Regulatory Impact Statement: Top-up regulations under the new Incorporated Societies Act 2022

Coversheet

Purpose of Document	
Decision sought:	*Analysis produced to inform Cabinet decisions on the making of regulations under the Incorporated Societies Act 2022*
Advising agencies:	*Ministry of Business, Innovation and Employment*
Proposing Ministers:	*Minister of Commerce and Consumer Affairs*
Date finalised:	*13 April 2023*

Problem Definition

The Incorporated Societies Act 2022 (the **2022 Act**) will enter fully into force in October 2023. To function as intended, this must first be supplemented by regulations to implement the new legislation and allow societies to re-register.

Executive Summary

This Regulatory Impact Statement (**RIS**) has been produced as part of the review of incorporated societies legislation. Incorporating a society under legislation gives a group of people its own legal identity, separate to that of its members. This allows a society to own property, sue, and be sued, and means members are not liable for its legal obligations.

Two Incorporated Societies Acts are currently on the statute book, the 2022 Act and the Incorporated Societies Act 1908 (the **1908 Act**). The 1908 Act will eventually be phased out: from October 2023, new societies will only be able to incorporate under the 2022 Act, and between October 2023 and April 2026 existing societies (of which there are around 23,000) will be able to migrate to the new regime.

To function as intended, the 2022 Act must be supplemented by regulations to implement the new legislation and allow societies to re-register. There are two broad types of regulations which can be made:

- **base** – regulations necessary to give effect to the purposes of the 2022 Act and there is little stakeholder interest in debating options for what those regulations should look like (e.g., *regulations for the minimum period (number of working days) that Registrar can set for objections to a notice of intended removal*).
- **top-up** – regulations necessary to give effect to the purposes of the 2022 Act and there is genuine scope to consider different options for what those regulations should look like (e.g., *regulations defining 'total current assets'*).

This RIS deals specifically with the top-up set of regulations and a RIS exemption is being sought for the base set. We have identified twelve regulation making provisions with issues for top-up consideration. Two to five options were considered to address each issue.

Limitations and Constraints on Analysis

Assumptions

This RIS assumes the base set of regulations will be made. In this context, we measure the marginal pros and cons of making top-up regulations.

Limitations in quantifying costs and benefits

Incorporated societies provide services that enable New Zealanders to enjoy sport, practise religion, pursue political objectives, stand up for workers' rights, and much more.

These promote the wellbeing of New Zealand as a whole, but we have not attempted to quantify their social or economic contribution.

Limited relevant overseas precedent

In formulating our proposals, officials considered regulations made under foreign legislation similar to the 2022 Act, such as those in Queensland, New South Wales, and British Columbia. However, because of their brevity and slightly different focus, none of these sources was of significant assistance.

Responsible Manager

Gillian Sharp (Manager)

Corporate Governance and Intellectual Property Policy

Small Business, Commerce and Consumer Policy

Ministry of Business, Innovation and Employment

13 April 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis in the Regulatory Impact Statement **meets** the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Section 1: Diagnosing the policy problem

1.1 What is the context behind the policy problem?

1.1.1 The relevant regulatory system

1. 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'.

1.1.2 Incorporated societies

2. 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, animal protection, religion, employment, and politics. They also provide educational, health and welfare services in communities.

3. An 'incorporated society' is a group of such people who have registered under the Incorporated Societies Act 1908 (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 obligations; in other words, they have 'limited liability'.

1.1.3 A new statute for incorporated societies

4. The 1908 Act is over a hundred years old and no longer fit for purpose. For example, it focuses on the creation and winding up of incorporated societies but does not set out clear rules on how an incorporated society should be governed during its lifetime. This has led to a situation where society officers struggle to understand their obligations (e.g., to act in the best interests of the society), members struggle to understand their rights (e.g., to access information held by their committee), and where – for want of guidance on dispute resolution – internal society matters end up litigated in court.

5. In this context, Parliament enacted the Incorporated Societies Act 2022 (the **2022 Act**) in April last year. As well as updating the rules for creating and winding-up incorporated societies, the 2022 Act sets out a robust framework for their governance. For example, officers will have clearly articulated duties to their society, members' rights to access information will be listed, and society constitutions will have to set out internal dispute resolution procedures that meet natural justice requirements. The result will be better run societies that can more efficiently devote their time to pursuing the objectives for which they were established, such as teaching our children to play sport, representing workers' rights, and tending to our national monuments.

6. The 1908 Act and the 2022 Act currently co-exist. The timeframe for transitioning to the new statute is as follows:

    - until early October 2023 (18 months after Royal Assent), the 1908 Act is fully in force but only the regulation-making provisions of the 2022 Act (sections 254, 255 and 256) are in force.
    - between early October 2023 and early April 2026, both the 1908 Act and the 2022 Act are fully in force.

- from early April 2026, only the 2022 Act is in force.

7. In this context, we need to consider two 'sets' of incorporated societies: 'existing societies' and 'new societies'. Existing societies are those that have incorporated under the 1908 Act and – at some point between October 2023 and April 2026 – will need to re-register under the 2022 Act. New societies are those that incorporate under the 2022 Act, which will be the case for all societies established after October 2023.

1.2 What is the policy problem or opportunity and how is the status quo expected to develop?

1.1.4 The need for regulations

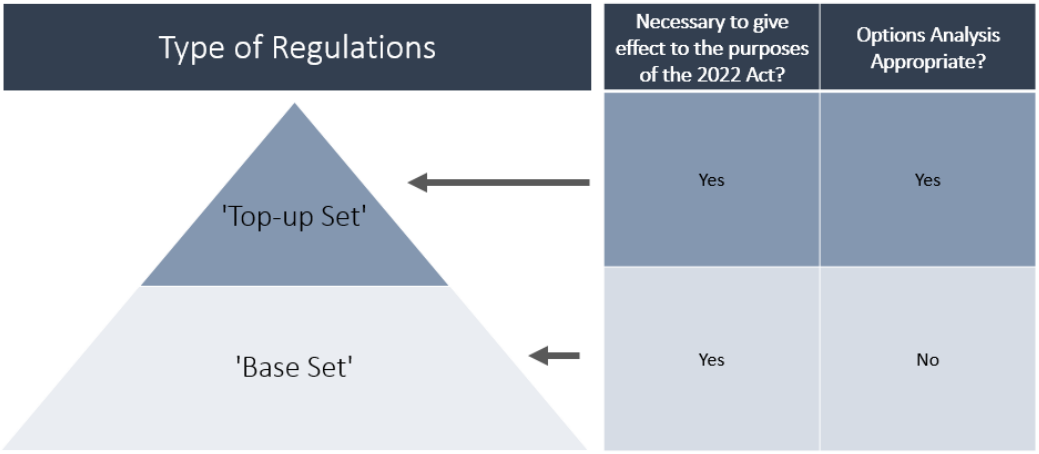
8. Regulations are required to implement the provisions of the 2022 Act. We consider that there are two broad types of regulations which can be made:

    1. **base** – regulations necessary to give effect to the purposes of the 2022 Act where there is little stakeholder interest in debating options for what those regulations should look like (e.g., *the form that an infringement notice must take*).

    2. **top-up** – regulations necessary to give effect to the purposes of the 2022 Act where there is genuine scope to consider different options for what those regulations should look like (e.g., *regulations defining 'total current assets'*).

9. This RIS only concerns the making of the top-up set of regulations. The Ministry of Business, Innovation and Employment (**MBIE**) has applied for an exemption for the base set of regulations and this RIS assumes that the base regulations will be made.

Diagram 1: Types of regulations possible under the 2022 Act



1.1.5 What is at stake

10. As at end-December 2022, there were 22,971 registered incorporated societies. This is down around 5% from a peak two years earlier. Incorporated societies have delivered, and continue to deliver, significant benefits to New Zealand society. They teach our children to play sports, tend to our war memorials, raise money for the disabled, and fight for better pay for our workers. Many also employ New Zealanders and purchase from New Zealand suppliers.

