



## 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.

# Stage 2 Cost Recovery Impact Statement

## Prescribing initial fees under the Incorporated Societies Act 2022

### Agency Disclosure Statement

#### Fees required

This Cost Recovery Impact Statement (**CRIS**) has been prepared by the Ministry of Business, Innovation and Employment (**MBIE**). It proposes to set fees 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.

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the transition period of 5 October 2023 to 5 April 2026, they will no longer be incorporated as the 1908 Act will be repealed.

Societies wanting to incorporate from 5 October 2023 must do so under the 2022 Act and, during the transition period, a society can be restored to the Incorporated Societies Register under the 1908 Act or 2022 Act depending on which they are registered under.

The Registrar of Incorporated Societies (the **Registrar**) delegates several functions under the 1908 Act to Assistant Registrars of Incorporated Societies within the New Zealand Companies Office (the **Companies Office**). We propose equivalent fees to those under the 1908 Act be payable under the 2022 Act while a routine review of all fees and levies collected by the Companies Office takes place. This review will determine fees and levies across the Companies Office registries system (the **registries system**) as a whole.

The authority to set fees by way of regulation is set out in section 255(1)(a) of the 2022 Act.

#### Key Assumptions

1. A wider fee and levy review, which is proposing a new mixed model of charging fees and specified levies for the New Zealand Business Number (**NZBN**) register and shared services of the Companies Office across the registries system, will be completed in 2024.
2. This review will result in new fees and, potentially, new levies being set for incorporated societies that will recover costs for services provided by the Companies Office.

#### Key Constraints

1. Regulations for fees must come into force on 5 October 2023 when the 2022 Act comes fully into force. This means we cannot wait for the wider fee and levy review (which will consist of fees and, potentially, levies) to conclude next year before an initial fee is set.
2. Fees under the 1908 Act were set in 1979 under the then Department of Justice. It is not known what costs and volumes were used to develop the fees, or if these were set at full cost recovery as the fee setting predates the Public Finance Act 1989 and the current policy approach to fees setting.

We are comfortable this statement provides sufficient information for setting initial fees under the 2022 Act until the wider fee and levy review across the registries system has taken place.

Gillian Sharp  
*Manager, Corporate Governance and Intellectual Property Policy*  
*Ministry of Business, Innovation and Employment*

11 August 2023

## Executive summary

1. A new Act for incorporated societies was passed in April 2022 (the **2022 Act**). It will replace the current Incorporated Societies Act 1908 (the **1908 Act**). No policy decisions have been made about what fees to charge for the performance of the functions or powers of the Registrar of Incorporated Societies (The **Registrar**) under the 2022 Act. Regulations for new fees must be in force by 5 October 2023, when the 2022 Act comes fully into force.
2. This CRIS provides options analysis to put initial fees in place under the 2022 Act until a wider fee and levy review of the New Zealand Companies Office (the **Companies Office**) registries system (the **registries system**) is complete. Broadly, the options considered were setting no fees, setting fees based on those under the 1908 Act or some other new level of fees.
3. The 1908 Act imposed fees for the performance of certain functions, but the basis for these is not known. We propose that equivalent fees be put in place under the 2022 Act while the wider fee and levy review of the registries system takes place. This is a clear and consistent approach that continues current fees until this review is complete.
4. A public consultation on this proposal, along with an exposure draft of the Incorporated Societies Regulations 2023, took place from 10 to 24 July 2023. This consultation received 64 submissions.
5. Most submitters supported the proposed fees. The small number that opposed these wanted the regime to be Crown funded with no fees charged to incorporated societies.

## Background

### The relevant regulatory system

6. This analysis concerns the corporate governance regulatory system, comprising the rules, institutions and practices that govern how various legal entities are set up, operated, and dissolved. These 'entities' can be described as associations or groups of individuals working towards an objective, such as economic gain or shared social benefits. The specific entities at issue in this analysis are 'incorporated societies'.

