



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Reform of the Incorporated Societies Act 1908	Date to be published	At same time as Ministerial press release (25 or 26 June 2019)

List of documents that have been proactively released		
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Lodged 2 May 2019	<i>Cabinet paper: Reform of the Incorporated Societies Act 1908</i>	<i>Office of Minister of Commerce and Consumer Affairs</i>
Lodged 2 May 2019	<i>Cabinet paper: Reform of the Incorporated Societies Act 1908: Annex 1 (Government response to the Law Commission's report)</i>	<i>New Zealand Government</i>
Lodged 2 May 2019	<i>Cabinet paper: Reform of the Incorporated Societies Act 1908: Annex 2 (Impact assessment)</i>	<i>MBIE</i>

Information redacted

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Reform of the Incorporated Societies Act 1908

Proposal

- 1 In 2015, the Ministry of Business, Innovation and Employment released an exposure draft of a bill (the “Draft Bill”) designed to replace the Incorporated Societies Act 1908 (the “1908 Act”).
- 2 I propose to issue drafting instructions to the Parliamentary Counsel Office, directing them to make a number of amendments to the Draft Bill, before its introduction to the House later this year.

Executive Summary

Context

- 3 In 2014, following a Law Commission report of 2013, the previous Government directed officials to prepare and consult on a Draft Bill to replace the 1908 Act, before reporting back to Cabinet. This paper represents that report-back.

Overview of consultation

- 4 After releasing the Draft Bill in 2015, MBIE received 116 submissions, but a lack of resources saw the policy process suspended for a number of months. Reviving the work in March 2018, I instructed officials to consult with Māori and relevant legal experts, in order to supplement the responses to the initial consultation, and to provide me with proposals for amendments to the Draft Bill.
- 5 Feedback from the 2015 public consultation, the recent targeted consultation, and subsequent inter-agency consultation was broadly supportive of the Draft Bill. However some submissions expressed concerns about the Draft Bill’s compliance costs on small societies. Others argued that societies were too diverse for standard constitutional provisions or model constitutions, and that further consideration was required of the Draft Bill’s potential conflict with other legislation (such as the Employment Relations Act 2000) in its application to trade unions.

Proposed amendments to Draft Bill

- 6 The proposed amendments to the Draft Bill are set out in three parts of the Cabinet paper:
 - 6.1 Significant changes that will affect all societies: for example, the Draft Bill’s currently very broad definition of “officer” will be aligned with the narrower definition in the Charities Act 2005.

- 6.2 Significant changes that will affect certain types of societies: for example, trade unions (which must register as incorporated societies) will be accommodated through carve outs, where provisions in the Draft Bill could be interpreted as conflicting with their rights and obligations under the Employment Relations Act 2000.
- 6.3 Significant changes that will affect certain types of existing societies, as they transition to the new regime: for example, the current two-stage, four-year transition process will be reduced to a single transition period of two years and six months.

Future funding implications

- 7 Enhancements to the register of incorporated societies are required to meet the proposed changes in the Draft Bill.
- 8 Furthermore, I consider that there are substantial risks that many societies will not be able to cope with the introduction of the new incorporated societies regime unless there is support from government. I am therefore planning education initiatives led by the Companies Office.
- 9 There will be operating and capital cost implications in updating the register and for maintaining two registers during the two-year and six month transition period. Upgrading the register is expected to require \$0.850 million capital investment and \$0.240 million one-off operating costs for project management and stakeholder engagement. The ongoing operating cost for depreciation, capital charge and system support is expected to be \$0.241 million annually. This paper does not seek funding decisions. MBIE will undertake further work to confirm the costs in line with the legislative requirements, and the level to which these costs could be absorbed within current baselines. Any capital injection or additional appropriation required would be addressed through a subsequent Cabinet paper or Budget bid process.

Risks

- 10 I wish to signal three main risks.
- 11 First, some trade union conferences take place more than six months after the end of their financial years. For this reason, trade unions have proposed that the Draft Bill be amended so that, instead of 6 months, they have 9 or 12 months to file financial statements after the end of their financial year. I have concluded that such a delay would unduly compromise the integrity of the financial information available on the register and the accountability of the union to its members. This conclusion could lead to lobbying by trade unions, and submissions to the Parliamentary select committee, to grant them extra time.
- 12 Second, incorporated societies that are registered as charities must use External Reporting Board (XRB) standards when preparing their financial statements. The Draft Bill would extend this requirement to the incorporated societies that are not registered as charities. I have concluded that a material proportion of these other incorporated societies will simply lack the knowledge or access to advice that would enable them to use the XRB standards, and so I have also concluded that the extension of XRB standards should be limited to larger societies only. This

recommendation has been questioned by the XRB and as a result there is a risk that some members of the accounting and auditing profession will raise objections as the Draft Bill progresses through Parliament. However, making a different decision would lead to strong objections from smaller incorporated societies. In addition, my proposal still requires the smaller societies to continue lodging financial statements with the Registrar of incorporated societies.

- 13 Third, the Draft Bill currently provides that all societies that are on the existing register (as established by the 1908 Act) will be automatically re-registered on the new register (as established by the new statute). I am proposing that the Draft Bill be amended so that societies are moved to the new register only if they confirm that they wish to be so moved and that they have achieved compliance with the requirements of the new statute (such as amending their constitution to include dispute resolution provisions). There was significant discussion about this change at the officials' meeting with the Legislation Design and Advisory Committee, and the decision is, indeed, a finely balanced one. In this context, there is a risk that the decision will be picked up on by certain stakeholders (some incorporated societies, the media) and become subject to criticism.

Background

Incorporated societies

- 14 A 'society' can be described as a group of people who associate for a particular purpose other than their own financial gain, and are organised according to certain rules. It might, for example, be a sports club, a ratepayers' association, an educational institute, a charitable entity, or a marae. An 'incorporated society' is a group of such people who have registered under the 1908 Act.
- 15 The advantage of becoming an incorporated society is that the society takes on a legal existence, meaning it can sign contracts, sue and be sued. This means individual members of the society do not have to expose themselves to the legal risks of, say, being the legal tenant of the clubrooms (and so legally responsible for paying the rent).
- 16 There are over 23,000 such entities currently on the Incorporated Societies Register (the Register). These range from Proactively Released: Improper Pressure – which in FY 2016 had an income of \$162 million – to the Banks Peninsula War Memorial Society Incorporated – which in FY 2016 had an income of \$5,889. Together, incorporated societies make a significant contribution to New Zealanders' well-being.
- 17 Incorporated societies must follow rules set out in the 1908 Act. Those rules relate largely to the formation and dissolution of a society – they say very little about governance.