11. Failure to put in place the top-up set of regulations will put some of these benefits at risk. If the regime does not function as intended, societies may need additional resources to comply with the 2022 Act or decide not to register under the new regime and cease their activities. This impacts not only the regulator: *the Companies Office*

and the Registrar of Incorporated Societies (the **Registrar**), and regulated: *societies*, but New Zealand as a whole, which benefits from their activities.

1.1.6 The top-up issues identified

12. In October 2022, MBIE published a discussion document inviting submissions on what regulations should be made under the 2022 Act. MBIE proposed various regulations that could apply to societies once they are incorporated under the 2022 Act (Parts 2 and 3) as well as those that could apply to existing societies when they are applying for re-registration (Part 4).

13. Following submissions analysis, regulation making powers requiring 'top-up' consideration in part or in full were identified and are set out in the table below.

Section	Regulation Making Power
254(1)(a)	prescribing information that must be included or provided, namely, officers details in certain circumstances.
254(1)(b)	prescribing the manner in which things must be done, namely, how communications to the Registrar are made in certain circumstances.
254(1)(d)	declaring persons to be, or not to be, officers.
254(1)(e)	prescribing circumstances related to independent committee members.
254(1)(f)	prescribing jurisdictions whose officer disqualifications we will recognise.
254(1)(i)	prescribing societies that can restrict general meeting attendance to delegates.
254(1)(j)	defining the term 'total current assets'.
254(1)(l)	determining the class of society that must have its financial statements audited.
254(1)(m)	setting infringement fees.
254(1)(o)	relating to removal and restoration of societies from the register, namely, the persons to whom the Registrar must give notice of their intention to remove a society from the register.
254(1)(u), 254(1)(v), 254(1)(w)	specifying matters concerning conversion into an incorporated society.
256(1)(c)	prescribing matters for the purposes of Part 1 of Schedule 1, namely, providing officers contact details in certain circumstances and how communications to the Registrar are made in certain circumstances.

14. These cover matters where regulations necessary to give effect to the purposes of the 2022 Act but there is genuine scope to consider different options for what those regulations should look like. The problem that needs to be addressed under each power, and the options considered to address it, are set out in Section 2 of this RIS.

15. Despite some stakeholder disagreement on what the regulations should look like, there was general support for some form of regulation to be made under these provisions.

1.1.7 How is the status quo expected to develop?

16. We assume that the base set of regulations will be made to allow various parts of the 2022 Act to function. In this context, the counterfactual for this RIS is what would happen in the absence of making top-up regulations. We anticipate that the base set of

regulations would ensure that the 2022 Act is broadly functional but they are unlikely to ensure it functions optimally.

17. In terms of the transition of existing societies, there are around 23,000 incorporated societies at the time of writing. If no top-up regulations are made, there will be confusion amongst those societies about how to re-register under the 2022 Act.

> Example of confusion amongst existing societies looking to re-register
>
> Under clause 5 of Schedule 1 of the 2022 Act, an application for re-registration must, amongst other things, be accompanied by a copy of the society's proposed constitution and contain the name and contact details of a contact person. However, there is no indication in the 2022 Act of whether a society can post its re-registration application or drop it off at the Companies Office, or whether the Registrar can insist on an online-only process.
>
> Clause 5(3)(f) of Schedule 1 provides that re-registration applications must "otherwise be made in the manner prescribed by regulations". This means regulations could be made to settle this. If regulations are not made, then disputes and complaints may emerge if societies and the Registrar have differing views on how applications should be communicated.

18. In terms of regulating all societies once they are incorporated under the 2022 Act, there are 600-odd new societies each year, and 20,000 or so existing societies we consider likely to re-register. A lack of top-up regulations will cause confusion amongst those societies and their officers about their rights and obligations.

> Example of confusion amongst all societies once incorporated under the 2022 Act
>
> Societies that qualify as 'small societies' can use less strict accounting standards when preparing their annual financial statements. The criteria for qualifying as a small society are set out in section 103(2) of the 2022 Act and include reference to a certain level of 'total current assets'. Section 103(5) anticipates that this term will be defined in regulations.
>
> If regulations are not made defining the term 'total current assets' for the purposes of section 103, then – because there are varying views within the accounting profession on what makes an asset 'current' – societies will be uncertain whether they qualify as 'small societies'. If their view of 'current' differs from the Registrar's, then they risk an infringement fee under section 160(2) or even removal from the register under section 175.

1.4 What objectives are sought in relation to the policy problem?

19. The new regime for incorporated societies aims in particular:

    a. to provide for the efficient incorporation and winding up of societies; and

    b. to promote high-quality governance of those societies while they are operating.

20. Any government intervention should remain consistent with these objectives. More specifically, our objectives in relation to the policy problems described are to:

    a. facilitate the efficient re-registration of existing societies; and

    b. provide certainty for new and existing societies, their officers, their members, and the Registrar of Incorporated Societies, around their rights and obligations under the new regime.

21. The first of these relates specifically to the regulation making power in section 256(1)(c), which concerns re-registration, and the second relates to the other regulation making powers that have been identified in this RIS.

Section 2: Deciding upon an option to address the policy problem

2.1 What criteria will be used to compare options to the status quo?

22. In order to meet the objectives identified above, we consider that the regulations should meet the following criteria:

    1. *Efficacy* – are necessary or desirable for the orderly implementation of the 2022 Act and are consistent with its purposes;
    2. *Clarity* – provide certainty and avoid unnecessary ambiguity or complexity; and
    3. *Costs* – avoid unnecessary financial or administrative costs on relevant parties, including the costs of confusion if no regulations are made.

23. When qualitatively comparing options against the criteria, the key below is used:

Key for qualitative judgements:	
+++	much better than the counterfactual
++	better than the counterfactual
+	slightly better than the counterfactual
0	about the same as the counterfactual
-	slightly worse than the counterfactual
--	worse than the counterfactual
---	much worse than the counterfactual

2.2 What scope will options be considered within?

24. The following factors limit the scope of the feasible options:

    1. *Primary legislation* - This RIS concerns the making of regulations where the 2022 Act makes provision for doing so. It would not be appropriate to use primary legislation where the relevant statute contemplates secondary legislation.
    2. *Non-regulatory options* - As noted in Section 1 of this RIS, the matters addressed by top-up regulations are those where regulations are necessary to give effect to the purposes of the 2022 Act.
    3. *Stakeholder engagement* – MBIE had hoped to share an exposure draft of the regulations for public consultation in early 2023, but this is now highly unlikely given the time constraints. This is discussed in more detail in Section 3 under 'Implementation Risks'.
    4. *Overseas experience* – In formulating proposals, MBIE officials considered regulations made under foreign legislation similar to the 2022 Act, such as those in Queensland, New South Wales, and British Columbia. However, because of their brevity and different focus, none of these sources were of significant assistance.

2.3 Regulations prescribing information that must be included or provided

Problem

25. An incorporated society's primary point of contact is its 'contact person(s)'[1], but there are instances where the Companies Office should be able to contact officers[2] directly. For example, if the Registrar intended to apply for a banning order against an officer, they must give notice of this to the officer under section 171(1). Regulations are also proposed under section 254(1)(q) that documents in legal proceedings and other documents can be served on officers under section 125 by leaving it at a physical address used by them.

MBIE Proposal

26. Section 254(1)(a) of the 2022 Act empowers the Governor-General to make regulations prescribing information that must be included or provided for the purposes of the Act.

27. MBIE proposed that an incorporation application[3], society's annual return[4], amalgamation proposal[5], and re-registration (conversion) application[6] include "each officer's name, contact address (which can be but need not be their residential address) and email address" to address the problem above. The rest of MBIE's proposals under section 254(1)(a) fall within the base regulations.

What did submitters say?

28. Many submitters raised security, privacy, and digital inclusivity concerns with the proposal to collect officer contact details. Some questioned the purpose of collecting the information and how it would be used, others were concerned residential details would be published on the Register[7] or the information would not be securely held.

29. It was suggested that providing either a physical or electronic address would be sufficient. This is consistent with section 5(2) of the 2022 Act, which requires "a physical *or* an electronic address used by the person"[8] for contact details. Section 90 also states an address for the purposes of that section includes an electronic one.

