



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



Consultation Document

Consultation on regulations for the Incorporated Societies Act 2022

October 2022

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Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on Tuesday 22 November 2022.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to societies@mbie.govt.nz or
- mailing your submission to:

Corporate Governance and Intellectual Property Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to societies@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on regulations for the Incorporated Societies Act 2022. We may contact submitters directly if we require clarification of any matters in submissions.

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List of Acronyms

BC	British Columbia
LIANZA	Library and Information Association of New Zealand Aotearoa
MBIE	Ministry of Business, Innovation and Employment
NSW	New South Wales
Qld	Queensland
XRB	External Reporting Board

1 Introduction

1.1 Context

1. The roughly 24,000 incorporated societies in New Zealand are currently governed by the Incorporated Societies Act 1908 and the associated Incorporated Societies Regulations 1979. However, at the time of its choosing from about 6 October 2023 until 5 April 2026,¹ each incorporated society that wishes to continue its existence will have to re-register under the Incorporated Societies Act 2022. Re-registration will change the society's governing legislation.
2. The Incorporated Societies Act 2022 provides that some of the details of the new regime – such as how to apply for re-registration and the penalties societies face if they breach their obligations under the Incorporated Societies Act 2022 – are to be prescribed by regulation. In this regard:
 - a. under sections 254 and 255 of the Incorporated Societies Act 2022, the Governor-General may, by Order in Council, make regulations related to the new regime. Broadly speaking, section 254 relates to non-financial issues and section 255 relates to financial issues i.e. fees and penalties.
 - b. under section 256 of the Incorporated Societies Act 2022, at least until the “5-year date” (likely 6 October 2028), the Governor-General may, by Order in Council, make time-limited regulations concerning the migration of existing societies to the new regime.
3. While many other provisions of the Incorporated Societies Act 2022 have not yet come into force, sections 254, 255 and 256 came into force on 6 April 2022.²

1.2 Purpose

4. This discussion paper sets out officials' preliminary views on what regulations the Minister of Commerce and Consumer Affairs should recommend the Governor-General make under sections 254, 255 and 256 of the Incorporated Societies Act 2022, and what they should provide for. It also seeks your feedback on those views.

¹ These dates can however be brought forward by Order in Council. At this stage, it seems unlikely they will be.

² See section 2(1) of the Incorporated Societies Act 2022. Other provisions of the Act will come into force at different times in the future.

1.3 Objectives of proposed regulations

5. Proposals in this consultation paper should be consistent with the purposes of the Incorporated Societies Act 2022. Those purposes, which are set out in section 3 of the Act, are to:
 - a. provide for the incorporation of societies that are carried on for lawful purposes other than for the financial gain of any of their members; and
 - b. provide a legislative framework that promotes high-quality governance of societies; and
 - c. make the law of societies more accessible; and
 - d. recognise the principles that:
 - i. societies are organisations with members who have the primary responsibility for holding the society to account; and
 - ii. societies should operate in a manner that promotes the trust and confidence of their members; and
 - iii. societies are private bodies that should be self-governing in accordance with their constitutions, any bylaws, and their own tikanga, kawa, culture, and practice, and should be free from inappropriate Government interference; and
 - iv. societies should not distribute profits or similar financial benefits to their members.
6. Officials have formulated preliminary proposals for regulations that are designed to align with these purposes.
7. In some public consultation documents, officials set out various options for each potential regulation and compare them using precise criteria. Given the sheer number of regulations in play here, and their technical nature, doing so in this consultation document would not be practical and – by significantly lengthening the consultation document – could dissuade stakeholders from engaging with us. The emphasis has instead been on setting out a preliminary view from officials with a view to stimulating stakeholder responses.
8. This approach should not leave you with the impression that other options are off the table. If, for a given proposal, you wish to present such options – including the option of not making a regulation at all – we encourage you to do so. In such a scenario, we would also strongly encourage you to set out your reasoning, including any critique you might have of officials’ reasoning. This will help make sure we can give your alternative option a ‘fair hearing’.
9. If you do wish to critique our proposals, however, you may wish to consider not just whether they are consistent with the purposes of the Incorporated Societies Act 2022 but also whether they are:
 - a. effective i.e. they achieve what they are trying to achieve;

- b. efficient i.e. they do not generate undue costs.
10. Note that, in formulating our proposals, officials considered regulations made under foreign legislation similar to the Incorporated Societies Act 2022, such as those in Queensland,³ New South Wales,⁴ and British Columbia.⁵ We also considered the Incorporated Societies Regulations 1979. However, because of their brevity and slightly different focus, none of these sources were of significant assistance.
 11. For instance, the Incorporated Societies Regulations 1979 contain only 12 regulations. You will see in this discussion paper that we are proposing significantly more regulations for what will likely become known as the Incorporated Societies Regulations 2023. This reflects the more detailed nature of the Incorporated Societies Act 2022, compared to the Incorporated Societies Act 1908.
 12. In this context, officials also considered regulations made under domestic legislation that related not to incorporated societies but to other types of legal person, notably the Companies Act 1993. This exercise proved more useful. For example, the Companies Act 1993 Regulations 1994 set out requirements for a number of the matters that the Governor-General can make regulations on under sections 254, 255 and 256 of the Incorporated Societies Act 2022. Of course, when considering these other regulations, we kept front of mind the fact that incorporated societies are not companies and, given their not-for-profit nature and the fact that many are staffed by volunteers, should not always be held to the same standards.