### Incorporated societies

7. A 'society' can be described as a group of people who associate for a particular purpose and are organised according to certain rules. They are very diverse, with activities ranging from culture (including marae) to sport and recreation, religion, employment, and politics. They also provide educational, health and welfare services in communities.
8. An 'incorporated society' is a group of such people who have registered under the 1908 Act. Like companies, charitable trust boards and limited partnerships, an incorporated society is, upon registration, an entity with its own legal existence, with the capacity to own property, sue and be sued. Incorporation also means that members of the society are not liable for the society's legal and financial obligations; in other words, they have 'limited liability'.

**A new statute for incorporated societies**

- 9. The 1908 Act is over a hundred years old and no longer fit for purpose. 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.
- 10. Registered societies have until 5 April 2026 to reregister under the 2022 Act otherwise they will cease to exist. New societies can register under the 1908 Act up to and including 4 October 2023, after which they need to register under the 2022 Act.

**Figure 1: Transition Period for Societies**



- 11. There are around 23,000 incorporated societies at the time of writing that will need to transition during the reregistration period if they wish to continue in existence.

**Initial regulations for fees are required under the 2022 Act**

- 12. To function as intended, the 2022 Act requires regulations. In May 2023, Cabinet agreed to proposals for non-fee-related regulations and to consult on initial fees under the 2022 Act using the same amount for registration and restoration fees charged under the 1908 Act to cover the period until a wider fee and levy review of the registries system is complete [CAB-23-MIN-0180 refers].<sup>1</sup>
- 13. Fees were not consulted on in the 2022 consultation proposing regulations because the wider fee and levy review was taking place. We had planned to consult on the initial fees when the discussion document on the wider fee and levy review of the registries system was released. However, the timing of this wider review did not align, resulting in the initial fees needing to be consulted on separately to the registries system review in order to be in place by 5 October 2023.
- 14. A public consultation on our proposal to set initial registration and restoration fees based on fees for equivalent services under the 1908 Act, along with an exposure draft of the Incorporated Societies Regulations 2023, took place from 10 to 24 July 2023.
- 15. The proposed fees are for the Registrar processing:
  - *Applications for incorporation* – for a society to incorporate under either Act, they must first file a registration application with the Registrar (section 9 of the 2022 Act).
  - *Applications for restoration* - if a society is removed from the register (e.g., at their own request or if the Registrar considers they are no longer operating), they can also request that they be restored to the register (section 185 of the 2022 Act).

<sup>1</sup> Under the 1908 Act, fees are only prescribed for applications to incorporate a society or restore a society to the register. Amalgamation, conversion and registering annual returns are not possible under the 1908 Act, but are under the 2022 Act.

16. We received 64 submissions, with most submitters agreed with our proposal. Some submitters referred to it as 'sensible' and 'reasonable'. The minority that opposed the fees wanted the regime to be fully Crown funded with no fees charged, or for the fees to be lower than those proposed (e.g., Sue Barker Charities Law and Sport New Zealand). Some submitters emphasised the good work done by these entities and their not-for-profit nature in advocating for partial or full state funding.

### **Wider fee and levy review**

17. The Registrar delegates several functions under the 1908 Act to Assistant Registrars of Incorporated Societies within the Companies Office. The Companies (Levies) Amendment Act 2022 (the **Levies Act**) provides the legislative framework for a new funding model for the Companies Office to administer the registries system.

18. While the Companies Office has previously only charged fees, the new model allows a mix of fees and levies. A wider fee and levy review has commenced, which will determine what fees and, potentially, levies should be payable by all registered entities administered by the Companies Office (including limited partnerships, companies and incorporated societies). A discussion document on proposals will be released in due course.

19. The new funding model consists of a mixed structure that splits cost recovery into activity specific fees and broader registries system levies. This will allow users of smaller registers, such as the incorporated societies register, to benefit from the Companies Office using economies of scale when administering the registries system (e.g., sharing costs for services used across the system as a whole).