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[1] Under section 133, every society must at all times have at least 1 contact person (and may have up to 3 contact persons), but under section 114(2) that person need not be an officer of the society.

[2] Under section 5, an officer is a natural person who is a member of the committee or is occupying a position in the society that allows them to exercise significant influence over its management or administration.

[3] Section 9(a) of the 2022 Act.

[4] Section 109(2) of the 2022 Act.

[5] Section 192(c) of the 2022 Act.

[6] Clause 3(a) of schedule 3 of the 2022 Act.

[7] Under section 233(1)(e) of the 2022 Act only the names of the officers of the society and of all persons who have been officers since the society was first registered are required to be published.

[8] A telephone number used by that person is also required.

Options Considered

Table 1 – Options for officer contact details

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations (Each officer's name under section 9(e)). ***[Status Quo]***	0	0	0	0
2 - Each officer's name and a physical address used by each officer is provided. *(Providing an electronic address is optional)*	++ Officers can be contacted by the Companies Office. Allows notice and documents to be served on officers at their physical address. Avoids digital exclusion.	++ Clear, just more information requested.	+ Relatively simple to provide and collect information. May avoid costs associated with being unable to contact an officer.	++
3 - Each officer's name and a physical *or* an electronic address used by each officer is provided.	+ Officers can be contacted by the Companies Office. Avoids digital exclusion. Notice and documents will not be able to be served on officers at their physical address if not provided.	++ Clear, just more information requested. More consistent with other contact details definitions in the 2022 Act.	+ Relatively simple to provide and collect information. May avoid costs associated with being unable to contact an officer.	+
4 - Each officer's name, contact address (which can be but need not be their residential address) *and* email address is provided. ***[MBIE Proposal]***	+ Officers can be contacted by the Companies Office. Allows notice and documents to be served on officers at their physical address.	+ Clear, just more information requested.	+ Relatively simple to provide and collect information. May avoid costs associated with being unable to contact an officer.	+

Preferred Option

30. The second option best meets the criteria set out above. It balances the digital inclusivity concerns raised by submitters against the benefit of the Companies Office being able to keep in contact with societies and the people running them (e.g., legal documents can be served on officers of the society at their residential address). It is of note that officer addresses are not intended to sit on the public side of the Register and this information must be held in line with the information privacy principles in the Privacy Act 2020.

2.4 Regulations prescribing the manner in which things must be done

Problem

31. The 2022 Act does not set out how certain information is to be provided by societies to the Registrar and instead leaves this up to regulations.

MBIE Proposal

32. Section 254(1)(b) of the 2022 Act empowers the Governor-General to make regulations prescribing the manner in which a thing must be done under the legislation.

33. MBIE proposed that, except with the leave of the Registrar given in their absolute discretion, communications under sections 9(a), 9(f), 9(g), 48, 52(2), 109(1), 111(3), 116(2), 117(1), 176(2), 185(1), 185(2) and 216(2)(b), and Schedule 3 clauses 3(f) and

3(g), must be made online through the Internet site designated by the Registrar. The rest of MBIE's proposals under section 254(1)(b) fall within base regulations.

What did submitters say?

34. Although some submitters acknowledged the proposed approach would be more efficient for the Companies Office, or expressly supported it, most raised concerns. Many raised that some societies do not have computers, internet access or technical knowledge, excluding those with older, poorer, or more rural members. Some also stated that, although the Registrar can allow alternative communications, the wording needed to be softened and the basis on which it will occur is unclear.

35. To improve the proposal, several submitters suggested the postal option still be made available by default. Some also suggested that those who wish to post their applications be charged for the extra time required to process them by MBIE.

Options Considered

Table 2 – Options for Communications with the Registrar

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations. ***[Status Quo]***	0	0	0	0
2 - **Registrar's absolute discretion** Except with the leave of the Registrar, *given in his or her absolute discretion,* communications must be made online through the Internet site designated by the Registrar (no charge). ***[MBIE Proposal]***	++ Accessibility if needed, with the flexibility to tailor alternate communications. Smaller chance of information being lost or processed incorrectly by the Companies office.	+ The base communication method is clear, but it is unclear what form alternate communications would take.	+ Administratively efficient.	+
3 - **Registrar's discretion, having regard to certain factors** Except with the leave of the Registrar *having regard to [e.g., the nature of the society] and any other relevant circumstance*, communications must be made online through the Internet site designated by the Registrar (no charge).	++ Accessibility if needed, with the flexibility to tailor alternate communications. Smaller chance of information being lost or processed incorrectly by the Companies office.	++ The base communication method is clear, but it is unclear what form alternate communications would take. Clear what the Registrar will consider.	+ Administratively efficient.	++
4 – Various methods (no fee) Through a web site designated by the Registrar (no charge); or By post, by personal delivery, by email (no charge).	+ Accessibility if needed. Higher chance of information being lost or processed incorrectly by the Companies office.	+ Communication options are clear, but the having several options may cause logistical confusion.	- Higher processing costs for some methods of communication. These costs are borne by all societies.	+
5 – Various methods (fee if not through web site) Through a web site designated by the Registrar (no charge); or By post, by personal delivery, by email (for a charge).	+ Accessibility if needed. Higher chance of information being lost or processed incorrectly by the Companies office.	+ Communication options are clear, but the having several options may cause logistical confusion.	-- Higher processing costs for some methods of communication. The costs to collect fees from users may outweigh the benefits.	+

Preferred Option

36. The third option best meets the criteria set out above. It balances the interests of the Registrar and societies as it allows for the efficient collection of information, whilst giving societies a flexible way to seek out alternative arrangements. It also gives some certainty of what will be considered when assessing alternative arrangements.

2.5 Declaring persons to be, or not to be, officers

Problem

37. Section 5(1) defines an 'officer' as a natural person 'who is a member of the committee' or 'occupying a position in the society that allows the person to exercise significant influence over the management or administration of the society (for example, a treasurer or a chief executive)'. To clarify who is covered, the 2022 Act allows regulations to prescribe any class or classes of natural persons to be, or not to be, officers for the purposes of the 2022 Act.

38. This definition was proposed to align with the definition in the Charities Act 2005[9]. The advantage of aligning these is the one third of incorporated societies also registered under the Charities Act 2005 will not have to maintain two lists of who is an 'officer'.

39. We note that the definition of 'officer' is proposed to be amended in the Charities Amendment Bill. We do not consider it appropriate to make regulations based on proposed changes. This is something that can be revisited once this legislation has passed, and alignment may more appropriately done through primary legislation.

MBIE proposal

40. MBIE did not propose any regulations under section 254(1)(d), noting that no regulations have been made under the 'officer' provision of the Charities Act 2005.

What did submitters say?

41. Most submitters agreed with MBIE's proposal, with some referring to the 'significant influence' threshold as being sufficient, appropriate, and flexible. However, several submitters made suggestions for what should be included in the regulations.[10] The classes of persons discussed included:

- Liquidators, receivers, and statutory managers (as their duties may conflict officer's duties)
- Advisors and consultants
- Pro bono workers
- Donors and sponsors
- Scrutineers
- Persons who hold roles within sub-clubs

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[9] See *Cabinet paper: Reform of the Incorporated Societies Act 1908*. However, it is of note that the Incorporated Societies Bill, as reported from the Economic Development, Science and Innovation Committee, changed 'and' to 'or' in the definition and added in reference to 'natural' persons.

[10] Comments were also made on the appropriateness of the 'significant influence' threshold itself, but this is set out in primary legislation and is therefore outside the scope of this provision.

- Managers
- Secretarial and administrative roles
- Persons who merely carry out procedures established by the society's committee or make recommendations to the society's committee
- Persons specified in a society's constitution, either for 'small' societies or all societies.