1.4 Process and timeline

13. You will have six weeks to send us your submissions i.e. until Tuesday 22 November 2022.
14. We will actively consider all submissions in a spirit of genuine consultation. Submissions (including a summary of submissions) will be made publicly available as soon as reasonably possible after the submission deadline.
15. Following analysis of your feedback, officials will advise the Minister of Commerce and Consumer Affairs on the regulations that he should recommend to the Governor-General.
16. If the Minister agrees with our recommendations, he will likely instruct us to work with the Parliamentary Counsel Office on preparing draft regulations. In the first half of 2023, you will have a chance to comment on those draft regulations before they are made final around August or September 2023.

³ Associations Incorporation Act 1981 (Qld) and the related Associations Incorporation Regulation 1999 (Qld)

⁴ Associations Incorporation Act 2009 (NSW) and the Associations Incorporation Regulation 2016 (NSW)

⁵ Societies Act 2015 (BC) and the related Societies Regulations 216/2015 (BC)

2 Regulations under section 254

2.1 Context

17. Section 254 of the Incorporated Societies Act 2022 is the main regulation-making power in the statute. It empowers the Governor-General to make regulations on a range of matters related to the new regime.
18. Constitutional convention is that the Governor-General will only make regulations upon the recommendation of the responsible Minister. For some regulations, section 254 makes this explicit, in order to add conditions that must be met before the Minister may make the relevant recommendation. This is the case for:
 - a. section 254(1)(l), which concerns prescribing the financial thresholds that will determine which societies need to have their financial statements audited;
 - b. sections 254(1)(u), (v) and (w), which concern the process by which entities incorporated under their own statute can convert into incorporated societies.
19. The nature of the conditions that the Minister must meet before recommending regulations under sections 254(1)(l), (u), (v) and (w) is discussed in the relevant sub-parts below.⁶

2.2 Specific regulations

2.2.1 Prescribing information that must be included or provided

20. Section 254(1)(a) empowers the Governor-General to make regulations prescribing information that must be included or provided for the purposes of the Act.
21. In the table below, we have identified all the provisions in the Act where such information is envisaged and indicated our initial thoughts on what that information should be. In most cases, we have sought to ensure a good level of continuity with the information that the Registrar currently requires under the 1908 Act.⁷

Section	Nature of information	MBIE proposal
9(a)	Information to be included in incorporation application	Section 9 of the Incorporated Societies Act 2022 already provides that an application for incorporation must include (i) the proposed name of the society, (ii) the name and contact details of at least one 'contact person', (iii) a copy of the proposed constitution, and (iv) information about every person named as an officer (including that they consent to, and are not disqualified from being, an officer).

⁶ See sub-parts 2.2.12 and 2.2.21

⁷ See, for example, the Companies Office website 'forms' section, at <https://is-register.companiesoffice.govt.nz/help-centre/forms-and-fees/forms/>

		<p>We propose that, under the regulations, the application should also include:</p> <ul style="list-style-type: none"> - the proposed society's balance date - the registered office of the proposed society, which must be a physical address - an address for service for the proposed society, which must be a physical address; - each officer's name, contact address (which can be but need not be their residential address) and email address - certification that: <ul style="list-style-type: none"> - a majority of the members of the proposed society have consented to the application; - the proposed constitution accompanying the application is the constitution of the society; - in the applicant's view, the constitution complies with the requirements of section 26 of the Incorporated Societies Act 2026.
33(2)	Information that must accompany an amendment to the constitution	<p>Section 33(2) already provides that the amendment, and amended constitution, must be accompanied by a certificate from an officer certifying that, amongst other things, the amendment was made in accordance with sections 30 and 31 of the Incorporated Societies Act 2022.</p> <p>We propose that, under the regulations, the information accompanying the amendment, and amended constitution, should include:</p> <ul style="list-style-type: none"> - the society's name; - the society's NZBN.
79(2)(d)	'Other information' that the register must contain ⁸	<p>Section 79(2) requires each society's register of members to contain the name of each member, their last known contact details (as defined in section 5(2) of the Incorporated Societies Act 2022), and the date they became a member.</p> <p>At this stage, we do not propose that the regulations require the register of members to contain any other information.</p>
86(2)	The information that the society's annual report must contain	<p>Section 86(1) requires a society's committee to present, at each AGM, "an annual report on the operations and affairs of the society during the most recently completed accounting period".</p> <p>Regulation 11(d) of the Companies Act 1993 Regulations 1994 sets out a requirement that a company's annual report should describe certain changes that may have occurred over the previous year, namely changes in the nature of the business of the company or in the types of businesses in which the company has an interest. We do not think that this is particularly relevant to incorporated societies. Consequently, at this stage, we do not propose that the regulations require the annual report to contain any specific information, beyond the requirements of section 86(1). Societies will be able to determine for themselves what information they consider meets those requirements.</p>
109(2)	The information that must be contained in a society's annual return	<p>A new obligation for incorporated societies (excluding incorporated societies that already file an annual return with Charities Services) will be filing an annual return with the Registrar.</p> <p>We propose that, under the regulations, the annual return should contain the following information:</p> <ul style="list-style-type: none"> - the society's name; - the society's NZBN; - the physical address of the society's registered office; - the society's address for service;