Previous policy process

- 18 In 2010, the then Minister of Justice asked the Law Commission to undertake a review of the 1908 Act. The Law Commission subsequently recommended in its final report of 2013 that the 1908 Act be replaced with a modern statute. It also recommended that the modern statute:

- 18.1 set out the basic duties for societies' officers (such as to act in good faith), essentially by codifying case law;
 - 18.2 set out rules on what officers must do when they have financial conflicts of interest;
 - 18.3 require each society to include disputes procedures in their constitution;
 - 18.4 provide for a model constitution which a society may adopt instead of drafting its own constitution; and
 - 18.5 provide a transition period of no less than four years for societies registered under the 1908 Act.
- 19 In February 2014, the Government responded to the Law Commission report, agreeing to 101 of the Law Commission's 102 recommendations in full or in principle.¹ A copy of this response is attached as Annex 1.
- 20 Accordingly, at Cabinet's invitation [EGI Min (14) 2/3 dated 19 February 2014 refers], MBIE issued drafting instructions to the Parliamentary Counsel Office, asking that the Draft Bill be prepared. In November 2015, MBIE released the Draft Bill for public consultation.
- 21 MBIE received 116 submissions on the Draft Bill, which demonstrated a high level of support for the reforms. However, resource constraints meant that work on the Draft Bill had to be put on hold for several months.

Recent developments

- 22 In January 2018, additional resources became available, and work restarted on the Draft Bill.
- 23 Continuing with the reform of the 1908 Act is the appropriate course of action, for three reasons:
- 23.1 The 1908 Act is outdated. For example, section 23(3) provides that the penalty for failing to lodge financial statements is a shilling (10 cents) a day.
 - 23.2 There is widespread agreement amongst stakeholders that the 1908 Act needs to be replaced. Consequently, a decision to abandon the reforms would likely ignite significant criticism.
 - 23.3 I can identify no significant risks associated with continuing this work-stream.
- 24 In this context:
- 24.1 In January 2018, I renewed the legislative bid of the previous Minister of Commerce and Consumer Affairs for an Incorporated Societies Bill, for the 2018 Legislative Programme, with a **Confidential**

¹ The exception related to the recommendation for the new statute to provide an easy and efficient mechanism for agricultural and pastoral societies (A&P societies) to transfer registration voluntarily from the Agricultural and Pastoral Societies Act 1908 (A&P Act) to incorporate under the new Incorporated Societies Act. Consideration of this issue was deferred until further information was obtained as part of the consultation process on the Draft Bill.

I submitted an updated legislative bid in January 2019.

- 24.2 In February 2018, I wrote to the Secretary of the Cabinet asking that the report-back date on the Draft Bill consultation be extended to 31 March 2019. This paper represents that report-back.

The Draft Bill

- 25 The Draft Bill retains the best of the 1908 Act, codifies what is useful from case law, and fills other legislative gaps where the law is unclear.
- 26 Table 1 illustrates how the Draft Bill draws on these three sources where it addresses the administration of incorporated societies:

Table 1: Where the Draft Bill comes from (Administration of incorporated societies)

Issue	Source	Current law	Draft Bill	Clause
Organisation	1908 Act (s 4)	Society needs at least 15 members to register	Society needs at least 10 members to register	66
	1908 Act (s 31)	Corporate members count as 3 members	Corporate members continue to count as 3 members	13
	Case law	People can only become members with their consent	People can only become members with their consent	67
Governance	N/A (legislative gap)	No requirement to have a committee	Every society must have a committee of at least 3 members	37
Officers' duties	Case law	Officers likely have fiduciary duties to their society under case law. However, the duties are not widely understood	Six broadly expressed duties that are modelled on directors' duties in the Companies Act	48-53
	Case law	Officers' duties are owed to the society, not to the members	Codifies case law to make this point clear to all	55
Financial reporting	1908 Act (s 23)	Financial reporting required, but no accounting standards to govern the reporting, meaning that a wide variety of practices are used	All societies must prepare their financial statements in accordance with accounting standards issued by the External Reporting Board	83
Resolution of internal disputes	Case law	Members of societies can bring matters to court, either by seeking judicial review or on the basis of an alleged breach of contract	Societies must include procedures in their constitutions for resolving disputes. Schedule 2 describes the minimum requirements for these procedures	24(1)(j), 31, Sch 2
Amalgamation	N/A (legislative gap)	Does not provide a framework for amalgamations of incorporated societies	Provides for an amalgamations regime that is a simplified version of the amalgamations regime in the Companies Act	143-154

- 27 Table 2 illustrates how the Draft Bill draws on similar sources, where it addresses enforcement matters:

Table 2: Where the Draft Bill comes from (Enforcement issues)

Issue	Source	Current law	Draft Bill	Clause
Civil enforcement in the courts	N/A (legislative gap)	Three civil law routes are usually used: contract law, judicial review and the Declaratory Judgments Act 1908	Coherent civil law enforcement provisions that clearly state who may apply for orders and the type of orders that a court can make	95-108
Criminal offences	Crimes Act + legislative gap	Generic offences set out in the Crimes Act 1961, which have little educative or deterrent effect on those running incorporated societies	Seven criminal sanctions that are aimed at egregious conduct, including: Dishonestly using a position of an officer for gain, or to cause loss to any other person; Fraudulently using or destroying the society's property; etc	113-119
Minor offences	1908 Act (ss 11A, 18, 19, 20, 23, 23A, 23B, 34A)	A number of fines payable for various acts and omissions	Includes a list of infringement offences for simple matters of comparatively minor concern	120-124

28 The Draft Bill contains the following additional provisions of note:

28.1 It sets out a complex multi-year transition scheme for societies already registered under the 1908 Act, to migrate to the new Incorporated Societies Act. Under this scheme, societies would have at least two years to conform to some requirements of the new regime (such as introducing compliant dispute resolution rules) and at least a further two years to comply with other requirements of the new regime (such as ensuring officers meet the new eligibility requirements).

28.2 It requires societies wishing to be registered to do so exclusively under the (new) Incorporated Societies Act. This would mean that societies wishing to go on the register of incorporated societies could no longer do so through the framework of the Charitable Trusts Act 1957, and that those that have already done so (a few hundred) would be migrated to the new Incorporated Societies Act regime.