Options considered

Table 3 – Options for Declaring Persons to be Officers

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations. ***[Status Quo / MBIE Proposal]***	0	0	0	0
2 - Exclude persons holding certain positions within all societies (e.g., secretaries).	-- May exclude persons that have significant influence over the society, therefore should owe officer duties.	- May be unclear as the scope of each position may change depending on the society.	- May lead to mismanagement without the appropriate consequences.	-
3 - Exclude persons holding certain positions within some societies (e.g., CEOs in 'small societies').	- May exclude persons that have significant influence over the society, therefore should owe officer duties. May encourage more people to volunteer for smaller societies (e.g., as CEOs).	- May be unclear as the scope of each position may change depending on the society.	- May lead to mismanagement without the appropriate consequences.	-
4 - Exclude persons acting as liquidators, receivers, and statutory managers for a society.	+ Expressly excludes persons that should not be subject to officer duties.	+ Makes it clear that such persons should not be subject to officer duties.	+ Avoids any costs associated with ambiguity on whether such persons are covered.	+

Preferred option

42. The fourth option best meets the criteria as this avoids any doubt about whether liquidators, receivers or statutory managers would be covered by officer's duties.

43. If a society goes into liquidation, a liquidator, receiver, or statutory manager may be brought in to wind up the society. Winding up a society entails stopping its activities, paying its debts, and distributing any assets in the manner set out in its rules.

44. In this context, it is not suitable for liquidators, receivers, or statutory managers to be bound by the officer's duties under the 2022 Act, even if they could be argued they 'occupy a position in the society that allows them to exercise significant influence over the management or administration of the society'. For example, it may be difficult to act in the best interests of the society when balancing the interests of creditors or other persons.

45. It is worth noting that pursuing this option does not prevent amendments to primary or secondary legislation being considered following any changes to the 'officer' definition through the Charities Amendment Bill.

2.6 Prescribing circumstances related to independent committee members

Problem

46. Section 45 of the 2022 Act requires that a majority of officers on an incorporated society's committee be members of the society. However, the Act also permits regulations to set out circumstances in which societies may be exempt from this requirement.

47. If regulations are not made this could leave some societies that do not meet this requirement for good governance reasons having to change their arrangements. Some societies, particularly large ones in the sports and recreation sector, currently have up to 100% independent directors to avoid bias and give them the expertise they need.

MBIE proposal

48. In the discussion document, MBIE proposed (i) an exemption for national and regional organisations involved in sport and recreation, and (ii) options for an operating expenses threshold, above which societies would be exempt.

What did submitters say?

49. A few submitters submitters did not support incorporated societies being able to have a majority of independent committee members. One stated a society's committee should not allow for this so it remains representative of member's views and others considered all committee members should be members of the society.[11]

50. By contrast, other submitters (including sports organisations and larger representative organisations) considered that having over 50% independent committee members would be appropriate in some circumstances. Views expressed included:

- National and regional sporting organisations threshold – There was some support for the exemption for national and regional sports organisations, particularly from sporting bodies. However, several submitters from other types of incorporated societies expressed concern that this was exclusionary and considered that the exemption should not just be limited to the sports sector.
- Operating expenses threshold – There was general support for some form of financial threshold, but some thought other thresholds may be necessary too.
- Other suggested thresholds:
  - Societies that are not 'small societies';
  - Societies with a majority of members that are body corporates and/or other society types
  - National and regional incorporated societies whose main purpose is to provide support for other entities
  - Societies that have provided for this in their constitution.

[11] Comments on whether any independent committee members should be allowed (i.e., under 50% of independent committee members) is outside the scope of this provision is set out in primary legislation and.

Options considered

Table 4 – Options for Independent Committee Members

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations. ***[Status Quo]***	0	0	0	0
2 – Exempting national and regional sports organisations.	+ Supports the purposes of good governance and that societies should be self-governing and free of inappropriate government interference. Captures the sector where most of these arrangements are likely to exist but is arbitrary as there is no clear reason to single out this sector. Other sectors that wish to be exempt will have to change their governance arrangements, potentially at the cost of good governance.	0 It is clear which societies this would apply to, but no more or less so than the status quo.	+ Status quo would result in all organisations with more than 50% independent officers having to change their governance arrangements. There would be significant costs for those societies. This option would reduce the number of organisations that would have to change their governance arrangements.	+
3 – Exempting societies above a certain operating expenses threshold.	+ Supports the purposes of good governance and that societies should be self-governing and free of inappropriate government interference. Size is quite an arbitrary proxy for societies that may wish to have more than 50% independent officers. Societies under the threshold that wish to be exempt will have to change their governance arrangements, potentially at the cost of good governance.	0 It is clear which societies this would apply to, but no more or less so than the status quo.	+ Status quo would result in all organisations with more than 50% independent officers having to change their governance arrangements. There would be significant costs for those societies. This option would reduce the number of organisations that would have to change their governance arrangements.	+
4 – Combination of options 2 and 3 ***[MBIE Proposal]***	++ Will capture more societies than either options 2 or 3 alone. Remains a somewhat arbitrary distinction.	0 It is clear which societies this would apply to, but no more or less so than the status quo.	+ Status quo would result in all organisations with more than 50% independent officers having to change their governance arrangements. There would be significant costs for those societies. This option would reduce the number of organisations that would have to change their governance arrangements.	++

5 – Exempting societies whose members have approved a rule in the constitution that the number of independent officers is not limited.	+++ Supports the purposes of good governance and that societies should be self-governing and free of inappropriate government interference. This is a principled approach that lets members decide the appropriate governance arrangements for their society, regardless of the size or sector of the society.	0 It is clear which societies this would apply to, but no more or less so than the status quo.	++ Under this option, no societies that already had provision for more than 50% independent officers in their constitution would have to change their rules. New societies wanting to take advantage of this exemption would need to have it in their constitution (they will be writing one anyway). Existing societies who wish to change their governance arrangements will need to bear the cost of changing their rules.	+++

Preferred option

51. Option 5 best meets the criteria and is our preferred option. Two purposes of the Act (section 3) that are relevant here are:

    - Providing a framework that promotes high-quality governance of societies
    - Societies should be self-governing in accordance with their constitutions and free from inappropriate government interference.

52. Option 5 is principles-based and consistent with these purposes. It gives the members of the society freedom to choose the governance arrangements that best suit the society, with section 45(3) setting out the default position if they have not specified their own arrangements. Larger societies (particularly those in a federal structure whose members are, in turn, other societies) may have significant financial turnover each year. Having the right expertise on the committee for those societies is critical.

53. We are also not concerned about stakeholder comments that members will lose their say in the governance of the society. Members will have a direct say in agreeing to such a rule in the society's constitution. They will also, at their discretion, be able to add any other conditions around the process, e.g., membership representation in the appointments process for independent officers. Independent officers on the committee are also still bound by the duties in the 2022 Act and, of course, can be voted off the committee by the members at any general meeting.

2.7 Regulations prescribing jurisdictions whose officer disqualifications we will recognise

Problem

54. Section 47(3)(f) disqualifies a person from acting as an officer if they are subject to certain orders (e.g., a banning order under subpart 7 of Part 4). However, this only applies to orders made in New Zealand and not equivalent foreign orders. Under section 47(3)(g) this can be extended to persons "subject to an order that is substantially similar to an order referred to in paragraph (f) under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the regulations".

MBIE proposal

55. Section 254(1)(f) empowers the Governor-General to make regulations prescribing countries, States, or territories for the purposes of section 47(3)(g). MBIE proposed a regulation be made under section 254(1)(f) prescribing Australia (including its states) to reflect most foreign officers are from Australia and the Companies Office has systems in place to check the registers of the Australian states for disqualifications.

What did submitters say?

56. Submitters supported Australia being designated, but most suggested this be expanded to include other countries. The scope of suggestions varied, including all countries, visa waiver countries, pacific neighbours (e.g., the Cook Islands, Samoa, Fiji, and Tonga), English speaking countries, Commonwealth countries, or specific countries (e.g., the UK). Many emphasised officers disqualified elsewhere could cause the same harm to societies as those disqualified in Australia and New Zealand.

57. To avoid the administrative burden of checking all countries, a submitter suggested the office still check the Australian registers, but they did not need to do this for other countries because officers must consent in writing they are not disqualified. Another suggested the Companies Office expand their resources to make broader inquiries.