⁸ Such information may be prescribed under section 254(1)(a) or section 254(1)(t)(iii) of the Incorporated Societies Act 2022

		<ul style="list-style-type: none"> - the society's balance date; - the society's membership figure at the time of filing the annual return; - the name and email address of the society's contact person; - the names and physical addresses of the society's officers, noting that the physical address need not be their residential address; - a certification that: <ul style="list-style-type: none"> - the information about the society on the incorporated societies register is up-to-date; - the membership figure included in the annual return is accurate; - an AGM was held and the quorum was met.
192(c)	The information that must be contained in an amalgamation proposal	<p>Section 220 of the Companies Act 1993 sets out the information that must be contained in a proposal to amalgamate companies. Much of that information is not relevant to incorporated societies.</p> <p>We propose that, under the regulations, the following information be prescribed for inclusion in a proposal to amalgamate incorporated societies:</p> <ul style="list-style-type: none"> - the names, and NZBNs or society numbers, of the amalgamating societies - the name of the proposed amalgamated society - the name and contact details of at least one 'contact person' for the amalgamated society - the balance date of the proposed amalgamated society - the registered office of the proposed amalgamated society (which must be a physical address) - an address for service for the proposed amalgamated society - for each officer of the proposed amalgamated society, their name, contact address (which can be but need not be their residential address) and email address - certification that: <ul style="list-style-type: none"> - a majority of the members of each of the amalgamating societies have consented to the application; - each officer name consents to, and is not disqualified from being, an officer; - the proposed constitution accompanying the application is the constitution of the proposed amalgamated society; - in the applicant's view, the constitution complies with the requirements of section 26 of the Incorporated Societies Act 2026.
193(a)	"Other information" that the committee must send to <i>members</i> , along with the amalgamation proposal	<p>Section 193(a) requires that the committee of each amalgamating society send to each member of that society "a copy of the amalgamation proposal and all other information prescribed by the regulations (if any)".</p> <p>At this stage, we do not propose that the regulations require the committee to send members any other information.</p>
193(b)	"Other information" that the committee must send to <i>creditors</i> , along with the amalgamation proposal	<p>Section 193(b) requires that the committee of each amalgamating society send to every secured creditor of the society "a copy of the amalgamation proposal and all other information prescribed by the regulations (if any)".</p> <p>At this stage, we do not propose that the regulations require the committee to send secured creditors any other information.</p>
197(c)	"Other information" that must be sent to the Registrar when 2 societies amalgamate	<p>Section 197 requires that certain items be sent to the Registrar, notably the amalgamation proposal, officer certificates, and "all other information prescribed by the regulations (if any)".</p> <p>At this stage, we do not propose that the regulations require the Registrar be sent any other information.</p>

Sch 3 cl (3)(b)	Information that must be included in a re-registration (conversion) application	<p>Schedule 3 concerns entities established under their own statutes who wish to convert into regular incorporated societies. Clause 3 of Schedule 3 already requires that an application for conversion include the proposed name of the society, the name and contact details of at least 1 contact person, and evidence that any relevant pre-conditions have been met.</p> <p>We propose that, under the regulations, the application for conversion should also include the name of the entity, its NZBN or register number (if any), the name of its founding statute and any associated secondary legislation, and finally the same information we intend to require under section 9(a), namely:</p> <ul style="list-style-type: none"> - the proposed society's balance date - the registered office of the proposed society, which must be a physical address - an address for service for the proposed society; - each officer's name, contact address (which can be but need not be their residential address) and email address - certification that: <ul style="list-style-type: none"> - a majority of the members of the proposed society have consented to the application; - the proposed constitution accompanying the application is the constitution of the society; - in the applicant's view, the constitution complies with the requirements of section 26 of the Incorporated Societies Act 2026.
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Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(a)?

2.2.2 Prescribing the manner in which things must be done

22. Section 254(1)(b) empowers the Governor-General to make regulations prescribing, for the purposes of any provision of the Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing:
- i. by whom, when, where, and how the thing must be done
 - ii. the form that must be used in connection with doing the thing
 - iii. what information or other evidence or documents must be provided in connection with the thing
 - iv. requirements with which information, evidence, or documents that are provided in connection with the thing must comply
 - v. that fees or charges must be paid in connection with doing the thing.⁹

⁹ Because we are considering fees as part of a broader review – encompassing not just incorporated societies but also companies, limited partnerships and so on – we are not proposing, at present, that the Minister recommend the making of regulations prescribing fees, either under section 254(1)(b) or section 255 [see below].