29 In accordance with the previous Government's response to the Law Commission report, the Draft Bill contains no provisions on A&P societies.

Comment

30 The main amendments I propose to make to the Draft Bill are set out below. For convenience, I have grouped the main amendments under the following headings:

30.1 Amendments affecting all incorporated societies

30.2 Amendments affecting specific types of incorporated society: general issues

30.3 Amendments affecting specific types of incorporated society: transition issues

Amendments to clauses affecting all incorporated societies

Dispute resolution

- 31 Clause 24(1)(j) of the Draft Bill requires societies to set out in their constitution “procedures for resolving disputes between members ... and between members and the society...”. Clause 31(1) provides that these procedures must “be consistent with the rules of natural justice” but must also “at a minimum, comply with the requirements of Schedule 2”.
- 32 I consider that the reference in clause 31(1) to two different sets of principles (those of natural justice and those in Schedule 2) has the capacity to confuse those running incorporated societies, many of which are run by volunteers with no legal training. Accordingly, I propose to reduce clause 31(1) to the first requirement (must be consistent with the rules of natural justice) and to change the second requirement into a prima facie safe harbour (adoption of Schedule 2 rules creates a presumption of compliance with the rules of natural justice). This will require some redrafting of Schedule 2.

Standard provisions

- 33 Clauses 33-35 of the Draft Bill provide for the issuing by the responsible Minister of standard provisions for societies’ constitutions. With the exception of the ‘safe harbour’ dispute resolution provisions that will be set out in Schedule 2, I have concluded that societies are too diverse for standard provisions. In addition, there was strong opposition (especially from trade unions) that the Registrar of incorporated societies could substitute standard provisions for non-compliant provisions in societies’ constitutions (under clause 13 of Schedule 1). All reference to standard provisions in the Draft Bill will therefore be removed.

Definition of officer

- 34 Under the Draft Bill, the officers of a society have a number of legal duties, and clause 36 sets out a broad definition of officer. This broad definition has created confusion and concern amongst submitters. For example, clause 36(1)(b) provides that officers include anyone who holds an office provided for in the society’s constitution. Trade unions have noted that this definition could capture thousands of their (and other federally-structured societies) members, including ‘worksites representatives’ and those serving on ‘area councils’. In addition, trade unions, a lawyer to a society, and some Māori have argued that clause 36(2)(d) – which refers to persons to whom committee powers have been delegated – could capture a society’s employees.
- 35 For this reason, I propose to narrow the definition of ‘officer’.
- 36 In this regard, one third of incorporated societies are registered charities, and the Charities Act 2005 has a narrower definition of ‘officer’, namely:
- (i) a member of the board or governing body of the entity...; and

(ii) a person occupying a position in the entity that allows the person to exercise significant influence over the management or administration of the entity (for example, a treasurer or a chief executive).²

37 I propose to align the definition of ‘officer’ in the Draft Bill with this definition.

Officers’ conflicts of interest

38 Clause 56 sets out when an officer will have a conflict of interest in a given matter.

39 Under clauses 57 and 58, such an officer must disclose that conflict and must not take part in the vote or sign any document relating to the matter.

40 One Māori lawyer suggested that, in small family-based incorporated societies such as marae, there may be conflicts of interest on a regular basis. He argued that banning voting in such circumstances could bog down the administration of the society (for example, by requiring – under clause 58(3) – the calling of a special general meeting if 50% or more of the members of the committee are conflicted). Other parties suggested that a special general meeting may not be the appropriate forum for certain committee matters.

41 In this context, I propose that clause 58 be amended to provide that an officer must not vote or sign documents ~~except~~ with the consent of all non-conflicted members of the committee. Where all members of the committee are conflicted, a special general meeting will still be required.

Delegate attendance at general meetings

42 Clause 75 provides that an annual general meeting is held by “a quorum of members”, meaning every member of a society has the right to attend and vote. However, because they can have thousands of members, a general meeting open to all would be impracticable for some societies, notably trade unions. As a result, these societies have developed a delegate system, whereby only delegates may attend and vote. I propose to amend the Draft Bill to make it clear that, subject to safeguards of members’ rights, such delegate systems may continue.

Other changes to Draft Bill

43 To better achieve the objectives of the Draft Bill, I also propose the following changes:

43.1 Financial gain (clause 22(3)): Under the Bill, a society must not be carried on for the financial gain of any of its members (for example, through the distribution of dividends). Clause 22(3) of the Bill specifies ‘safe harbours’ where activity does not fall foul of this rule, and I propose to amend this clause so that a society will not have a purpose of financial gain just because it will or may:

43.1.1 upon liquidation or removal from the register, distribute surplus assets to a member, where that member is itself a not-for-profit entity

² See section 4(1) of the Charities Act 2005

which does not provide for distribution of surplus assets to its members;

- 43.1.2 as part of an amalgamation, distribute any gain, profit, dividend or other financial profit to a member who is a body corporate and is the entity into which the society and member are amalgamating;
- 43.2 Additional grounds for removal from the register (clause 129): the Registrar should have the ability to remove a society from the register if the Registrar is satisfied that:
 - 43.2.1 the society is in breach of the requirement to have 10 members and it fails to comply with a notice from the Registrar under clause 66 requiring it to increase its membership;
 - 43.2.2 the society is in breach of its obligations to lodge financial statements (clause 83) or an annual return (clause 85);
 - 43.2.3 the society is no longer operating.
- 43.3 Appeals from Registrar's decisions (clause 187(1)): appeals will lie in the first instance to the District Court (rather than the High Court), and the applicant will have 28 days (rather than 15) to do so.