Options considered

Table 5 – Options for Officers Disqualified Overseas

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations. ***[Status Quo]***	0	0	0	0
2 - Australia. ***[MBIE Proposal]***	+ Protects societies by recognising disqualifications for some foreign officers. May decrease the pool of potential officers.	++ Clear as Australia has a very similar legal system. Consistent with the Companies Act 1993.	+ Systems are already in place to check this. Additional resources may be required to deal with complaints about officers disqualified in other countries.	+
3 - Australia, the Cook Islands, Samoa, Fiji, and Tonga.	++ Protects societies by recognising disqualifications for most foreign officers. May decrease the pool of potential officers.	+ Mostly clear, but some complexity due to different legal systems.	+ Additional resources required to assess uncertainty, but do not anticipate many complaints.	+
4 - Australia, the Cook Islands, Samoa, Fiji, Tonga, Canada, the UK, and the US.	++ Protects societies by recognising disqualifications for the vast majority of foreign officers. May decrease the pool of potential officers.	+ Mostly clear, but some complexity due to different legal systems.	+ Additional resources required to assess uncertainty, but do not anticipate many complaints.	+
5 - All countries.	+++ Protects societies by recognising disqualifications for all foreign officers. May decrease the pool of potential officers.	+ Mostly clear, but some complexity due to different legal systems.	+ Additional resources required to assess uncertainty, but do not anticipate many complaints.	++

Preferred option

58. The fifth option best meets the criteria, preventing the harm of the persons covered to societies.

2.8 Regulations prescribing societies that can restrict general meeting attendance to delegates

Problem

59. Annual general meetings (**AGM**s) are critical to the proper functioning of an incorporated society, giving a voice to members. However, some incorporated societies have memberships in the tens of thousands, making attendance by all members perhaps not a practical impossibility (if the constitution allows for online meetings) but one which would certainly hamper the ability to get things done.

60. Section 84(4) of the 2022 Act provides that, if a society is a union or "is of a kind prescribed by the regulations", the society can provide in its constitution that a right to attend an AGMs applies "only to delegates or other representatives of members (rather than to all members)".

MBIE Proposal

61. Section 254(1)(i) empowers the Governor-General to make regulations this section.

62. MBIE did not have a proposal for this regulation making power, but instead sought submitters views on whether any societies other than unions should be able to provide in their constitution that attendance at AGMs is limited to delegates or other representatives.

What did submitters say?

63. Many submitters considered that prescribing other types of societies was desirable, but thresholds varied.[12] Some suggested societies of a certain nature be prescribed, such as umbrella societies, sporting bodies, national associations with branches, societies where representatives are elected by regional groups of members, or societies where most members are bodies corporate. Others thought this should apply to societies of a certain size, such as those with over 10,000 members. Some even considered that all societies should be prescribed and able to limit this in their constitution if they wish to do so.

64. On the other hand, a few submitters stated no further prescription was required and several others fundamentally disagreed with this provision as restricting member's rights is inappropriate. Some also emphasised technology made attendance easier.

[12] Comments were also made on the suitability of unions being prescribed, but this is set out in primary legislation and is therefore outside the scope of this provision.

Options Considered

Table 6 – Options for the Right to Attend an AGM

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations (Unions). ***[Status Quo]***	0	0	0	0
2 – Size: Unions and societies of a certain size. For example: *1,000 members.*	+ Allows societies with higher membership to conduct AGMs more efficiently, but any threshold will be somewhat arbitrary. Removes an important right for some societies.	+ Clear criteria. May be complex to assess if societies meet the criteria in some circumstances (e.g., where there are body corporate members).	+ Societies with high membership require less resources to hold AGMs. May lead to internal disputes or confusion. The Companies Office may require resources to assess this.	+
3 – Structure: Unions and societies of a certain structure. For example: *Where the society's constitution requires the delegates or other representatives elected by members to attend the AGM on their behalf.*	+ Allows societies of a certain structure to conduct AGMs more efficiently. Removes an important right for some societies, but the democratic structure ensures those members are still represented. Open to manipulation (i.e., representation might not be proportionate to members).	- Complex in practice. May be challenging to assess the criteria. Will likely be challenging for societies to amend their constitution and get the correct election structures in place (e.g., unclear what members would vote for what representatives).	- Societies of a certain structure require less resources to hold AGMs, but it will take resources to get structures in place. Internal disputes or confusion less likely due to representation. Challenging to assess this and advise on what would be allowable.	-
4 – Grandparenting: Unions and societies that currently limit attendance to delegates or other representatives in their constitutions.	++ Allows societies that already restrict attendance to continue this practice. Simplifies transition to the new regime for societies that restrict attendance. Removes an important right for some societies, but they already operate this way so these rights will not change.	+ Clear criteria. May be complex to assess if societies meet the criteria in some circumstances (e.g., if their constitution is complex or ambiguous).	+ Societies that already restrict attendance will require less resources to hold AGMs. The Companies Office may require resources to assess this.	+
5 – Size + Grandparenting	++ Allows societies that already restrict attendance and with higher membership to conduct AGMs more efficiently. Simplifies transition to the new regime for societies that restrict attendance. Removes an important right for some societies, but the existing societies already operate this way so these rights will not change.	+ Clear criteria. May be complex to assess if societies meet the criteria in some circumstances.	++ Societies with high membership and that already restrict attendance will require less resources to hold AGMs. May lead to some internal disputes or confusion. The Companies Office may require resources to assess these.	++

Preferred Option

65. The fifth option best meets the criteria above, balancing the administrative difficulty for some existing societies and larger societies (with over 1,000 members) to hold AGMs against the benefits of a member's right to attend these.

66. This would allow the following societies to provide in their constitution that a right to attend an annual general meeting applies only to delegates or other representatives of members (rather than to all members):

- *existing societies that restrict AGM attendance*; and
- *existing and new societies with over 1,000 members.*

67. This would mean existing societies avoid the disruption of having to change the way they conduct AGMs and all societies with a large number of members (over 1,000) have the autonomy to restrict this in their constitutions. It is worth noting that member's views should still be reflected by the *"delegates or other representatives of members",* and the society's rules to amend their constitution would still apply.

2.9 Regulations defining the term 'total current assets'

Problem

68. Under section 102, the general rule is that incorporated societies must prepare their financial statements in accordance with generally accepted accounting practice (i.e., the standards set by the External Reporting Board (**XRB**). However, an exemption is created for 'small societies', who can prepare financial statements in line with the minimum requirements set out in section 104.

69. One of the requirements to be classified as a 'small society' is to have 'total current assets' under a certain level. Although many people have a sense that the term 'current assets' means 'liquid assets', such as money in a bank account or invested in shares, there are varying views on what makes an asset current.

MBIE Proposal

70. Section 254(1)(j) empowers the Governor-General to make regulations that define the term 'current total assets' to make this clear and certain for societies. MBIE proposed that such regulations be made and that they define current assets by exclusion:

> *"Total current assets means total assets excluding fixed assets, where fixed assets are those items of property, plant, and equipment which are not expected to be sold within 12 months after the society's balance date."*

What did submitters say?

71. Although a few submitters agreed with the wording proposed, many suggested alternatives.[13] Several took issue with "expected" as it is difficult to predict future decisions. Alternative suggestions included requiring sales be subject to contracts or this only covering sales "in the ordinary course of the society's activities". Others took issue with "sold", suggesting "disposed of" as an alternative. It was also noted that assets may only be held temporarily.

72. There was also disagreement about whether to define this positively or negatively. Some said it should be defined positively with reference to liquid assets, cash, cash equivalents or convertible to cash within 12 months. Others considered "fixed assets" should be further expanded upon (e.g., to include some long-term investments). As an alternative, many submitters said that the wording should be consistent with International Accounting Standards (**IAS**), in particular:

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[13] Comments were also made on the 'small society' threshold of $50,000 being too low, but this is set out in primary legislation and is therefore outside the scope of this provision.

"[IAS 1.66] An entity shall classify an asset as current when:

(a) it expects to realise the asset, or intends to sell or consume it, in its normal operating cycle;

(b) it holds the asset primarily for the purpose of trading;

(c) it expects to realise the asset within twelve months after the reporting period; or

(d) the asset is cash or a cash equivalent (as defined in IAS 7) unless the asset is restricted from being exchanged or used to settle a liability for at least twelve months after the period.