23. In the three tables below, we have identified all the provisions in the Act that require a thing to be done in a manner prescribed by the regulations and indicated our initial thoughts on what that manner should be.

Communications with Registrar

Section	Nature of information	MBIE proposal
9(a)+(f) +(g)	Manner in which application for incorporation must be made	Except with the leave of the Registrar given in his or her absolute discretion, applications for incorporation must be made online through the Internet site designated by the Registrar.
48	Manner in which an application to waive officer disqualifying criteria must be made	Except with the leave of the Registrar given in his or her absolute discretion, applications to waive officer disqualifying criteria must be made online through the Internet site designated by the Registrar.
52(2)	Manner in which notices about officers are made to the Registrar	Except with the leave of the Registrar given in his or her absolute discretion, notices about officers must be made online through the Internet site designated by the Registrar.
109(1)	Manner in which a society must give its annual return to the Registrar	<p>Except with the leave of the Registrar given in his or her absolute discretion, annual returns must be filed online through the Internet site designated by the Registrar.</p> <p>Having noted that s.109 does not set out a deadline by which an annual return must be filed, we also propose setting such a deadline through regulations made under section 254(1)(b). The simplest solution for incorporated societies would be to align that deadline with the deadline for filing financial statements i.e. within 6 months of the end of the society's financial year.</p>
111(3)	Manner in which a society must notify the Registrar of a change of registered office	<p>Except with the leave of the Registrar given in his or her absolute discretion, notice of any change to a society's registered office must be filed online through the Internet site designated by the Registrar.</p> <p>Having noted that s.109 does not set out a deadline by which a notification of a change in registered office must be filed, we also propose setting such a deadline through regulations made under section 254(1)(b). That deadline should be within 20 working days.</p> <p>A related issue is when the change in registered office should take effect. Section 187(3) of the Companies Act 1993 provides that, for companies that provide notice to the Registrar of Companies that their registered office is changing, "[t]he change in the registered office takes effect on the date stated in the notice" provided that that date cannot be "earlier than 5 working days after the notice is registered". There are identical provisions in section 68 of the Limited Partnerships Act 2008 and section 95 of the Retirement Villages Act 2003. Subject to confirming that there is a regulation-making power that allows the Governor-General to do so, we propose that the Minister recommend the making of regulations that have the same effect for incorporated societies.</p>
116(2)	Manner in which a society must notify the Registrar of a change in contact person	Except with the leave of the Registrar given in his or her absolute discretion, notice of any change to a society's contact officer must be filed online through the Internet site designated by the Registrar.
117(1)	Manner in which an application to change the society's name must be made	Except with the leave of the Registrar given in his or her absolute discretion, applications to change a society name must be made online through the Internet site designated by the Registrar.
176(2)	Manner in which a society may request its removal from the register	Except with the leave of the Registrar given in his or her absolute discretion, requests to remove a society from the register must be made online through the Internet site designated by the Registrar.
185(1) +(2)	Manner in which a person may make an application for a society to be restored	Except with the leave of the Registrar given in his or her absolute discretion, requests to restore a society from the register must be made online through the Internet site designated by the Registrar.

		We also propose prescribing who can apply for a society to be restored. This might include, for example, the society itself, any of its officers, any creditors, any liquidator or receiver, or any court.
216(2)(b)	Manner in which the society must make the application for a different distribution under s.216(1)(d) [see also (p) below]	Except with the leave of the Registrar given in his or her absolute discretion, requests that the Registrar act under subsection(1)(d) must be made online through the Internet site designated by the Registrar.
Sch 3 cl (3)(f)+(g)	Manner in which a conversion application must be made	Except with the leave of the Registrar given in his or her absolute discretion, applications for reregistration must be made online through the Internet site designated by the Registrar.

Communications by Registrar

177(2)(b)	Manner in which a notice by the Registrar (that he intends to remove a society) must be given	<p>Section 177(2) already provides that a notice of intention to remove a society from the register must be:</p> <ul style="list-style-type: none"> - given to the public; and - specify the date by which an objection to the removal must be delivered to the Registrar. <p>We propose that the notice also be:</p> <ul style="list-style-type: none"> - given to the society concerned; - given to the liquidator or receiver (if any); - given to security holders registered on the Personal Property Securities register; and - given to the public by being published: <ul style="list-style-type: none"> - in the <i>Gazette</i>; and - on the Companies Office website for not less than 20 working days
186(2)	Manner in which Registrar must give notice of proposed restoration	<p>Sections 186(2) and 186(3) already provide that a notice of intention to restore a society to the register must be:</p> <ul style="list-style-type: none"> - given to the public; and - specify the date by which an objection to the restoration must be delivered to the Registrar. <p>We propose that the notice also be:</p> <ul style="list-style-type: none"> - given to security holders registered on the Personal Property Securities register; and - given to the public by being published: <ul style="list-style-type: none"> - in the <i>Gazette</i>; and - on the Companies Office website for not less than 20 working days.

