



## COVERSHEET

<b>Minister</b>	Hon Duncan Webb	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Incorporated Societies Regulations 2023: Authorisation for submission to the Executive Council	<b>Date to be published</b>	16 October 2023

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2023	Incorporated Societies Regulations 2023: Authorisation for submission to the Executive Council	Office of the Minister of Commerce and Consumer Affairs
August 2023	Stage 2 Cost Recovery Impact Statement	MBIE
31 August 2023	Incorporated Societies Regulations 2023 LEG-23-MIN-0186 Minute	Cabinet Office

### **Information redacted**

**YES / NO** (please select)

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Some information has been withheld for the reasons of Legal professional privilege and Confidential advice to Government.

# IN CONFIDENCE

## In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

## Incorporated Societies Regulations 2023: Authorisation for submission to the Executive Council

### Proposal

1. I seek Cabinet's:
  - 1.1 agreement to set initial fees for registration and restoration in the Incorporated Societies Regulations 2023 (the **regulations**); and
  - 1.2 authorisation to submit the regulations to the Executive Council.
2. The regulations are made under the Incorporated Societies Act 2022 (the **2022 Act**), which was passed in April 2022 and will enter fully into force on 5 October 2023.

### Executive Summary

3. The 2022 Act fully enters into force on 5 October 2023 and will put in place a modern legal, governance and accountability framework for incorporated societies and those who run them. This paper seeks agreement to make regulations that are necessary to implement the regime.
4. The 2022 Act has extensive regulation-making provisions to support the administrative and procedural functions required for the new regime to function effectively. It is critical that these regulations are made by the time the 2022 Act comes into force on 5 October 2023.
5. In May 2023, Cabinet agreed to the proposals for regulations to be made, as well as the proposal to consult on initial fees (referred to previously as 'interim fees') for incorporated societies [DEV-23-MIN-0085, CAB-23-MIN-0180].
6. A public consultation on the proposal for initial fees and an exposure draft of the regulations took place from 10 to 24 July 2023. I seek Cabinet's agreement to the initial fees proposed and note some changes have been made to the regulations following the consultation to ensure they are clear and fit for purpose.

### Background

#### Incorporated societies

7. An incorporated society is a legal entity formed by its members for a particular purpose other than their own financial gain. It might, for example, be a sports club, an educational institute, or a marae.
8. There are over 23,000 such entities currently on the Incorporated Societies Register. These range from large societies like New Zealand Rugby Incorporated, to small societies like the Banks Peninsula War Memorial Society Incorporated. Together, incorporated societies make a significant contribution to New Zealanders' well-being.

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### The 2022 Act and the regulations

9. The 2022 Act comes fully into force on 5 October 2023. To function as intended this must be supplemented by regulations, so it is critical these are also in force by then.
10. Incorporated societies registered under the Incorporated Societies Act 1908 (the **1908 Act**) will not be subject to the new regime (including fees payable) until they reregister under the 2022 Act. If a society does not reregister during the transition period of 5 October 2023 to 5 April 2026, they will no longer be incorporated.
11. In May 2023, Cabinet agreed to the proposals for regulations to be made, as well as the proposal to consult on initial fees for incorporated societies [DEV-23-MIN-0085, CAB-23-MIN-0180]. A public consultation on the proposal for initial fees and an exposure draft of the regulations took place from 10 to 24 July 2023 and received 64 submissions. The outcomes of this consultation are discussed later in this paper.

### Policy decisions

#### Previous policy decisions

12. In May 2023, Cabinet agreed to the proposals for the regulations (excluding fees proposals), which were separated into two groups:
  - 12.1 base regulations – comprising regulations necessary to give effect to the purposes of the 2022 Act in relation to matters that are uncontroversial (eg, the form that an infringement notice must take).
  - 12.2 top-up regulations – comprising regulations necessary to give effect to the purposes of the 2022 Act where there was genuine scope to consider different options for what those regulations should provide for.
13. Stakeholders were given the opportunity to submit on an exposure draft of the regulations, based on these proposals, from 10 to 24 July 2023.

#### Amendments following consultation on the exposure draft of the regulations

14. Following the consultation on the exposure draft of the regulations and further analysis, I consider it appropriate to make several changes, including:
  - 14.1 *Liquidators, receivers, and statutory managers are not officers*

Regulation 8 from the exposure draft has been removed to avoid the risk of suggesting “liquidators, receivers, and statutory managers” are officers under the section 4(1) of the Charities Act 2005, which makes no explicit carve out for these persons.
  - 14.2 *Register of members*

Regulation 13 has been updated to limit the time a society needs to keep a record of the names of former members, and the date they ceased to be a member, to 7 years. This strikes a balance between functionality and privacy.
15. All of the changes to the regulations are within my authority to make decisions consistent with the overall policy decisions in the paper under DEV-23-SUB-0085 on any matters that might arise during the drafting process or as a result of consultation on an exposure draft of the regulations [CAB-23-MIN-0180].