Amendments affecting specific types of incorporated societies: general issues

Incorporated societies that are registered trade unions

- 44 Incorporated societies that are registered as trade unions under the Employment Relations Act 2000 have raised several potential conflicts between the provisions of the Draft Bill and, first, the provisions of the Employment Relations Act and, second, the nature and practices of trade unions.
- 45 In respect of the provisions of the Employment Relations Act:
 - 45.1 Clause 32 allows a society's constitution to provide for arbitration. However, section 238 of the Employment Relations Act 2000 prevents parties from contracting out of that Act, including its provisions attributing jurisdiction over disputes to employment institutions.
 - 45.2 Clause 104 provides that a member or former member of an incorporated society may apply to the courts for an order where the society has acted in an unfair manner. However, section 161 of the Employment Relations Act 2000 provides that the Employment Relations Authority has exclusive jurisdiction to determine asserted rule breaches or "any other matter" arising from a member's union membership.
- 46 I propose addressing these issues by including a clause in the Draft Bill providing that nothing in the new Act will affect the exclusive jurisdiction of the Employment Relations Authority or the Employment Court.
- 47 In respect of the nature and practices of trade unions, I propose the following main changes to the Draft Bill to accommodate the unions' concerns:

- 47.1 Clause 21 provides that a society must not be carried on for the financial gain of any of its members. Trade unions are concerned that they may fall foul of this provision, inasmuch as they negotiate pay rates on behalf of their members. In this regard, clause 22(3) sets out “exceptions”, where a society is deemed not to be being carried on for the financial gain of its members. For clarity, I propose including amongst these exemptions, any society that is a trade union negotiating on behalf of its members.
- 47.2 Clause 56 sets out when an officer is deemed to be “interested” in a matter (and so subject to an obligation not to vote on that matter). A member of a trade union committee will always have an interest in a matter before them regarding the negotiation with employers of working conditions, since they are also members of the union. In this regard, clause 56(3) sets out “exceptions”, where an officer is deemed not to be interested in a matter. I propose to work with the Parliamentary Counsel Office to ensure that these exemptions cover the situation where the person concerned is an officer of a trade union advocating for the collective interests of the union’s members.
- 47.3 Clauses 77-80 restrict the circumstances in which a society may indemnify, or effect insurance for, any of its members or employees. These provisions are intended to apply only to members’ acts or omissions in respect of the society’s affairs. By contrast, trade unions commonly take legal cases against employers on behalf of their members and cover the costs of doing so. They also commonly provide financial assistance to members who are the subject of criminal proceedings, for the cost of those proceedings, without indemnifying a member against any sanctions that are pronounced. Unions that submitted on the Draft Bill did not consider that clauses 78-80 provided sufficient guarantees that these union activities were not being targeted. I therefore propose to work with the Parliamentary Counsel Office to assess whether amendments are required to the draft Bill to make this clear.
- 48 By contrast, I do not propose to amend the Draft Bill to accommodate a concern expressed by the New Zealand Council of Trade Unions (NZCTU) and the New Zealand Educational Institute (NZEI) union concerning the timeframe for filing financial statements.
- 49 To explain, under the Draft Bill, a society must, no later than six months after the end of the society’s financial year (in technical terms, six months after its “balance date”):
- 49.1 call an annual general meeting (clause 73); and
- 49.2 provide to the Registrar copies of completed financial reports (clause 83).
- 50 NZCTU stated in its submission that “union annual general meetings (usually called conferences) are often massive organisational undertakings with hundreds of attendees” and as a result “some union conferences take place more than six months after the end of their financial years”. For example, the NZEI has noted that its balance date is 31 December and that its annual general meeting is, for practical reasons, during the following September school holidays (slightly less than nine months later). It notes that, while it could comply with a six-month reporting requirement by changing its balance date to 31 March, this would involve significant “cost, effort and ongoing operational inconvenience”.

- 51 While I am sensitive to these concerns, I consider that they have been over-stated. Furthermore, in the corporate governance regulatory system, financial statements are key documents for providing accountability to the owners or members about the stewardship of the resources under the reporting entity's control. I also consider that timeliness is an issue – the more up-to-date the financial statements, the stronger the accountability.
- 52 In addition, extending financial reporting to nine months after balance date would be very weak from an accountability perspective, not just for trade unions, or for incorporated societies more broadly, but for any class of reporting entity. For example, companies that must prepare financial statements have 5 months to do so (section 201 of the Companies Act 1993) and registered charities have 6 months (section 41 of the Charities Act 2005). For this reason, I do not propose any change to the six-month reporting requirement.

Incorporated societies that are levy associations

- 53 Clause 67(1) provides that “a person must consent to become a member of a society”. This is based on case law holding that societies do not have the ability – for example by writing rules to this effect in their constitution – to deem certain persons members, without seeking their consent.³
- 54 This provision does not sit well with the commodities levy system implemented by the Ministry for Primary Industries pursuant to the Commodity Levies Act 1990 and the usual practices of levy associations in that area. Under that system, producers of commodities (e.g. fruit, vegetables) often automatically become members under the rules of the levy associations (although they do have the ability to opt out of membership).
- 55 There is already an exception of sorts to the consent rule. Under section 7 of the Incorporated Societies Amendment Act 1920, every person who joins a local branch of a national society “shall be deemed to be a member of the society and liable to all the obligations of membership”.
- 56 Subject to compliance with the Bill of Rights Act 1990, in particular the right to the freedom of association in section 17, I propose to amend the Draft Bill to include a subclause allowing associations with levies under the Commodity Levies Act 1990 to constitute an exception to the membership consent rule.
- 57 One Māori lawyer did raise a further concern. He suggested that some iwi members believe signing a form before they become a member of a papatipu rūnanga, iwi, hapu or other Māori entity would be incompatible with tikanga Māori (i.e. membership is their right by whakapapa). In this context, he suggested that it may be appropriate to provide that, while consent is required to be subject to the obligations of membership of an incorporated society, consent is not required to enjoy the benefits of membership.
- 58 However, this was an isolated comment. Other Māori consulted did not consider the requirement for consent to be an issue. On balance, I therefore do not propose to

³ *Te Runanga o Muriwhenua Inc Society v Noho*, High Court, Whangarei, 2 December 1998

establish a legislative exception to clause 67(1) to accommodate this aspect of tikanga Māori.