Other communications

11(3)	Manner in which a society gives its consent to a new society using a similar name	The other society, company, or body corporate (A) should give its consent in writing. That consent may be given on A's behalf by a person acting under A's express or implied authority.
65(1), 66	Manner in which a society's committee must notify members of the society of a failure to comply with conflict-of-interest provisions	At this stage, we do not propose that the regulations prescribe the manner in which a committee must notify the society members of a failure to comply with sections 63 or 64.
125(1)	Manner in which a legal proceeding may be served on a society [see also (r) below]	Discussed in part 2.2.18.1 below
125(2)	Manner in which other documents may be served on a society [see also (r) below]	Discussed in part 2.2.18.1 below

193(c)	Manner in which the committee of an amalgamating society must give public notice of the proposed amalgamation	The notice must be published in the Gazette and either: <ul style="list-style-type: none"> - in at least 1 issue of a newspaper circulating in the area in New Zealand in which its registered office is situated; or - on an Internet site maintained by the society and to which the public has free access.
225(2)	Manner in which an application to the Registrar of Land must be made	Discussed in part 2.2.16 below

2 Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(b)?

2.2.3 Authorising the Registrar to determine the manner in which things must be done

24. Like section 254(1)(b), section 254(1)(c) concerns provisions of the Act that require a thing to be done in a manner prescribed by the regulations. However, section 254(1)(c) empowers the Governor-General to authorise the *Registrar* (rather than regulations) to determine or prescribe those matters. This reflects the fact that sometimes the Registrar will need to adapt procedural requirements faster than regulations can be changed.
25. If the Governor-General did make such regulations, the Registrar would have the ability (though not the obligation) to make determinations by notice, and any such notices would normally be secondary legislation¹⁰ (meaning, amongst other things, that they would need to be presented to, and could be disallowed by, Parliament).
26. Provisions similar to section 254(1)(c) exist in other legislation, for example section 138(1)(jd) of the Credit Contracts and Consumer Finance Act 2003 and section 548(1)(p) of the Financial Markets Conduct Act 2013.
27. At this stage, we do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make regulations under section 254(1)(c) authorising the Registrar to determine or prescribe any matters. This is because we consider that, generally, such delegation of legislative powers should be made only where there is a strong case for doing so and, in the present case at the present time, we have not found one.
28. This is not to say, however, that such a case does not exist and, in this regard, we are open to hearing alternative views.

3 Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 254(1)(c)?

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

29. Section 5(1) of the Incorporated Societies Act 2022 sets out a definition of the term ‘officer’. That definition includes a limb that provides that the term “excludes any class or classes of

¹⁰ See section 254(5)(a) of the Incorporated Societies Act 2022.

natural persons that are declared by regulations not to be officers for the purposes of this Act". In this regard, the definition resembles the definition of 'officer' in section 4(1) of the Charities Act 2005,¹¹ and the definition of 'officer' in section 2(1) of the now-repealed Securities Markets Act 1988.

30. Section 254(1)(d) empowers the Governor-General to make regulations declaring any class or classes of persons to be, or not to be, officers for the purposes of this Act.
31. We note that no regulations have been made under the equivalent provision of the Charities Act 2005,¹² nor (as far as we are aware) were any made under the equivalent provision of the Securities Markets Act 1988.¹³
32. In this context, at this stage, we do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make any regulations under section 254(1)(d).
33. However, if you have a different view, please present it to us, along with your reasoning. You may, for example, feel that:
 - a. certain positions within *all* societies (e.g. society 'secretaries') should not be considered offices; and/or
 - b. certain positions within a particular type of societies (e.g. 'CEOs' in societies that qualify as 'small societies').

4

Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?

2.2.5 Prescribing circumstances related to independent committee members

34. Normally, the majority of the persons who sit on the committee of an incorporated society will have to be members of the society.¹⁴ This rule exists "in order to ensure that a committee remains 'self-governing' (one of the principles set out in clause 3(d) of the Bill) and representative of a society's membership".¹⁵
35. However, under section 45(4) of the Incorporated Societies Act 2022, the rule does not apply in the circumstances "prescribed in the regulations". It is section 254(1)(e) that empowers the Governor-General to make regulations prescribing circumstances for the purposes of section 45(4).

¹¹ Around one third of incorporated societies are registered as charities under the Charities Act 2005.