**My recommendation to make certain regulations**

16. Under sections 254(2) and 256(1) of the 2022 Act, certain regulations can only be made on my recommendation. Accordingly, I recommend the Governor-General make the following regulations:
  - 16.1 *Regulation 16* – in doing so, I have had regard to the relevant matters in section 254(3).
  - 16.2 *Regulations 50, 51, 52, 53 and 54* – in doing so, I confirm I am satisfied that the requirements set out in section 254(4) are met and that the relevant consultation in 254(4)(c) has been undertaken.
  - 16.3 *Clauses 3, 4, 5, 6 and 7 of Schedule 1* – in doing so, I confirm I am satisfied that the requirements set out in section 256(2) are met.
17. I note in particular clause 6 of Schedule 1, which makes provision for societies who have less than 50 percent of their officers as members of the society. It does this by allowing both existing and new societies to set the composition of their committee during a five-year transition period, free from the restriction that 50 percent of the committee must be members, provided that they notify the Registrar and expressly provide in their constitution that their committee doesn't comply with section 45(3).
18. This clause is included to accommodate the fact that there are a number of societies who have chosen to have a largely or entirely independent governance structure. The provision allows for a period of time for those societies to transition to a compliant structure. It will also have the collateral benefit (by requiring them to identify as falling under this exception) to understand the nature and extent of such boards and whether any further regulatory intervention is needed.
19. **Legal professional privilege**  
[Redacted text]
20. Section 45(3) recognises the principle that societies should be self-governing by requiring that every committee of a society comprise a majority of the members of the society and/or representatives of bodies corporate that are members of the society. Section 45(4) provides that section 45(3) does not apply in the circumstances prescribed in regulations. It is my view that the circumstances in which section 45(3) does not apply should be as narrowly defined as possible in order to preserve the principle and purpose underlying section 45(3).
21. This will allow those societies to develop a fit for purpose and more permanent solution for their organisations to be put in place before the end of the transition period if appropriate. I consider that this exception is as narrow as possible and based on evidence. I consider the full transition period is necessary as these societies (which are often volunteer based) will then need time to amend their constitutions to reflect the new requirements. The understanding of the extent of committees with less than 50 percent members through the notification process will inform whether any further regulatory measures are needed.

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### New policy proposals

22. In May 2023, Cabinet agreed to consult on a proposal to set initial registration and restoration fees under the 2022 Act at the same level as they currently are under the 1908 Act. The proposed initial fees are intended to cover the period until a full fees and levies review across all Companies Office registers is complete.
23. A public consultation on this proposal, along with the exposure draft of the regulations, took place from 10 to 24 July 2023. Most submitters supported the proposed initial fees, with some referring to them as 'sensible' and 'reasonable'. The minority that opposed them wanted the regime to be fully Crown funded with no fees or for lower fees than those proposed.
24. I seek Cabinet's agreement to set a fee for application for incorporation and a fee for application for restoration to register in the regulations as follows:
  - 24.1 Registration fee – \$88.89 exclusive of goods and services tax;
  - 24.2 Restoration fee – \$177.78 exclusive of goods and services tax.
25. These fees are set at the same level as the equivalent fees under the 1908 Act.

### Timing and 28-day rule

26. The regulations will be gazetted no later than 7 September 2023 and will come into force on 5 October 2023. I am not seeking a waiver of the 28-day rule.