20. The implementation of new fees following this review will not be completed until 2024, but some initial fees under the 2022 Act still need to be in place by 5 October 2023.

### **Fees for the performance of functions or the exercise of powers**

21. Under section 255(1)(a) of the 2022 Act, the Governor-General may, by Order in Council, make regulations prescribing "fees or other amounts payable to the Registrar for the performance of functions or the exercise of powers under this Act or the regulations or the manner in which those fees or amounts may be calculated".

22. Provisions in the 2022 Act that expressly envision potential fees include:

- *section 9(f)* – fees accompanying an application for incorporation
- *section 197(d)* – fees paid when two societies amalgamate
- *clause 3(f) of Schedule 3* – fees that must accompany an application for an entity to convert into an incorporated society.

23. Fees can also be charged for the performance of other functions of the Registrar under the 2022 Act, such as registering annual returns or restoring societies to the register.

# Status quo

## Current fees

- 24. After a society has registered or reregistered under the 2022 Act, they will be subject to the 2022 Act and any associated regulations. Regulations are needed to ensure fees are payable for key functions performed by the Registrar under the 2022 Act.
- 25. Without regulations, the “status quo” from 5 October 2023 is that the Registrar has no ability to charge fees for key functions such as the incorporation or restoration of an incorporated society. If these are not charged, the Registrar would have to find alternative funds to help cover the cost of these services while the review is undertaken.

## Policy outcome sought

### Initial fees

- 26. The policy outcome of prescribing initial regulations is to ensure there are clear and workable fees in place to keep the incorporated societies register running until the wider fee and levy review of the registries system is completed. If there are no fees in place, the Registrar will be unable to recover any of its costs for undertaking its key functions as the Registrar, in particular:
  - consideration of an application for incorporation (*section 10*), and
  - restoring a society to the register (*section 185 and clause 12 of Schedule 1*).

Confidential advice to Government



Confidential advice to Government



## Cost Recovery Principles and Objectives

29. As mentioned above, the policy outcome of prescribing regulations for fees by 5 October 2023 is to ensure there are clear and workable fees in place to keep the incorporated societies register running while the wider fee and levy review of the registries system is being completed.

30. The underlying principles that apply to and guide this proposal are:

- *Authority*: Fees are consistent with the authority to collect fees in the 2022 Act.
- *Efficiency*: Fees will allow the Companies Office to provide an efficient and high-quality service to consumers by funding appropriate resources to perform functions.
- *Transparency*: We have been transparent in the process of setting the fees and has consulted on the proposals.

31. The objectives of this proposal are:

- *Effectiveness*: Fees are set at a level that will allow the Registrar to collect fees for the performance of certain key functions.
- *Equity*: Fees are paid by the appropriate users of the system.
- *Simplicity*: Fees are set at level that does not adversely disrupt or confuse users of the regime while the wider fee and levy review of the registries system is taking place.

32. These principles and objectives have been set based on Treasury and Office of the Auditor-General (**OAG**) guidelines on cost recovery.

## Policy Rationale

### Why a user charge?

33. Under the Treasury and OAG guidelines, cost recovery fees are charges imposed on a specific individual or organisation for a good, service or regulation directly provided to (or directly benefiting) that individual or organisation.

34. Although incorporated bodies in the not-for-profit sector can benefit members of the public, societies that choose to incorporate are the direct beneficiaries of incorporation. Incorporation gives a society an identity separate from its members, so while members may change, the society's identity does not. This allows the society to enter into contracts and members are not personally liable for the society's legal and financial obligations.

35. A charge should therefore apply because this primarily benefits the users (i.e., incorporated societies) by not making their members personally liable.

### How many users?

36. The number of anticipated volumes for each service is set out below:

- *Applications for incorporation* – expected to remain relatively steady with those under the 1908 Act if the fee for this service does not change. On average, there are approximately 700 applications per year.

