



## COVERSHEET

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

List of documents that have been proactively released		
Date	Title	Author
8 May 2019	<i>Cabinet Committee minute: DEV-19-MIN-0101</i>	<i>Cabinet Office</i>
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

**YES** / **NO** (please select)

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# Cabinet Economic Development Committee

## Minute of Decision

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### Reform of the Incorporated Societies Act 1908

Portfolio                      Commerce and Consumer Affairs

On 8 May 2019, the Cabinet Economic Development Committee:

#### Background

- 1        **noted** that incorporated societies are governed by the Incorporated Societies Act 1908;
- 2        **noted** that on 19 February 2014, the previous government agreed to the government response to the Law Commission's report *A New Act for Incorporated Societies*, agreed to the release of an exposure draft Incorporated Societies Bill for public comment, and invited the Minister of Commerce and Consumer Affairs to report back on the results of the consultation [EGI Min (14) 2/3];
- 3        **noted** that the Incorporated Societies Bill has a category 4 priority on the 2019 Legislation Programme (to be referred to a select committee in 2019);

#### Major amendments affecting all incorporated societies

- 4        **agreed** that, as it concerns all incorporated societies, the draft bill be amended so that:
  - 4.1      the 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 **agreed** 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 has 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 **agreed** that, as it concerns certain types of incorporated society, the draft bill 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 New Zealand 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 **agreed** 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 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 (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 implications

- 8 **noted** 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;
  - 8.2 undertake an education campaign to accompany the introduction of the new incorporated societies regime;
- 9 **noted** that it is estimated that:
- 9.1 register enhancement will require \$0.850 million in capital investment;
  - 9.2 register enhancement and the education campaign will require \$1.747 million in operating funding spread over six years, including depreciation and capital charge;
- 10 **noted** 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 believes 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 **invited** 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 above paragraphs;
- 12 **authorised** 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 the paper under DEV-19-SUB 0101, on any issues that arise during the drafting process;
- 13 **invited** 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.

Janine Harvey  
Committee Secretary

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**Hard-copy distribution: (see over)**

**Present:**

Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Phil Twyford  
Hon Dr Megan Woods (Chair)  
Hon Chris Hipkins  
Hon David Parker  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Damien O'Connor  
Hon Shane Jones  
Hon Kris Faafoi  
Hon Willie Jackson  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister of Commerce and Consumer Affairs

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