### Compliance


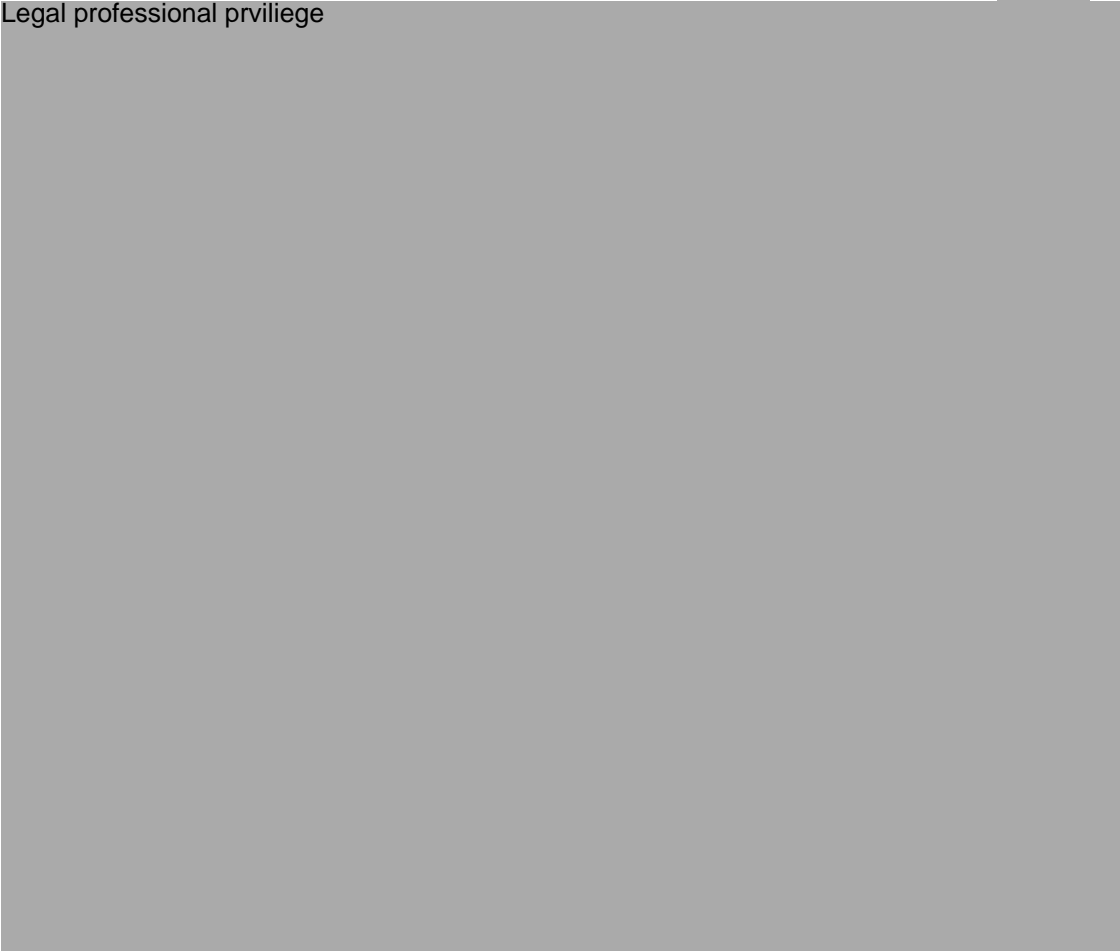
27. The proposed regulations comply with:
  - 27.1 the principles of the Treaty of Waitangi;
  - 27.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 27.3 the Privacy Act 2020;
  - 27.4 relevant international standards and obligations; and
  - 27.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
28. The privacy issues pertaining to the regulations have been consulted on with the MBIE privacy team and the Office of the Privacy Commissioner. As part of this, the Companies Office has confirmed officer addresses, which are collected to contact officers under the 2022 Act, will not be made publicly available. This information will be held in line with the information privacy principals in the Privacy Act 2020.

### Regulations Review Committee

29. Legal professional privilege



**Certification by Parliamentary Counsel**

30. The Parliamentary Counsel Office (**PCO**) has certified that the regulations and Commencement Order are in order for submission to the Executive Council,   
Legal professional privilege 

31.

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33.

34.

**Cost-of-living implications**

35. There are no cost-of-living implications arising from the fee proposals in this paper. The proposed initial application and restoration fees under the 2022 Act are to be set at the same level as fees for equivalent services under the 1908 Act.

**Financial implications**

36. There are no financial implications arising from the fee proposals in this paper. The proposed initial application and restoration fees under the 2022 Act are to be set at the same level as fees for equivalent services under the 1908 Act.

**Impact Analysis**

**Regulatory Impact Statement**

37. A regulatory impact statement (**RIS**) in respect of the 'top-up' regulations was submitted at the time Cabinet made the relevant policy decisions. The 'base' regulations received an exemption from preparing a RIS.

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38. MBIE's Regulatory Impact Analysis Review Panel (**RIARP**) assessed the 'top-up' RIS and considered that the information and analysis in the RIS met the criteria necessary for Ministers to make informed decisions on those proposals.

### Cost Recovery Impact Statement

39. In relation to the initial fees I seek approval for, a Cost Recovery Statement (**CRIS**) has been completed and is attached to this paper.
40. MBIE's RIARP assessed the CRIS and considered that the information and analysis summarised meets the criteria necessary for decisions by Ministers to be made on these fee proposals.