¹² Section 73(1)(f) of the Charities Act 2005

¹³ Section 49(1)(a) of the Securities Markets Act 1988

¹⁴ See section 45(3) of the Incorporated Societies Act 2022

¹⁵ 'Incorporated Societies Bill: Departmental Report to the Economic Development, Science and Innovation Committee', 10 August 2021 (updated 20 September 2021, at para 98

36. We recognise the value that outsiders (or people who are independent of the society) can bring to the committee of an incorporated society. This includes their ability to be objective and impartial and bring expertise and other skills, such as business skills and knowledge, to the committee.¹⁶ It is well accepted that in certain circumstances, that value is such that it is important to allow those outsiders to hold a majority (or indeed all) of the committee seats.
37. This is particularly the case within national and regional sporting and physical recreation societies, where lack of good governance capability in the past has had significant impacts not just on the achievement of the societies' purposes (such as increasing participation in physical activity or successful sporting results)¹⁷, but also on the level of protection for individuals participating in such activity and the consequential reputation of sport in New Zealand – for example, concerns about individuals' wellbeing (as evidenced in recent reports on cycling and gymnastics).¹⁸
38. The case for allowing independent directors may also apply to other societies (typically operating nationally) which have significant operations. Our preliminary view is that such societies require a more mature governance structure, including the ability to have a majority of independent committee members.
39. Bearing in mind, also, that:
- a. one of the purposes of the Incorporated Societies Act 2022 is to “provide a legislative framework that promotes high-quality governance of societies”; and
 - b. members of a society will have the power to require a majority of society members on the committee, if they want one, by voting to amend the constitution to that effect;¹⁹

we consider that exceptions to the rule in section 45(3) should be made for:

- national and regional incorporated societies whose main purpose is sport and physical recreation; and
- other societies with operations above a specified threshold.

40. We therefore propose that the Governor-General make regulations under section 254(1)(e) prescribing the following circumstances for the purposes of section 45(4):

Where an incorporated society is a national or regional organisation involved in physical recreation and sport, as those terms are used in the Sport and Recreation New Zealand Act 2002.

¹⁶ Types of Directors, “Starting a Board”, Institute of Directors of New Zealand, <https://www.iod.org.nz/resources-and-insights/starting-a-board/types-of-directors/#>

¹⁷ See, for example, the Hood Report commissioned by NZ Cricket in 1994

¹⁸ See the Heron reports commissioned by NZ Cycling and High Performance Sport New Zealand in 2018 and 2022 and the Howman, Nicol and Vickery report commissioned by Gymnastics NZ in 2020.

¹⁹ This is because, under section 26(1)(f) of the Incorporated Societies Act 2022, a society's constitution will have to specify the composition of the society's committee.

41. We estimate that the number of incorporated societies that fall within this description is in the hundreds.
42. We also propose that the Governor-General make regulations under section 254(1)(e) prescribing a certain threshold beyond which the rule in section 45(3) does not apply. Our preliminary view is that there are several options here:
 - a. Having one threshold:
 - i. aligned with the audit threshold in the Incorporated Societies Act 2022: proposed in this discussion document to be operating expenses in excess of \$3 million for two years straight – see section 2.2.12 below; or
 - ii. aligned with the audit threshold in the Charities Act 2005: specified in section 42D of the Charities Act 2005 to be operating expenses in excess of \$1.1 million for two years straight; or
 - b. Having more than one threshold:
 - i. A threshold for incorporated societies not registered as charities aligned with the audit threshold in the Incorporated Societies Act 2022 (the afore-mentioned \$3 million); and
 - ii. A threshold for incorporated societies registered as charities aligned with the audit threshold in the Charities Act 2005 (the afore-mentioned \$1.1 million).
43. Depending on which of these options is adopted, we estimate that the number of incorporated societies concerned would be somewhere between 500 and just over 1,000 – although some of these will already have qualified for an exemption as national or regional physical recreation / sporting organisations.
44. Please let us know which option you would prefer, and why.
45. Finally, we note that insurers are required by section 21 of the Insurance (Prudential Supervision) Act 2010 to comply with the conditions of licence that the Reserve Bank may impose. An example of an incorporated society that is a licensed insurer is the Veterinary Professional Insurance Society Incorporated.
46. The Governance Guidelines implemented by the Reserve Bank require licensed insurers to demonstrate ‘independence’. The Guidelines say it is expected that at least half of the directors will be independent and the licensed insurer should disclose in its governance statement which directors are independent (see guideline 32).
47. However, the Reserve Bank’s interest in director ‘Independence’ is primarily about independence from management or a commercial interest in the regulated firm, so that independent officers are in a position to hold management to account. Thus its Governance Guidelines provide that “If the licensed insurer is a mutual insurer, a director will not fail to be

independent simply because they are a member of the mutual”.²⁰ In this context, we do not consider that the membership requirement for committee members is a bar to the kind of independence that the Reserve Bank requires.

48. We are not aware of any other classes of incorporated society that are required to have a majority of ‘independent’ committee members, although that does not mean that in future such requirements will not exist.

5

Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(e)?

