating environment more resembling a with-profit entity with employees, than a not-for-profit organisation operated by volunteers, which will create additional complexity and, in some cases, deter volunteers from continuing to provide service to community sport in New Zealand.</p> <p>As we have raised with Government on many occasions since this legislative reform was first mooted, the Association believes there will be unintended consequences arising from the application of the Act to ICSSOs in its current form including (but not limited to): fewer volunteers willing to undertake the statutory obligations required by the new Act; and an increased rate of voluntary and involuntary dissolution as ICSSOs opt-out of the new legislative framework.</p> <p>We refer Government to similar legislative reform currently being considered by the Irish Law Commission which is aware of the risks of over-regulation as a disincentive to community volunteers.</p> <p>In particular, the Irish Law Commission recently noted<sup>1</sup> "given that many associations and sporting associations in particular are run on the basis of people giving their time and expertise voluntarily, the costs and formality associated with incorporation may not be suitable and this is particularly the case for smaller associations. Incorporation of an association involves a significantly greater degree of governance structures and annual reporting which could deter participation of potential volunteers who may not have the time or expertise to manage the additional administrative duties."</p> <p>We understand that the Irish Law Commission, among other options, has (for example) proposed the creation of "non-profit registered associations" under which by which separate legal personality could be gained by a community sport organisation by registration, without incorporation.</p> <p>Ideally, further consideration should be given to how the Act and the draft regulations affect ICSSOs and whether an amended legislative framework would be more suitable.</p>
16	<b>Initial Fees</b>  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?	<p>The Association agrees with the proposal to roll-over the current fees under the 1908 Act.</p>

The Association welcomes any discussion on the above points at the convenience of Officials.

ENDS

<sup>1</sup> Law Reform Commission Consultation Paper On Liability Of Clubs, Societies And Other Unincorporated Associations, 15th December 2022