- *Applications for restoration* – expected to decrease when compared to the 1908 Act as less societies will be registered under the 2022 Act, and as they are new, it is unlikely they will be removed during this period. On average there are 250 restoration applications per year, but this should be lower while the initial fees are in place.

### What options were considered?

37. We considered the following options for setting initial fees:

Option	Outcome
<b>Option A</b> – setting no fees	The Companies Office would be unable to recover any costs for the Registrar undertaking key functions, namely: <ul style="list-style-type: none"> <li>• considering an application for incorporation (section 10),</li> <li>• restoring a society to the register (section 185 and clause 12 of Schedule 1).</li> </ul>
<b>Option B</b> – setting fees based on the 1908 Act for key functions <i>[MBIE's preferred option]</i>	The Companies Office would be able to charge clear, consistent and workable fees while the wider fee and levy review is being completed.
<b>Option C</b> – some other new level of fees	The Companies Office would be able to charge fees, but it is not clear on what basis completely new fees for these functions could be set outside the context of the registries system.

### What type of charge is most appropriate?

#### Charging a fee

38. In general, a fee is a defined payment from a specified party to another in return for the provision of a good or service. A levy will also be charged to a particular party or group, for a specified purpose, but not necessarily for a specific good or service.
39. Time and effort from employees of the Companies Office must be put into processing applications to incorporate a society or restore one to the register. As costs can be directly attributed to the performance of these functions or exercise of relevant powers, there should be some fee attributed to registration and restoration applications.
40. The proposed fee levels are based on fees for equivalent services under the 1908 Act. The basis on which these were set is unknown and this is discussed further below.

#### Preferred option

41. Our preferred option is **Option B**, which maintains service continuity until all fees and levies can be set under the wider review of the registries system. This option meets the principles and objectives identified above:
- *Authority:* Fees are consistent with the authority to collect fees under the 2022 Act.
  - *Efficiency:* Fees will allow the Companies Office to provide an efficient and high-quality service to consumers by funding appropriate resources to perform functions.
  - *Transparency:* We have been transparent in the process of proposing and setting these fees and consulted publicly on the proposals from 10 July to 24 July 2023.
  - *Effectiveness:* Fees are set at a level that will allow the Companies Office to collect fees for established services related to registration and restoration of societies.

- *Equity*: Fees will be paid only by societies filing registration and restoration applications.
- *Simplicity*: Fees being carried over from the 1908 Act will not adversely disrupt or confuse users of the regime while the wider fee and levy review takes place.

42. **Option A** is not appropriate as it does not allow for any cost recovery and **Option C** is not feasible as there is no clear basis to set new fees outside of the context of the registries system. In particular, the 1908 Act charged for these functions using fees only, but the new regime being developed will use a mixture of fees and levies to fund the system. Given this context, it is appropriate to continue with existing fees until the new system, consisting of a combination of fees and levies, is in place.

## The level of the proposed fee and its cost components

### Proposed fees

43. The service fees proposed are consistent with equivalent fees set out in Schedule 1<sup>4</sup> of the Incorporated Societies Regulations 1979:

Service	Fee (excl. GST) <sup>5</sup>	Total (incl. GST)
Application for incorporation of a society or a branch or group of branches of a registered society	\$88.89	\$102.22
Revocation under section 28(3) of the Act of a declaration of dissolution of a society (effectively 'restoration')	\$177.78	\$204.45

### Costing

#### Basis for costs under the 1908 Act

44. The current fees under the 1908 Act were set in 1979 under the then Department of Justice. At this time the register was a manual system where access to view a file could only be completed at the Companies Office location where the society was incorporated.
45. It is not known what costs and volumes were used to derive the fees or if the fees were set at full cost recovery. This decision to set these predates the Public Finance Act 1989.