2.2.6 Prescribing jurisdictions whose officer disqualifications we will recognise

49. Under the Companies Act 1993, persons disqualified from holding office as directors of a company include “a person who is prohibited from [being a director] ... under an order made, or a notice given, under a law of a prescribed country, State or territory outside New Zealand”.²¹ In this regard, regulation 10 of the Companies Act 1993 Regulations 1994 provides that Australia is a prescribed country for those purposes.
50. In a similar vein, under section 47(3)(g) of the Incorporated Societies Act 2022, persons disqualified from holding office as officers of an incorporated society include those who are “subject to an order that is substantially similar to an order referred to in ... [section 47(3)](f) [e.g. a banning order] under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the regulations”.
51. Section 254(1)(f) of the Incorporated Societies Act 2022 empowers the Governor-General to make regulations prescribing countries, States, or territories for the purposes of section 47(3)(g).
52. We propose that the Governor-General make regulations under section 254(1)(f) prescribing Australia. This reflects the fact that:
- a. most foreign officers in incorporated societies are from Australia; and
 - b. the Companies Office has systems in place to check the registers of the Australian states for disqualifications.
53. However, you may have reasons for considering that:
- a. if someone has been banned from being an officer in jurisdictions other than Australia (e.g. Cook Islands, Samoa, Fiji and/or Tonga), then they should also be disqualified from being an officer in New Zealand; or

²⁰ At para 39

²¹ Section 151(2)(eb) of the Companies Act 1993.

- b. on the contrary, prohibition from being an officer abroad should not always prohibit them from holding the role of officer in New Zealand.

54. If so, please let us know, and set out your reasoning clearly.

6

Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?

2.2.7 Prescribing the types of changes in officer information that must be notified

55. Under section 52(1) of the Incorporated Societies Act 2022, a society must inform the Registrar when a new officer starts, when an existing officer departs, or when certain information about an existing officer changes. Section 254(1)(g) empowers the Governor-General to make regulations prescribing what 'information changes' trigger this last obligation.
56. It is logical to consider what information the Registrar will hold about officers, before determining what 'information changes' will need to be notified to the Registrar:
- a. Under section 9(e), the Registrar will have received "information" about "every person named as an officer" in an application for incorporation. In part 2.2.1 above, we proposed that this information comprise their name, contact address and email address;
 - b. Under section 233(1)(e), the Registrar must hold, on the register of incorporated societies, "the names" of the officers of the society.
 - c. Under section 233(1)(i), the Registrar must hold on the register of incorporated societies "any other information prescribed by regulations", which could potentially include certain types of information about officers [see part 2.2.20 below].
57. The equivalent of section 52(1) in the companies context is section 159(1) of the Companies Act. However, that provision – rather than providing for regulations to determine what 'information changes' about directors must be notified – specifies that those changes are "a change in the name or the residential address".²² Meanwhile, a similar notification duty in section 40(1) of the Charities Act 2005 also requires notification of "a change that disqualifies an officer of the charitable entity from being an officer of the entity".²³
58. In this context, we propose that the Governor-General make regulations under section 254(1)(g) prescribing the following information changes:
- a. any change to an officer's name, contact address or email address (including the date of the change);
 - b. any change to an officer's status as an officer e.g. resignation, disqualification, death etc. (including the date of the change).

²² Section 159(1)(b) of the Companies Act 1993

²³ Section 40(1)(ca) of the Charities Act 2005, inserted by section 9(1) of the Charities Amendment Act 2021

2.2.8 Regulating constitutional provisions on conflicts of interest

59. Sometimes the people who run societies have conflicts of interest. For example, a society might be deciding which building company to use to re-build its clubhouse, and one of the society officers might be related to one of the building companies' CEOs.
60. The consequences of having such an interest in a matter are set out in, amongst other provisions, sections 63 and 64 of the Incorporated Societies Act 2022: the officer concerned must disclose the conflict of interest and – unless all non-conflicted committee members agree – they must not vote on the matter or sign any contract relating to the matter. Under section 68, the society can also sometimes “avoid” a transaction entered into by an officer who had a conflict of interest.
61. Section 62(1)(e) of the Incorporated Societies Act allows a society to specify (in its constitution) circumstances – additional to those listed in the Act – where a person will be considered to have a conflict of interest (say, where the person is also an officer at another society with conflicting objectives).
62. Section 62(2)(d) of the Incorporated Societies Act 2022 is the negative equivalent of section 62(1)(e). Under section 62(2)(d), a society can specify in its constitution that certain kinds of interest (say, having once worked for a company with which the society proposes to do business) *do not amount to a conflict of interest*.
63. Similarly, under section 67 of the Incorporated Societies Act 2022, a society has the right, in its constitution, to “negate, limit, or modify” the consequences of an officer having a conflict of interest (say, by providing that an officer with a conflict of interest may vote on a matter if a simple majority of non-conflicted committee members agree).
64. However, powers under section 62(2)(d) and section 67 can only be exercised “if conditions prescribed by the regulations (if any) are satisfied”.²⁴ In this regard, section 254(1)(h) empowers the Governor-General to make regulations prescribing such conditions.
65. At this stage, we do not propose recommending that the Governor-General make regulations under section 254(1)(h) prescribing any such conditions.