An entity shall classify all other assets as non-current."

73. It was considered that a separate definition for an established accounting term would only cause more uncertainty and confusion for smaller societies.

Options Considered

Table 7 – Options for Total Current Assets

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations. ***[Status Quo]***	0	0	0	0
2 - Prescribing a new definition for 'total current assets' as set out above. ***[MBIE Proposal]***	+ Practical criteria in place.	+ Less criteria for societies to consider. Criteria inconsistent with understood international accounting standards.	+ There are less criteria to assess but making an assessment may be more difficult as this is not an established definition.	+
3 - Prescribing a definition for 'total current assets' using the international accounting standards definition of 'current assets'.	+ Practical criteria in place.	++ More criteria for societies to consider. Criteria consistent with understood accounting standards.	++ There are more criteria to assess but making an assessment may be easier as this is an established definition.	++

Preferred Option

74. The third option best meets the criteria set out above, balancing consistency with established accounting standards with certainty for smaller societies. Guidance should be provided to societies on how to interpret this definition to ease any confusion.

75. Although submitters suggested IAS 1.66 be used, this is a for-profit accounting standard, and we expect most incorporated societies will be considered Public Benefit Entities (**PBE**) for financial reporting purposes. PBE Accounting Standards are issued by the XRB based on International Public Sector Accounting Standards (**IPSAS**).

76. Therefore, whilst it is substantially same as the IAS 1 definition of "current assets", the definition as used in PBE IPSAS 1 is a more appropriate base in this context:

*"An **asset shall be classified as current** when it satisfies any of the following criteria:*

(a) It is expected to be realised in, or is held for sale or consumption in, the entity's normal operating cycle;

(b) It is held primarily for the purpose of being traded;

(c) It is expected to be realised within twelve months after the reporting date; or

(d) It is cash or a cash equivalent (as defined in PBE IPSAS 2 Cash Flow Statements) unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.

All other assets shall be classified as non-current"

77. Cash and cash equivalents under PBE IPSAS 2 are defined as follows:

> *"**Cash** comprises cash on hand and demand deposits.*
> *"**Cash equivalents** are short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value."*

2.10 Regulations determining the class of society that must have its financial statements audited

Problem

78. The introductory version of the Incorporated Societies Bill had provided that every society that was large within the meaning of section 45 of the Financial Reporting Act 2013[14] (whether a charity or not) would have to have its financial statements audited.

79. Several submissions to the select committee examining the Bill expressed the view that these thresholds were far too high for incorporated societies and the select committee agreed. The result was section 105 of the 2022 Act, under which every society that is "of a kind prescribed by the regulations" must ensure that its financial statements are audited by a qualified auditor.

MBIE Proposal

80. Section 254(1)(l) empowers the Governor-General to make regulations prescribing when societies not registered as charities must ensure their financial statements are audited. However, the Minister can only make a recommendation with regard to:

    a. the circumstances in which companies and other kinds of entities are required to have their financial statements audited under other legislation;

    b. the desirability of avoiding unnecessary administrative burdens, and unnecessary compliance costs, for incorporated societies;

    c. the four principles set out in section 3(d) of the 2022 Act e.g., that societies are organisations with members who have the primary responsibility for holding the society to account, but that societies should operate in a manner that promotes the trust and confidence of their members; and

    d. the desirability of promoting confidence in the integrity of the financial reporting of incorporated societies.

81. Under the Charities Act 2005, incorporated societies registered as charities must already have their financial reports audited when, in each of the 2 preceding accounting periods, their total operating expenditure is $1.1 million or more.

82. A threshold based on 'operating expenditure' is appropriate for both charities and incorporated societies as their revenue can be quite variable year-to-year due to large bequests or donations in certain years. The threshold proposed by MBIE captures approximately 1% of incorporated societies that are not registered as charities.

[14] Section 45 provides that a society is 'large' for any given financial year if, at the balance date of each of the two preceding financial years, its total assets exceed $66 million or if, in each of the two preceding financial years, its revenue exceeds $33 million.

83. MBIE analysed data from the 2020 financial year to estimate the expenditure required for a society not registered as a charity to fall within the top 0.4%, 1%, 2%, 3%, 4%, 5% or 8% of all incorporated societies not registered as charities:

Proportion captured	Expenditure
0.4%	$7.1 million
1%	$3.0 million
2%	$1.5 million
3%	$890,000
4%	$630,000
5%	$480,000
8%	$250,000

84. With the above in mind, MBIE proposed that societies not registered as charities 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."*

What did submitters say?

85. Many submitters agreed with the $3 million threshold proposed, but some suggested alternative thresholds, including $500,000, $550,000, $1.1 million (to be aligned with the Charities Act 2005), or $7 million. It was also suggested that the threshold should be more fluid, for example by adjusting it to account for inflation over time.

86. Other submitters considered that societies should have more autonomy to decide whether an audit was necessary, either by leaving this wholly up to societies (no regulations) or by having some sort of provision that would allow them to 'opt out' of an audit (similar to section 207I of the Companies Act 1993).[15]

87. On the other hand, one submitter considered all societies should have an annual audit.

Options Considered

Table 8 – Options for the Audit Threshold

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations ***[Status Quo]***	0	0	0	0
2 – Total operating expenditure of $3 million: *"Those societies not registered as charities for which, in each of the 2*	++ Applies to societies with the highest operating expenditure, benefiting members and the public.	++ Clear threshold, as this is fixed and set in the regulations.	++ Only costly for societies with the highest operating expenditure (top 1%).	++

[15] It was also suggested by some submitters that, similar to a 'medium size' charity under the Charities Act 2005, there should be an intermediate group of societies that has an option of an audit or a 'review', but this is outside the scope of this provision.

preceding accounting periods, the total operating expenditure of the society and all entities it controls (if any) is $3 million or more." ***[MBIE Proposal]***	Recognises that registered charities should be subject to higher public scrutiny.		The threshold is not linked to inflation[16], but has the flexibility of being updated as needed by amending the regulations.	
3 - Threshold with operating expenditure equivalent to that under the Charities Act 2005: *"Those societies not registered as charities that meet the criteria of a large charitable entity under section 42D(1)(a) of the Charities Act 2005."*	+ Applies to societies with the highest operating expenditure, benefiting members and the public.	+ Clear threshold but requires reference to the Charities Act 2005 and will be reviewed for inflation.	+ Only costly for societies with the highest operating expenditure (top 2-3%). The threshold does not need to be independently updated for inflation.[17]	+
4 - Threshold covers all societies.	--- Applies to all societies but mostly is of little benefit to members or the public.	- Clear threshold but unclear in the context of the 2022 Act.	--- Disproportionally costly for almost all societies. Unlikely there are even sufficient auditors available to meet such demand.	--

Preferred Option

88. The second option best meets the criteria set out above, balancing equitable reporting requirements between entity types and avoiding placing an undue burden on societies. As charities receive tax benefits, they should have a lower threshold to be audited.

2.11 Regulations setting infringement fees

Problem

89. The purpose of infringement offences is to deter conduct that is of relatively low seriousness and that does not justify the full imposition of the criminal law. The 2022 Act sets out seven infringement offences under section 160(2) (e.g., to call an AGM within the specified timeframe) and section 160(1)(a) states that the infringement fees are to be prescribed by the regulations.

90. The Registrar has prosecutorial discretion in whether to take enforcement action when infringement offences are committed in section 162 of the 2022 Act.

MBIE Proposal

91. Section 254(1)(m) empowers the Governor-General to make regulations setting the infringement fee for each infringement offence, which must not exceed $1,000. Accordingly, MBIE proposed the following infringement fees:

[16] Unlike the figures defined in primary legislation set out in section 48 of the Financial Reporting Act 2013, this figure is set out in regulations so can be amended more easily when other thresholds are reviewed for inflation.

[17] The 'large' charitable entity threshold is already required to be reviewed under section 48 of the Financial Reporting Act 2013 to account for inflation.