#### Estimated costs under the 2022 Act

46. The main cost drivers for registration and restoration fees are personnel and IT costs associated with these functions. However, it is not possible to quantify their cost without having regard to the efficiencies and costs of the registries system as a whole (i.e., the cost of wider IT systems, staff salaries, and property, plant, and equipment at the Companies Office).

<sup>4</sup> As set out in Schedule 1 of the Incorporated Societies Regulations 1979, there are currently two main fees payable to the Registrar, which are \$88.89 (GST exclusive) for 'application for incorporation of a society or a branch or group of branches of a registered society' and \$177.78 (GST exclusive) for 'revocation under section 28(3) of the Act of a declaration of dissolution of a society' (effectively 'restoration'). There is also a fee for a 'certification copy of or extract from any document', but we do not propose to continue this.

<sup>5</sup> The Incorporated Societies Regulations 1979 reflects a GST inclusive fee, when GST was 12.5 percent. The current GST payable fee has been adjusted to 15 percent, but this is not reflected in those regulations.

47. It would be artificial to set new fees for these services without taking the entire registries system into account. This is being done under the wider fee and levy review, which is proposing a new mixed cost recovery structure of fees and specified levies for the NZBN register and shared services provided by the Companies Office to the registries system.

48. The proposed levies and register specific fees are to be summarised in a discussion document as part of the wider fees and levies review of registries system to be released in due course. Confidential advice to Government

49. Confidential advice to Government

50. Confidential advice to Government

**Revenue**

Estimated annual revenue from equivalent fees under the 1908 Act

51. If the current regime were to continue, we estimate the following revenue would be collected annually from equivalent fees under the 1908 Act:

Service	Fee (excl. GST)	Estimated Qty p.a.	Estimated Revenue p.a. (\$m)
Application to incorporate a society	\$88.89	700	\$0.062
Application to restore a society to the register	\$177.78	250	\$0.044

Estimated annual revenue from proposed initial fees under the 2022 Act

52. We have assumed that, as the fees do not change, revenue from initial application fees will not differ significantly while the initial fees are in place. No significant revenue is anticipated from initial restoration fees, noting that societies must first register or reregister under the 2022 Act and then be taken off the register in order to apply for restoration. We have therefore suggested only five of those.

53. Therefore, in the year from 5 October 2023 to 4 October 2024, we estimate the following revenue will be collected from the proposed initial fees under the 2022 Act:

Service	Fee (excl. GST)	Estimated Qty p.a.	Estimated Revenue p.a. (\$m)
Application to incorporate a society	\$88.89	700	\$0.062
Application to restore a society to the register	\$177.78	5	\$0.001

Estimated revenue under the 2022 Act following the wider fee and levy review

54. These figures rely on the new cost model and will be determined as part of the wider fee and levy review.

## Impact analysis

### Impact on the regulated party

55. The registration fee will only apply to groups looking to incorporate as a new society from 5 October 2023. As this is the same fee charged under the 1908 Act, there will be no financial incentives to incorporate prior, or after, this date. Given this, we do not anticipate the demand for these services will change while initial fees are in place.

56. The restoration fee will primarily apply to those wishing to restore their society after they have registered under the 2022 Act and are then removed from the register.<sup>6</sup> We do not anticipate many removals, and therefore restorations, to happen while the initial fees are in place as many societies will not have reregistered and those that have are likely to be compliant with the 2022 Act.

57. Due to the fees being the same as fees for equivalent services under the 1908 Act, we anticipate this to have minimal flow on effects to members of societies and people that use their services.

### Impact on the regulator/Registrar

58. As the Registrar has been charging the same fees for equivalent services under the 1908 Act, continuing to charge these should not meaningfully impact how the Companies Office operates under the 2022 Act while these fees are in place.