Incorporated societies that are not registered as charities

- 59 Incorporated societies that have registered as charities under the Charities Act 2005 (about one third of all incorporated societies) send their annual financial reports to the charities sector regulator, Charities Services. In preparing those reports, the society must (since 2015) use accounting standards set by the XRB.
- 60 By contrast, incorporated societies not registered as charities (IS-NRAC) send their financial reports to the Registrar of Incorporated Societies, and follow only basic legislative requirements in their accounting (section 23 of the 1908 Act).
- 61 The Draft Bill would, as drafted, require all IS-NRAC to adopt the same XRB accounting standards as registered charities.
- 62 While I approve of this change in principle, I have concluded that it poses some practical problems for very small incorporated societies. In particular, the recent experience of Charities Services suggests that there will be a rump of societies – particularly those with limited funds – who will likely never be capable of complying with the XRB standards, creating increased compliance enforcement costs for government.
- 63 There is also a principle-based justification for why IS-NRAC (or at least a sub-set of them) can be allowed to have lower levels of accountability than equivalent registered charities. That justification is that IS-NRAC do not benefit in the same way as registered charities from tax exemptions. It is true that all not-for profits (including IS-NRAC) receive tax concessions to some degree: they all have a \$1,000 income tax deduction; they all have access to GST concessions (if they have a taxable activity), and they have the potential to have access to donee status and to an exemption from the fringe benefit tax rules. Indeed, according to the Inland Revenue Department, only around 600 IS-NRAC actually pay tax each year. However, unlike registered charities, IS-NRAC do not receive complete and automatic exemption from income tax.
- 64 In this context, I propose to amend the Draft Bill so that the new requirement to use XRB standards in annual financial statements applies only to those incorporated societies likely to be able to comply, namely those that have at least one of the following:
- 64.1 annual payments of \$10,000 or more;
 - 64.2 assets of \$30,000 or more; or
 - 64.3 'donee' status under the Income Tax Act 2007.⁴
- 65 I estimate that this proposal will mean the XRB standards will continue to apply to as many as 60% of IS-NRAC (about 75% of all incorporated societies). Other IS-NRAC

⁴ If an incorporated society (or other entity) is a donee organisation, then taxpayers can receive tax benefits for monetary donations they make to the society. The advantage societies gain from this status makes transparency around their financial statements more important.

will apply basic standards based on those currently set out in section 23 of the 1908 Act.

- 66 I should note that, during consultation with the XRB, they offered a counterview to the proposal to limit the requirement to follow their standards to larger societies. In their view:
- 66.1 It is important that all incorporated societies be required to prepare annual financial statements in accordance with XRB standards (based on their tiered-approach developed for not-for-profit entities) to promote consistent and transparent financial reporting across the entire sector.
 - 66.2 The retention of the requirement for IS-NRAC to use XRB standards when preparing annual financial statements (as proposed in the Draft Bill) would promote a higher level of accountability, improvement in governance practices, and ultimately enhance the society's ability to perform activities consistent with its objectives.
 - 66.3 Once a small society accepts that they need to do something different, there would be some investment of additional resources in the first year of adoption, but after this period the resources required will progressively decrease to a point where application of the new reporting requirements is business as usual. In this regard, XRB question whether the XRB accounting standards that will apply to smaller societies (so-called Tier 4 accounting standards) are actually materially more difficult to apply than the current requirements under section 23 of the 1908 Act.
- 67 I have considered the XRB perspective but consider that it is outweighed by the disruption that will result if very small IS-NRACs are required to use XRB standards. I also reiterate that, under my proposal, IS-NRAC will continue to be required to file their financial reports with the Registrar of incorporated societies.
- 68 I believe the thresholds for the application of XRB standards should be set in primary legislation. To allow for adjustment to take account of inflation, I propose that the Minister of Commerce and Consumer Affairs have an obligation to review the threshold at least every 8 years, and the ability to recommend that the Governor-General amend the threshold accordingly by Order in Council. This is the approach adopted in section 48 of the Financial Reporting Act 2013, for the amending of monetary amounts specified in some provisions of that Act.
- 69 I also propose a second amendment to the Draft Bill related to IS-NRAC. The Draft Bill does not currently require any IS-NRAC to have their financial statements independently assured (either by review or audit). This is in contrast to the Charities Act, which requires registered charities (including incorporated societies registered as charities) that have annual expenditure of \$500,000 or more, over each of the preceding two years, to seek independent assurance.
- 70 It is not appropriate that IS-NRAC be held to the same assurance requirements as incorporated societies that are registered charities as, in MBIE's view, the latter should be more accountable to wider society due to the complete and automatic tax exemptions they enjoy. However, I believe that there is some need for assurance when IS-NRAC have very high income and/or very valuable assets. In this regard, I

propose that the audit threshold for IS-NRAC be set at annual expenditure of \$2 million or assets of \$4 million. The \$2 million expenditure threshold would correspond to the threshold for 'Tier 3' not-for-profit entities used by the XRB. I estimate that fewer than 5% of IS-NRAC would be captured.

Amendments affecting specific types of incorporated societies: transition issues

Incorporated societies that have incorporated under the Charitable Trusts Act

- 71 The Charitable Trusts Act 1957 allows entities to incorporate as trust boards, but also as charitable societies. However, charitable societies do not properly belong under legislation that governs trusts (such as the Charitable Trusts Act). This is because societies are democratically controlled organisations (members have the right to vote), while trusts are not (beneficiaries have no vote).
- 72 As a result, in accordance with the Law Commission's report, the Draft Bill currently provides that:
- 72.1 entities that in future wish to incorporate as charitable societies will have to do so under the new Incorporated Societies Act, and not under the Charitable Trusts Act; and
- 72.2 entities that have already incorporated as charitable societies will be brought over into the incorporated societies regime (Schedule 1).
- 73 However, having considered submissions, I have concluded that it would be excessive to force entities that have already incorporated as charitable societies to migrate to the incorporated societies regime. Such an approach would cause additional administration, legal, accounting, marketing and re-branding costs.
- 74 I therefore propose to remove from the Schedule 1 transition regime the requirement that charitable societies be moved to the incorporated societies regime.
- 75 I propose instead that the Draft Bill simply allow these charitable societies to migrate to the new incorporated societies regime voluntarily.

Incorporated societies that are registered under the 1908 Act at the time the new Act comes into force

- 76 The Draft Bill currently provides for a staggered application of the new regime to existing societies, over a minimum of four years. After a first grace period (of at least two years), provisions relating to certain matters (e.g. dispute resolution procedures) would take effect. After a second grace period (of at least another two years), provisions relating to all other matters (e.g. new officer eligibility rules) would take effect.
- 77 Following intensive engagement with the Companies Office, I have concluded that the Draft Bill's transition approach is not ideal because:
- 77.1 its staggered nature risks confusing some incorporated societies about what obligations apply when;