Section	Nature of infringement offence	MBIE proposal
160(2)(a)	Failure to notify the Registrar of amendments to the constitution	$100
160(2)(b)	Failure to notify Registrar of elections or appointments and other changes relating to officers	$100
160(2)(c)	Failure to maintain a register of members	$100
160(2)(d)	Failure to call annual general meeting	$500
160(2)(e)	Failure to properly hold, and keep minutes of, annual general meetings	$500
160(2)(f)	Failure to send copy of passed resolution in lieu of meeting to certain members	$200
160(2)(g)	Failure to register financial statements	$500
160(2)(h)	Failure to register an annual return	$100
160(2)(i)	Failure to have registered office	$100
160(2)(j)	Failure to give Registrar notice of change of contact person	$200

92. The fees proposed align with the seriousness of each infringement offence. $500 was proposed for the most serious infringement offences (e.g., failure to call an AGM), $200 was proposed for less serious infringement offences (e.g., failure to send copy of passed resolution in lieu of meeting to certain members), and $100 was proposed for the least serious infringement offences (e.g., failure to have a registered office).

93. No fees were proposed above $500 due to concerns that, in the backdrop of almost three years of a pandemic, the finances of many societies are in a fragile position and will remain that way for some time.

What did submitters say?

94. Although several submitters considered the infringement fees proposed were appropriate, many suggested adjustments.[18] One group of submitters considered the proposed infringement fees were too high, particularly for smaller societies. Another group considered these were too low to deter offending. Suggestions included that:

- $500 fees should be decreased to $200;
- $500, $200, and $100 fees should be changed to $500, $100, and $50;
- $200 for *'Failure to give Registrar notice of change of contact person'* should decrease (multiple submitters considered this to be less serious);
- $500 for *'Failure to register financial statements'* should decrease to $100;
- $500, $200, and $100 should be increased to $1000, $500, and $200;
- All fees should be the maximum of $1,000;
- There be no fees.

[18] Some submitters wanted clarification for when infringement fees would be waived (e.g., non-compliance due to health issues) or clarity that smaller societies should be given more leniency, but this is outside the scope of this provision. The Registrar's discretion to issue an infringement notice is set out in section 162 of the 2022 Act.

95. As a middle ground, some submitters suggested that fees be low in the first instance and increase with repeat offending or that there be different thresholds for societies that are small (e.g., 'very small' societies) or meet certain other criteria.[19]

Options Considered

Table 9 – Options for Infringement Fees

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations. ***[Status Quo]***	0	0	0	0
2 - Regulations prescribing fees based on the seriousness of the offence. ***[MBIE Proposal]***	+ Deters more serious offending. Maintains the reputation of the Companies Office (e.g., trust that the information on the Register is correct).	++ Clear what fees apply.	++ Administratively straightforward.	++
3 - Regulations prescribing fees based on the seriousness of the offence and the size of the society (e.g., infringement fees are 50% less for small societies).	++ Deters more serious offending and visibly* punishes societies more proportionately. Maintains the reputation of the Companies Office (e.g., trust that the information on the Register is correct).	+ Clear what fees apply, but more criteria.	+ Administratively challenging (more criteria).	+
4 - Regulations prescribing fees based on the number of offences (e.g., infringement fees lower to begin with but increase by $50 with each repeat offence).	+ Deters repeat offending. May disproportionately punish societies for actions of previous office holders and/or harm those already struggling. Maintains the reputation of the Companies Office (e.g., trust that the information on the Register is correct).	-- Unclear what fees apply as this would require record keeping and could be applied multiple ways.	-- Administratively difficult (complex criteria).	-

**Note that the Registrar has discretion to bring issue an infringement notice so can already take the societies financial situation into account when making that decision.*

Preferred Option

96. The second option best meets the criteria set out above, deterring more serious offending, whilst avoiding unnecessary complexity.

[19] It was also suggested that societies be 'name and shamed', that there be a warning and grace period to rectify an error, or no fees until the new regime is well established, but these are outside the scope of this provision.

2.12 Removal of societies from the register

Problem

97. Section 177(1)(a) states the Registrar may only remove a society if they give notice of this intention to the public and all other persons prescribed by the regulations (if any). It is important for interested persons to be notified of this so they can act accordingly.

MBIE Proposal

98. Section 254(1)(o) empowers the creation of regulations prescribing scenarios where the Registrar removes a society from the register. MBIE proposed that the following persons be prescribed in the regulations for the purposes of section 177(1)(a):

- The contact person of the society;
- Charities Services (for those registered as charities); and
- Inland Revenue.

99. The rest of MBIE's proposals under section 254(1)(o) fall within the base regulations or are otherwise covered by part 2.4 above.

What did submitters say?

100. Although some submitters agreed with the removal and restoration proposals generally, several commented on the persons to whom notice should be given.

101. Concerns were raised that the 'contact person' was insufficient to notify a society. Several submitters proposed that all of the officers, or key officers, of the society be contacted. It was also suggested that notice be sent to the society's registered address or other organisations related to the society (e.g., a national sport organisation).

Options Considered

Table 10 – Options for Notification to Remove a Society

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations. ***[Status Quo]***	0	0	0	0
2 - Prescribed persons: • The contact person*(s)* of the society; • Charities Services (for those registered as charities); and • Inland Revenue. ***[MBIE Proposal]***	+ Notifies the society through 'contact person(s)', along with other interested government entities.	+ Details of those notified are clear or on record.	+ Administratively straightforward.	+
3 - Prescribed persons: • The contact person*(s)* of the society; • The society via its registered office; • Charities Services (if applicable); and • Inland Revenue.	++ Notifies the society through 'contact person(s)' *AND* its registered office, along with other interested government entities.	+ Details of those notified are clear or on record.	+ Administratively straightforward. Reduces the risk of removal without a society knowing.	++
4 - Prescribed persons: • The contact person*(s)* of the society; • The officers of the society;	++ Notifies the society through 'contact person(s)' *AND* officers, along with other	+ Details of those notified are clear or on record.	- Higher administrative costs, especially for societies with many officers.	+

• Charities Services (if applicable); and • Inland Revenue.	interested government entities.		Reduces the risk of removal without a society knowing.	

Preferred Option

102. The third option best meets the criteria, balancing the administrative burden of notification against ensuring the society is informed of the intention to remove it from the register. Although a society is responsible for keeping the details of their 'contact person(s)' updated, posting a notification to the society's registered office will further reduce the risk of removal happening without the society being aware.

2.13 Specifying matters concerning conversion into an incorporated society

Problem

103. Subpart 4 of Part 6 of the 2022 Act contains provisions permitting (in certain circumstances), entities established under other statutes to convert to incorporated societies without having to take up parliamentary time amending the often-sub-standard legislation they are governed by.

104. In relation to these provisions, regulations can be made specifying:

- Acts to which the provisions apply (section 254(1)(u));
- preconditions that must be met for an entity to be re-registered as an incorporated society (section 254(1)(v));
- terms and conditions that must be complied with after re-registration as an incorporated society (section 254(1)(w)).

105. The New Zealand Library Association Inc (**LIANZA**)[20] and Naseby Atheneum[21], which is governed by Libraries and Mechanics' Institutes Act 1908 (**LMIA**), have indicated to MBIE that they favour being empowered to convert into an incorporated society.

MBIE proposal

106. MBIE proposed that regulations be made under:

- section 254(1)(u) - specifying the New Zealand Library Association Act 1939 and the Libraries and Mechanics Institutes Act 1908 be covered by the provisions of subpart 4 of Part 6 of the 2022 Act.
- section 254(1)(v) specifying as a precondition for re-registration that:
  - LIANZA and each of the three athenea under the LMIA must obtain a resolution of their members approving the specification of their Act. The resolution should be obtained in the manner required by their founding text or, where it makes no such provision, by a simple majority of members.
  - LIANZA should maintain two rules from its founding statute.
- section 254(1)(w) - specifying that LIANZA must maintain the two rules mentioned above after it has reregistered.

[20] Governed by the New Zealand Library Association Act 1939.

[21] Governed by Libraries and Mechanics' Institutes Act 1908.