### Reasonableness

59. The proposed fees are the same as those charged under the 1908 Act, which have not changed since 1979, so are what is already expected of by the regulator and consumers. We consider the functions performed by the Companies Office under the 1908 Act in relation to incorporating or restoring a society are sufficiently the same or similar to these functions performed under the 2022 Act. Given this, it is reasonable for the same fees to be used under the 2022 Act until the fees and levies review is complete.

<sup>6</sup> Societies that have not reregistered during the transition period can still be restored under clause 12 of Schedule 1 of the 2022 Act. In the unlikely event that the wider fee and levy review has not concluded and implemented by the end of the transition period in April 2026, the initial restoration fee would still apply.

60. The proposed fees are also small compared to fees charged for the same services in similar jurisdictions. For example, the cost of registration is \$186 AUD (approx. \$200 NZD) in New South Wales<sup>7</sup>, \$178 AUD (approx. \$193 NZD) in Queensland<sup>8</sup> and \$229 AUD (approx. \$247 NZD) in Western Australia<sup>9</sup>.
61. These fees are also reasonable in the context of fees charged by the Companies Office to other entities. For example, the fee to incorporate a company is \$90 and the fee to restore a company to the register is \$150 (noting these fees are GST exclusive and that companies also pay other fees and levies, such as fees for registering their annual returns and a Financial Markets Authority levy).

## Consultation

62. A public consultation on our proposal to set initial fees based on those under the 1908 Act, along with an exposure draft of the Incorporated Societies Regulations 2023, took place from 10 to 24 July 2023. This consultation received 64 submissions.
63. Most submitters supported the proposed fees. The small number that opposed these wanted the regime to be Crown funded with no fees charged to incorporated societies.

## Conclusions and recommendations

64. We have concluded that Option B (carrying over existing fees from the 1908 Act into the 2022 Act) would have the least impact on incorporated societies and ensure that the Companies Office continues to recover at least some of its costs for providing services to societies at the same level as under the 1908 Act. We recommend, therefore, the registration and restoration fees set under the 1908 Act be used under the new 2022 Act until the wider fee and levy review of the registries system is completed.

## Implementation plan

65. It is intended that the initial fees will commence on 5 October 2023 when the remaining provisions in the 2022 Act come into force.<sup>10</sup> The Companies Office will collect this fee at time of filing, in the same way as they do under the current system under the 1908 Act.
66. The Companies Office offers the following payment methods:
- direct debit
  - credit card or debit card, and
  - internet banking.
67. Given that these payment methods are well established, risks and impacts of collecting these fees are low. Fees must also be paid for the action of incorporation or restoration to take place, so no enforcement is needed for the non-payment of the proposed fees.

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<sup>7</sup> <https://www.fairtrading.nsw.gov.au/help-centre/fees/association-fees>

<sup>8</sup> [https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/fair-trading-fees#accordion-panel\\_269506](https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/fair-trading-fees#accordion-panel_269506)

<sup>9</sup> <https://www.commerce.wa.gov.au/consumer-protection/associations-fees-forms-and-online-transactions>

<sup>10</sup> At the end of the transition period the 1908 Act will be repealed, and the Incorporated Societies Regulations 1979 will be revoked, as per Part 6, Subpart 6 of the 2022 Act.

## Monitoring and evaluation

68. The effectiveness of this fee in the context of the registries system is being assessed as part of the wider fee and levy review. The review should be complete and implemented by the end of 2024. Longer term monitoring and evaluation of these fees and levies will be carried out every three to five years, in line with Treasury and OAG guidance.

## Review

69. As stated above, we have commenced a wider fee and levy review across all registers managed by the Companies Office of what fees and, potentially levies should be payable by all entities, including companies, limited partnerships, and incorporated societies.

70. The review will involve a consultation on the proposed fees and levies, but the implementation of a revised charging structure itself is not expected to be complete until the latter part of 2024. This consultation will be open to the public and will include the proposed fees, and potentially levies, to be payable by incorporated societies for services provided.