- 77.2 its duration is too long, as high officer churn would mean efforts by the Companies Office in years 1 and 2 to educate officers about the changes would likely need to be repeated in years 3 and 4; and
- 77.3 its automatic application to all existing societies, whether they comply with the new rules or not, would make it difficult for the Companies Office to know which societies need targeted assistance with adapting to the new regime, and would also lead to substantial numbers of societies on the new register having non-compliant constitutions and ineligible officers (compromising the integrity of the register).
- 78 I therefore propose that the Draft Bill be amended to provide for a transition approach that is non-staggered, that is shorter in duration, and that requires societies to actively re-register under the new regime (for example when they are submitting their annual returns). More specifically, I propose that:
- 78.1 for a period of at least two years and six months after the new Incorporated Societies Act enters into force, societies that wish to continue to enjoy incorporation have the chance:
- 78.1.1 to make any amendments to their constitutions required by the new Act, and to ensure all officers meet the eligibility requirements under the new Act, and then
- 78.1.2 to re-register under the new Incorporated Societies Act (at which point they become subject to the new obligations – this means different societies will become subject to the new obligations at different times over the transition period);
- 78.2 at the end of that period, societies that have not sent in this confirmation will be de-registered by effect of the new statute (the 1908 Act is fully repealed and, as a consequence, the 1908 register will cease to exist and any societies still on it will cease to benefit from the incorporation status it provides);
- 78.3 the Draft Bill will continue to contain a ‘restoration’ provision (currently clause 137), and the Bill will provide that, if a society fails to re-register and is consequently de-registered, it can later apply to be ‘restored’ (as the same society) to the new register. The Registrar would retain the discretion to refuse such a request (in which case, the society would need to apply for incorporation as a new society). The assets of societies that are not restored could be dealt with by way of the direction process currently set out in clause 161 of the Draft Bill.
- 79 A minimum period of two years and six months would provide societies with at least two full governance cycles to make the necessary changes to their constitution, and to receive subsequent reminders from the Companies Office.
- 80 There was significant discussion at the officials’ meeting with the Legislation Design and Advisory Committee (LDAC) about this change, and the decision is, indeed, a finely balanced one. LDAC expressed concern that some societies might be de-registered because they did not know of the requirement to re-register and that, if a de-registered society later sought to be ‘restored’ to the register using the Draft Bill’s

restoration provisions, there might be difficulty in keeping track of their assets during the interim period.

81 Notwithstanding these concerns, I remain confident that a re-registration system is preferable to an automatic one. In particular, requiring societies to confirm they wish to appear on the new register:

81.1 creates an incentive for societies to comply with the new statute, by updating their constitutions to reflect the new rules and by providing the names of their officers;

81.2 would remove inactive societies from the register in one go, enhancing the authenticity of the register;

81.3 would improve the cost-effectiveness of the education campaign that will accompany these reforms, by allowing the Companies Office to focus their immediate post-reform efforts on societies that fail to re-register (rather than wasting education efforts on societies that have already become compliant and re-registered); and

81.4 would reflect recent international practice, such as the approach taken in British Columbia under a new incorporated societies statute in 2016. For completeness, I note that New Zealand's Companies Reregistration Act 1993 did include an automatic reregistration backstop for companies which did not voluntarily transition to the new regime. However, I understand that the decision to include this was made in the specific context of companies and their shareholders, and so may be of limited relevance to incorporated societies.⁵

Consultation

Feedback in original submissions

82 From my officials' analysis of the 116 written submissions received in 2016, I have concluded that there was a high level of support for reform of incorporated societies law. However:

82.1 there were concerns about the Draft Bill's compliance costs on small societies;

82.2 societies were considered too diverse for standard constitutional provisions or model constitutions;

82.3 further consideration was required on the Draft Bill's potential conflict with the Employment Relations Act 2000 in its application to trade unions, and on its application to societies whose members are other societies or who have a multiple branch structure ('federal structures').

⁵ Law Commission report no.16 dated September 1990 stated at para 152 that "if liquidation were the sole sanction [for non-reregistration], there could be situations where one group of shareholders in a company – those likely to be less adversely affected by liquidation than another group with which they were negotiating – could use the reregistration process as an opportunity to re-negotiate the contract underlying the formation of the company".

- 83 The changes outlined to the Draft Bill in this paper would accommodate the majority of the concerns expressed by these submitters.

Feedback from targeted consultation

- 84 When I decided to continue with this reform process begun by the previous administration, I wanted to ensure that all relevant stakeholders had been appropriately consulted.
- 85 For example, although Māori have made considerable use of incorporated societies as a vehicle for community endeavours, the consultation process for Te Ture Whenua Māori Bill (which aims to restate and reform the law relating to Māori land), of key interest to Māori societies, took place at about the same time as the Draft Bill consultation process. This meant that officials did not get as much Māori input on the Draft Bill as they would have hoped. I therefore arranged for officials to undertake targeted consultation with Māori between May and July 2018.
- 86 Besides Māori, officials also undertook targeted consultation this year with a number of lawyers and law firms who specialise in incorporated societies law.
- 87 The changes outlined to the Draft Bill in this paper would accommodate the majority of the concerns expressed by these stakeholders.

Feedback from government departments and agencies

- 88 Officials at MBIE consulted with the Ministry of Justice, the Ministry for Primary Industries, the Inland Revenue Department and the Department of Internal Affairs. The Treasury and the Department of the Prime Minister and Cabinet were informed.
- 89 Officials at MBIE also consulted with four agencies:
- 89.1 The Companies Office. They will be responsible for implementing the new incorporated societies regime – processing re-registration applications, undertaking checks to determine levels of compliance, and using the new enforcement provisions where this is appropriate. The Companies Office supports the proposed changes, and in particular the change to the transition rules;
- 89.2 The charities sector regulator, Charities Services, which sits within the Department of Internal Affairs. This allowed officials to learn from the regulator's experience with recent reforms imposing financial reporting standards on registered charities, a large proportion of which are incorporated societies. Charities Services supports the proposed changes, including the limitation of XRB standards for financial reports to larger IS-NRAC;
- 89.3 The XRB. They did not support the proposal to limit the requirement to use XRB accounting standards, to larger IS-NRAC.
- 89.4 The Office of the Privacy Commissioner. They provided comment on the rights of members to access information held by incorporated societies, and on information about society officers that will appear on the register of incorporated societies.

90 Officials also spoke with LDAC. LDAC's comments focused on the transition regime.

Future financial Implications

91 There are two financial consequences attached to the reforms, resulting from the need to upgrade the register of incorporated societies, and the need for education of the affected entities.

Register upgrade

92 The then Minister of Commerce informed Cabinet that "consideration has not, at this stage, been given to whether the existing register of incorporated societies would need to be modified or replaced... if there are any such costs, then consideration would need to be given to meeting some or all of them through third party revenue" [Cabinet paper associated with EGI Min (14) 2/3 dated 19 February 2014]. In this regard, clause 193 of the Draft Bill allows the Governor-General to make regulations prescribing fees for the performance by the Registrar of his or her functions. This will enable me to consider, in future, the need for third-party revenue.