107. We also proposed certain conditions relating to the conversion process, but they are not considered any further here.

What did submitters say?

108. Submitters tended to be supportive of these proposals and no other statues were proposed for inclusion.[22] However, one submitter suggested a simple majority of members is insufficient for a change of this magnitude and another considered it should be clarified that they no longer need to comply with their original statutes.

Options considered

Table 11 – Options for Conversion into an Incorporated Society

Option	Criteria			Overall
	Efficacy	*Clarity*	*Costs*	
1 - No regulations. ***[Status Quo]***	0	0	0	0
2 – Regulations specify the New Zealand Library Association Act 1939 and the Libraries and Mechanics Institutes Act 1908 and associated conditions and preconditions. ***[MBIE Proposal]***	++ Provides LIANZA and three athenaeums with a simple way of escaping the sub-standard provisions of their founding statutes. Will save Governor-General and Parliament from being called on by all four entities to amend its rules	0 This option is no more or less clear than the status quo.	- For government: relatively simple to make regulations For entities concerned: no costs to entities unless they decide to apply for conversion	+

Preferred option

109. Option 2 is clearly better than the status quo. It would save House resources, cost little to the Crown in terms of making regulations and would provide all four entities with a pathway to convert to an incorporated society if their members agreed.

110. We note that certain conditions must be met[23] before the Minister can recommend the making of regulations under Subpart 4 of Part 6. We have not undertaken detailed analysis on these, but our preliminary view is that it is likely that these conditions would be met if any of these entities sought to convert to an incorporated society.

2.13 Prescribing matters for the purposes of Part 1 of Schedule 1

Problem

111. To transition to the new regime, existing societies under the 1908 Act will need to re-register under the 2022 Act between October 2023 and April 2026. In order to facilitate this process, regulations need to be made under the 2022 Act.

112. Similar to the regulations making powers mentioned in subpart 2.3 and subpart 2.4, these regulations are able to prescribe, amongst other things:

- how certain information is to be provided by societies to the Registrar;

[22] Comments were made regarding incorporated societies being able to convert into charitable trust boards or amalgamate prior to re-registration, but these suggestions are outside the scope of this provision.

[23] These are set out in section 254(4) of the 2022 Act.

- what information needs to be included in a re-registration application.

113. This raises the same problems set out in those subsections of this document.

MBIE Proposal

114. Section 256(1)(c) allows for the creation of time-limited regulations prescribing matters for the purposes of Part 1 of Schedule 1, which concerns the re-registration process. MBIE's proposals included that:

- under clause 5(3)(a), the information required for re-registration include *'each officer's name, contact address (which can be but need not be their residential address) and email address'*;
- under clauses 5(3)(f), 12(6) and 17(3), except with the leave of the Registrar, given in his or her absolute discretion, communications must be made online through the Internet site designated by the Registrar.

115. The rest of MBIE's proposals under this subsection fall within the base regulations.

What did submitters say?

116. Substantially similar submissions were raised regarding MBIE's proposals above as those raised under subpart 2.3 and subpart 2.4 respectively.

Options Considered

Table 12A – Officer Contact Details

See Table 1A – same analysis applies.

Table 12B – Communications with the Registrar

See Table 2A – although this is a one-off communication, consider the same analysis applies.

Preferred Option

117. The preferred options for MBIE's initial proposals align with the preferred options in subpart 2.3 and subpart 2.4 above respectively.

Section 3: Delivering an option

3.1 How will the new arrangements be implemented?

New regulations

118. Public consultation on the proposed regulations closed in November 2022 and received 72 submissions from a variety of stakeholders, including:

- small local incorporated societies
- national federations of incorporated societies
- lawyers
- accountants
- a number of individuals.

119. We have used these submissions and further engagement with stakeholders to determine the top-up regulations needed to give effect to the 2022 Act. Once policy

proposals are approved, these will be drafted by the Parliamentary Counsel Office (**PCO**).

120. This paper addresses the **top-up regulations.** The preferred option for each policy problem in the top-up regulations will be implemented through putting secondary legislation in place. Top-up regulations will have only a marginal cost for government because base regulations are already being prepared under the 2022 Act.

121. The 2022 Act was passed in April 2022, but only the regulation making powers are currently in force. The regulations will enter into force in October 2023, at the same time as the remaining provisions of the 2022 Act.

Preparing for implementation of new regulations

The Regulator

122. The Companies Office will be responsible for the ongoing operation and enforcement of the new regime, including the regulations. We are working closely with them to ensure they are ready for the new regime to commence in October 2023.

123. This will include providing them with information on the regulations ahead of time so that the Constitution Builder tool, which is used to help societies draft their consultation, can be updated prior to October 2023 to reflect the new regulations.

Regulated Parties

124. Incorporated societies are aware that the new regime is coming into force in October 2023 and are aware of what the majority of the regulations might look like. Although they can choose to reregister from 5 October 2023, they will have two and a half years to transition to the new regime.

125. There will be various measures in place to prepare incorporated societies for re-registration, including educational communications from the Companies Office, providing an updated Constitution Builder and more direct assistance from the Companies Office where issues arise during this process.

126. Stakeholders who submitted on the discussion document or have signed up for Companies Office alerts about the 2022 Act's implementation will be informed by email when the Companies Office website is updated on the regulations. We anticipate other stakeholders, such as influential incorporated societies or other government entities, may also share information to help incorporated societies transition to the new regime.

Implementation risks

Timing

127. The overarching risk is that other government priorities will make it difficult for the necessary regulations to be drafted in time for the full commencement of the 2022 Act in early October 2023.

128. This risk is being actively managed with PCO and the Legal Services (Legislation) team at MBIE. We had hoped to share an exposure draft of the regulations for public consultation early this year, but this is highly unlikely within the timeframe available.

Quality

129. Another risk is that there are errors or oversights in the finalised regulations, which will increase if we are unable to release an exposure draft for consultation in early 2023.

130. We received comprehensive feedback in response to our discussion document which is informing our advice. This, along with our development and drafting processes, will

help ensure the regulations are fit for purpose. If drafting progresses quicker than anticipated creating time for a short consultation on an exposure draft we will do so. If not, we can also consider whether some other form of consultation on the draft regulations, whether it be shortened or targeted, could be undertaken at some point before the regulations are finalised.

3.2 How will the new arrangements be monitored, evaluated, and reviewed?

The 2022 Act

131. The Monitoring*, Evaluation and Review* section of the RIS for the Incorporated Societies Bill states that:

> *"We expect that any significant problems with the new legislation will become evident within five years of it coming into force. We will monitor progress during that period by contacting the key stakeholders including NFP sector umbrella organisations and experts, and the regulator. What happens after that will depend on the feedback we obtain. If it eventuates that the reforms have largely been successful, we would expect that any subsequent review would occur decades rather than years later. The NFP sector needs legislative stability because it has very limited capacity to employ legal staff or obtain professional legal advice."*

The top-up regulations

132. The top-up regulations proposed in this RIS are necessary to give effect to the purposes of the 2022 Act, but there is genuine scope to consider different options for what those regulations should look like.

The Companies Office

133. As the agency responsible for implementing and enforcing the 2022 Act, the Companies Office will play a key role monitoring the impact of the proposed regulations. This can be done through collecting and sharing qualitative and quantitative information that relates to the implementation of these provisions.

134. Qualitatively, they can track statistics such as the number of incorporated societies that have requested alternative ways to communicate with the Registrar or that have been charged with infringement offences. Qualitatively, issues or concerns that stakeholders have in relation to implementation or enforcement of the changes can be shared with the Companies Office, who can manage these accordingly.

MBIE (Corporate Governance Policy)

135. There will be an opportunity for corporate governance policy staff to receive information from the Companies Office about the effectiveness of the regime on an ongoing basis as part of regular engagement with the Companies Office.

136. More generally, corporate governance policy officials regularly engage with peak bodies in the not-for-profit area, as well as other agencies involved in the governance of not-for-profits (e.g., XRB, Charities Services and Inland Revenue). These engagements provide an opportunity to test the impacts of the proposed regulations on the not-for-profit sector.