### Climate Implications of Policy Assessment

41. The Climate Implications of Policy Assessment (**CIPA**) team were consulted on the 'top-up' proposals, 'base' proposals and fees proposals. The CIPA team confirmed the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

### Publicity

42. Notice of the regulations will be published in the New Zealand Gazette and I also propose to announce these changes publicly once this has taken place.
43. MBIE will also notify those that submitted on the regulations when they are made public. The Companies Office, which is part of MBIE, also intends to prepare communications and guidance on the regulations to help existing incorporated societies understand, and transition to, the new regime.

### Population Implications

44. There are no population implications from the proposals in this paper.

### Human Rights

45. There are no human rights implications from the proposals in this paper.

### Use of External Resources

46. There were no external resources used to prepare the policy advice in the paper.

### Consultation

#### Public and departmental consultation on the regulations

47. The following government departments and agencies were consulted on the policy decisions reflected in the regulations: External Reporting Board, the Department of Internal Affairs, Land Information New Zealand, Sport New Zealand, and the Office of the Privacy Commissioner. The New Zealand Treasury and the Department of Prime Minister and Cabinet (Policy Advisory Group) were informed.
48. A public consultation process was undertaken on proposed regulations in October/November 2022. 72 written submissions were received.

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### Public and departmental consultation on the exposure draft and proposed initial fees

49. A public consultation took place from 10 to 24 July 2023 on an exposure draft of the regulations and proposals for initial fees. 64 submissions were received.
50. The New Zealand Treasury was also consulted regarding the proposed initial fees and the Audit Office's Guidelines to Costing and Charging for Public Sector Goods and Services have been consulted.

### Consultation on this paper

51. The following government departments have been consulted on this paper: the New Zealand Treasury, the Inland Revenue Department, the Department of Internal Affairs, Land Information New Zealand and the Office of the Privacy Commissioner. We have also informed the Department of Prime Minister and Cabinet (Policy Advisory Group).

### Communications

52. I propose to announce the regulations publicly once gazetted.

### Proactive release

53. I propose to release this paper proactively within 30 business days. Any redactions made will be consistent with the Official Information Act 1982.

### Recommendations

I recommend that the Cabinet Legislation Committee:

#### *Context*


- 1 **note** that on 5 April 2022 the Incorporated Societies Act 2022 (**the 2022 Act**) received Royal Assent;
- 2 **note** that the new regulations must be in place by 5 October 2023 when the 2022 Act comes fully into force;

#### *Regulations*

- 3 **note** that on 17 May 2023 Cabinet agreed to new base and top-up regulations for the Incorporated Societies Act 2022 [DEV-23-MIN-0085, CAB-23-MIN-0180]:
  - 3.1 base regulations – comprising regulations necessary to give effect to the purposes of the 2022 Act in relation to matters that are uncontroversial;
  - 3.2 top-up regulations – comprising regulations necessary to give effect to the purposes of the 2022 Act where there was genuine scope to consider different options for what those regulations should provide for;
- 4 **note** that Cabinet authorised the Minister of Commerce and Consumer Affairs to release an exposure draft of the proposed regulations and make decisions consistent with the overall policy decisions in the paper under DEV-23-SUB-0085 on any matters that might arise during the drafting process or as a result of consultation on an exposure draft of the regulations [DEV-23-MIN-0085, CAB-23-MIN-0180];



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- 5 **note** that the Minister of Commerce and Consumer Affairs has made some further decisions consistent with the authority referred to in recommendation 4;
- 6 **note** that regulations 16, 50, 51, 52 ,53 and 54, and clauses 3, 4, 5, 6 and 7 of Schedule 1, can only be made on the recommendation of the Minister of Commerce and Consumer Affairs once certain conditions have been met, and the Minister is satisfied those conditions have been met;
- 7 **note** that the Incorporated Societies Regulations 2023 will give effect to the decisions referred to in recommendation 3;
- 8 **Legal professional privilege**  


*Policy decisions*

- 9 **agree** to set the fees for registration and restoration under the 2022 Act at the same level as under the Incorporated Societies Act 1908 as follows:
  - 9.1 Registration fee – \$88.89 exclusive of goods and services tax;
  - 9.2 Restoration fee – \$177.78 exclusive of goods and services tax;
- 10 **note** that this proposal is reflected in the Incorporated Societies Regulations 2023;

*Authorisation of submission*

- 11 **authorise** the submission to the Executive Council of the Incorporated Societies Regulations 2023;
- 12 **note** that the Incorporated Societies Regulations 2023 come into force on 5 October 2023.

Authorised for lodgement

Hon Dr Duncan Webb

Minister for Commerce and Consumer Affairs