93 Enhancements to the register of incorporated societies are required to meet the proposed changes in the Draft Bill. The costs will include capital funding, which will be used to deliver the system enhancements to the Business Registers Platform required to meet new register functions introduced by the new Act, support dual-system functions for both Acts during the transition period, and to cease old Act functions at the end of transition. It will include technical resources to manage the design and implementation of system changes and system and vendor costs to deliver the enhancements at the various phases of the commencement and transition.

Education campaign

94 The Government's 2014 response to the Law Commission's final report noted that "the reforms can only be successfully implemented if the not-for-profit sector has a good understanding of them" and so concluded that "sector education will be an integral part of the implementation programme".⁶

95 In this context, MBIE held 25 seminars in eight different cities during the Ministry's consultation on the Draft Bill in 2016.

96 The then Minister of Commerce informed Cabinet that "decisions are yet to be made about resourcing any subsequent education initiatives" [Cabinet paper associated with EGI Min (14) 2/3 dated 19 February 2014]. I have concluded that there are substantial risks that many societies will not be able to cope with the proposed changes unless there is support from government. This is because a large proportion of societies are very small-scale entities staffed by often untrained volunteers. The difficulties they are likely to experience in adapting to the new statute are borne out by those faced by registered charities when changes were made to their financial reporting requirements in 2015, despite an extensive education campaign undertaken by the regulator of the sector, Charities Services.

⁶ See Government Response, February 2014, at para 33

97 Funding will be used for extensive stakeholder engagement activity and support (including seminars) leading up to the commencement of the new Act and throughout the transition period. The predicted peak in Year 2 is based on the two-year six-month transition period expiring just after the end of Year 2. Funds will also be used to meet ongoing system maintenance and central support costs.

Summary

98 Operational expenditure for the register upgrade and educational campaign can likely be absorbed within baseline funding. MBIE is undertaking further work on whether capital expenditure can also be absorbed this way, failing which a budget bid will likely be prepared. As such, no decisions are currently sought from Cabinet on these matters.

99 In the meantime, officials estimate that the proposals will necessitate the following capital and operational funding allocations for the Registrar:

\$millions	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Capital injection	0.850						
Operating costs	0.198	0.275	0.310	0.241	0.241	0.241	0.241

Human Rights

100 Clause 39(2)(a) of the Draft Bill provides that a person who is under 16 years of age is disqualified from being an officer in an incorporated society. By contrast, clause 43(3)(b) of the Draft Bill provides that a society's contact officer (the person whom the Registrar can use to contact the society) must be at least 18 years old. This raises a human rights issue, since the grounds of discrimination under s 21(1)(i) of the Human Rights Act 1993 include discrimination based on age (commencing with the age of 16 years old).

101 MBIE considers that this limitation is a justifiable form of age-based discrimination. Contact officers will sign documents on behalf of their society, and so need to be 18 or over to ensure that the validity of those documents cannot be challenged.

102 My proposal to amend the Draft Bill to allow associations with levies under the Commodity Levies Act 1990 to constitute an exception to the membership consent rule requires a compliance check with the Bill of Rights Act 1990. I will arrange for officials to consult with the Ministry of Justice on this point.

Legislative Implications

103 In January 2018, I renewed the previous Government's legislative bid for an Incorporated Societies Bill for the 2018 Legislative Programme, with a category of 6 (which at that time meant drafting instructions to the Parliamentary Counsel Office by the end of the year). I renewed this legislative bid in January 2019. If Cabinet agrees to my recommendations, these (supplementary) drafting instructions will be issued, and I anticipate that the finalised bill will be introduced to the House in late 2019.

104 Secondary legislation will also be needed to set requirements referred to in the Bill.

105 The Draft Bill provides in its clause 7 that it will bind the Crown. There is no intention to change this.

Regulatory Impact Analysis

106 A regulatory impact statement (RIS) accompanied the Cabinet paper considered by Cabinet in February 2014 [EGI Min (14) 2/3 dated 19 February 2014 refers]. That Cabinet paper stated that the General Manager, Strategic Policy, MBIE, and the MBIE Impact Analysis Review Panel had reviewed the statement and concluded that “the information and analysis summarised in the RIS meets the criteria necessary for ministers to fairly compare the available policy options and take informed decisions on the proposals in the paper”.

107 A supplementary RIS was prepared to accompany this Cabinet paper (Annex 2). It concerns the two most significant changes I propose to make to the Draft Bill, both of which fall within the second category of amendments I discussed earlier in this paper (*Amendments to clauses affecting specific types of incorporated societies*). Those two significant changes are:

107.1 for incorporated societies not registered as charities that fall below certain thresholds, the creation of an exemption from the obligation to use XRB accounting standards; and

107.2 for incorporated societies that are registered under the 1908 Act at the time the new Act comes into force, the change to the manner and timeframe in which they will transition to the new regime.

108 MBIE’s Regulatory Impact Analysis Review Panel has reviewed the supplementary RIS prepared by MBIE. The Panel considers that the information and analysis summarised in the RIS could be more concise but meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

109 Other amendments to the Draft Bill received an exemption from the Regulatory Impact Requirements. The Regulatory Quality Team at the Treasury agrees that no formal Regulatory Impact Statement is necessary in support of these proposals, whose impact (over and above the reforms agreed separately) is expected only to be minor.

Gender Implications and Disability Perspective

110 This paper has no gender or disability implications.

Publicity

111 I propose to release a media statement outlining the major policy changes that the Government is planning to make to the Draft Bill. The media statement will contain an indication that the Incorporated Societies Bill is likely to be introduced to the House in late 2019.

112 I do not anticipate significant media interest in the announcement.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that incorporated societies are governed by the Incorporated Societies Act 1908;
- 2 **note** that, at Cabinet's invitation [EGI Min (14) 2/3 dated 19 February 2014 refers], the Ministry of Business, Innovation and Employment:
 - 2.1 issued drafting instructions to the Parliamentary Counsel Office, asking that a draft bill be prepared to replace the Incorporated Societies Act 1908, and
 - 2.2 consulted publicly on the draft bill;
- 3 **note** that, in the same decision, Cabinet asked that the Minister of Commerce and Consumer Affairs report back on the results of the consultation, and this paper represents that report-back;

Major amendments affecting all incorporated societies

- 4 **agree** that, as it concerns all incorporated societies, the draft bill be amended so that:
 - 4.1 adoption of basic procedures set out in an amended Schedule 2 will be deemed to constitute compliance with the rule that a dispute resolution procedure in a society's constitution must be consistent with the rules of natural justice (clause 31);
 - 4.2 all reference to standard provisions is removed (clauses 33-35 and clause 13 of Schedule 1);
 - 4.3 the definition of officer is narrowed to align with the definition of officer in the Charities Act 2005 (clause 36);
 - 4.4 the rule that a conflicted officer must not vote or sign documents can be suspended in a given case with the consent of all non-conflicted members of the committee (clause 58);
 - 4.5 while a general meeting must be attended by a "quorum of members", delegate systems such as those used by trade unions are, subject to appropriate safeguards, deemed to satisfy this requirement (clause 75);
- 5 **agree** that, as it concerns all incorporated societies, the draft bill also be amended so that:
 - 5.1 a society does not have a purpose of financial gain (clause 22(3)) just because it will or may:
 - 5.1.1 upon liquidation or removal from the register, distribute surplus assets to a member, where that member is itself a not-for-profit entity which does not provide for distribution of surplus assets to its members;

- 5.1.2 as part of an amalgamation, distribute any gain, profit, dividend or other financial profit to a member who is a body corporate and is the entity into which the society and member are amalgamating;
- 5.2 the Registrar should have the ability to remove a society from the register if the Registrar is satisfied that:
 - 5.2.1 the society is in breach of the requirement to have 10 members and it fails to comply with a notice from the registrar under clause 66 requiring it to increase its membership;
 - 5.2.2 the society is in breach of its obligations to lodge financial statements (under clause 83) or an annual return (under clause 85);
 - 5.2.3 the society is no longer operating.
- 5.3 appeals from Registrar's decisions (clause 187(1)) will lie in the first instance to the District Court, and the applicant will have 28 days (rather than 15) to do so.

Major amendments affecting certain types of incorporated society: general issues

- 6 **agree** that, as it concerns certain types of incorporated society, the draft bill should ensure that:
 - 6.1 in respect of societies registered as trade unions:
 - 6.1.1 the scenarios where a society is deemed as not being carried on for the financial gain of its members include any society that is a trade union negotiating on behalf of its members (clause 22(3));
 - 6.1.2 nothing in the draft bill (in particular, in clauses 32 and 104) will affect the exclusive jurisdiction of the Employment Relations Authority or the Employment Court;
 - 6.1.3 the scenarios where an officer is deemed not to be interested in a matter cover situations where he or she is an officer of a trade union advocating for the collective interests of the union's members (clause 56);
 - 6.1.4 trade union practices of taking legal cases against employers on behalf of their members and covering the costs of doing so, and of providing financial assistance to members who are the subject of criminal proceedings, are not unduly impeded by the ban on indemnities in the Draft Bill (clauses 77-80);
 - 6.2 in respect of societies that are levy associations:
 - 6.2.1 subject to compliance with the Bill of Rights Act 1990, associations with levies under the Commodity Levies Act 1990 will be exempted from the rule that a person must consent to society membership (clause 67);

- 6.3 in respect of societies that are not registered as charities:
- 6.3.1 the requirement to use External Reporting Board standards in annual financial statements is limited to those societies that have one or more of the following:
 - 6.3.1.1 annual payments of \$10,000 or more; and/or
 - 6.3.1.2 assets of \$30,000 or more; and/or
 - 6.3.1.3 donee status under the Income Tax Act 2007,
 - 6.3.2 the Minister of Commerce and Consumer Affairs has an obligation to review these thresholds at least every 8 years, and the ability to recommend that the Governor-General amend the threshold accordingly by Order in Council;
 - 6.3.3 a requirement to have their annual financial statements audited applies to societies that have annual expenditure of \$2 million or more, or assets of \$4 million or more;

Major amendments affecting certain types of incorporated society: transition issues

7 **agree** that, as concerns the transition of certain types of society from current registers to the new incorporated societies register, the draft bill be amended so that:

- 7.1 in respect of societies incorporated under the Charitable Trusts Act 1957:
- 7.1.1 the requirement that charitable societies transition to the new regime is replaced with provisions facilitating voluntary transition (notably clauses 3 and 6 of Schedule 1);
- 7.2 in respect of societies incorporated under the Incorporated Societies Act 1908:
- 7.2.1 for a period of at least two years and six months after the new Incorporated Societies Act enters into force, societies that wish to continue to enjoy incorporation have the chance:
 - 7.2.1.1 to make any amendments to their constitutions required by the new Act, and to ensure all officers meet the eligibility requirements under the new Act; and then
 - 7.2.1.2 to re-register under the new Incorporated Societies Act (at which point they will become subject to the new regime);
 - 7.2.2 at the end of that period, societies that have not sent in this confirmation will be de-registered by effect of the new Incorporated Societies Act;
 - 7.2.3 the 'restoration' provision (currently clause 137) will allow a society that fails to re-register, and is consequently de-registered, to apply to be 'restored' (as the same society) to the new register.

Financial recommendations

- 8 **note** that the Companies Office, in collaboration with the Ministry of Business, Innovation and Employment, is planning to:
- 8.1 enhance the register of incorporated societies; and
 - 8.2 undertake an education campaign to accompany the introduction of the new incorporated societies regime;
- 9 **note** that I estimate that register enhancement will require \$0.850 million in capital investment, and that register enhancement and the education campaign will require \$1.747 million in operating funding spread over six years, including depreciation and capital charge;
- 10 **note** that Ministers expect that the capital investment and operational expenditure should be met from within baseline, and that the Ministry of Business, Innovation and Employment believe the operational expenditure can likely be absorbed within current baseline funding, while further work is being undertaken to determine if the capital expenditure can also be absorbed this way

Next steps

- 11 **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to amend the draft bill to give effect to the decisions in the recommendations above;
- 12 **authorise** the Minister of Commerce and Consumer Affairs to make:
- 12.1 decisions on any minor or technical matters that may arise during the drafting process that are consistent with the policy decisions in EGI Min (14) 2/3;
 - 12.2 minor or technical changes, consistent with the decisions in this paper, on any issues that arise during the drafting process;
- 13 **invite** the Minister of Commerce and Consumer Affairs to report back to Cabinet with the final text of the draft bill later in 2019, with a view to its introduction to the House.

Authorised for lodgement

Hon Kris Faafoi
Minister of Commerce and Consumer Affairs