²⁴ Sections 62(3), 67(1) and 67(2) of the Incorporated Societies Act 2022

2.2.9 Prescribing societies that can restrict general meeting attendance to delegates

66. Annual general meetings are critical to the proper functioning of an incorporated society, giving a voice to members. However, some incorporated societies (including entities – like unions – that are legally obliged to be 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.
67. In this context, section 84(4) of the Incorporated Societies Act 2022 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 annual general meeting applies only to delegates or other representatives of members”.
68. Section 254(1)(i) empowers the Governor-General to make regulations prescribing kinds of societies for the purposes of section 84(4). A potential ‘kind of society’ might be one with a membership exceeding a certain threshold. However, we are not certain what that threshold should be.
69. In this context, we are seeking your views on whether any societies other than unions should be able to provide in their constitution that attendance at annual general meetings is limited to delegates or other representatives.

9

Do you have any suggestions regarding regulations that should be made under section 254(1)(i)?

2.2.10 Defining the term ‘total current assets’

2.2.10.1 Proposal

70. Under section 102 of the Incorporated Societies Act 2022, 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’.
71. In this regard, assume a society was incorporated several years ago, has a balance date of 31 December and, in early 2028, is preparing its financial statements for 2027. Under section 103, one of the criteria that it must meet to qualify as ‘small’ for its 2027 financial year is that its ‘total current assets’ on each of 31 December 2025 and 31 December 2026 were less than \$50,000.
72. 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 within the accounting profession on what makes an asset current or not. For this reason, section 254(1)(j) empowers the Governor-General to make regulations that define the term ‘current total assets’.

73. We propose that such regulations be made and that they define current assets by exclusion, as follows:

“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”

2.2.10.2 Examples

74. Some assets are clearly not fixed assets e.g. clubhouse bar stock, cash on hand, and money in a bank account (including money in term deposits or other investment schemes). These assets would thus, under our proposed definition, count towards the calculation of total current assets.
75. Other assets are more ambiguous.
76. For instance, imagine that the society from our example above owned some land valued at \$100,000. Imagine further that, both on 31 December 2025 and on 31 December 2026, the society had no plans to sell that land. The land would qualify as a fixed asset, so would not count towards the ‘total current assets’ threshold of \$50,000.
77. But imagine now that, on 31 December 2026, members of the society were aware of a concrete plan to sell the land some time in 2027. Even if the plan eventually fell through, the land would not qualify as a fixed asset, and so would count towards (and breach) the ‘total current assets’ threshold of \$50,000.

2.2.10.3 Discussion

78. While we have put forward the definition above, we are open to hearing alternative proposals. For instance, you may consider it unnecessarily confusing to define total current assets by what they are not (fixed assets), rather than by what they are. Or you may consider it unrealistic for incorporated societies – when preparing their financial statements several months after the relevant balance date – to be in a position to judge whether a fixed asset was – on that balance date – likely or not likely to be sold.
79. If you do have any concerns like these, please let us know and, if possible, suggest alternative drafting that would alleviate your concerns.

2.2.11 Prescribing additional requirements for the financial statements of small societies

80. Under section 104 of the Incorporated Societies Act 2022, societies that qualify as ‘small’²⁵ will be able, if they wish to, to continue to apply very basic accounting standards to their financial statements.
81. To be precise, such societies need only specify their assets and liabilities, the security interests (e.g. mortgages) affecting their property, and (if they choose accrual accounting) their income and expenditure or (if they choose cash accounting) their receipts and payments. However, under Section 104(b) of the Incorporated Societies Act 2022, they must in addition comply with “requirements prescribed by the regulations”.
82. Section 254(1)(k) empowers the Governor-General to make regulations prescribing requirements under section 104(b).
83. Some smaller societies already struggle to comply even with the basic requirements set out in section 23(1) of the Incorporated Societies Act 1908, which are almost identical to those in section 104 of the Incorporated Societies Act 2022. In this context, at this stage, we do not propose recommending that the Governor-General make regulations under section 254(1)(k) prescribing any such requirements.

11

Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 254(1)(k)?

2.2.12 Determining the class of society that must have its financial statements audited

84. Incorporated societies that are charities under the Charities Act 2005 must, if they meet certain expenditure thresholds, have their financial statements audited.²⁶ At present, incorporated societies that are *not* charities face no such requirement, but this will change once a society re-registers under the Incorporated Societies Act 2022.
85. By way of background, the introductory version of the Incorporated Societies Bill had provided, in its clause 98, that *every* society that was large within the meaning of section 45 of the Financial Reporting Act 2013 (whether a charity or not) would have to have its financial statements audited. 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.
86. Several submissions to the select committee examining the Bill expressed the view that these thresholds were far too high for incorporated societies. The select committee agreed. The result was section 105 of the Incorporated Societies Act 2022, under which every society that

²⁵ Section 103(2)(b) of the Incorporated Societies Act 2022

²⁶ Under the Charities Act 2005, those that meet certain lower expenditure thresholds must have their financial statements ‘reviewed’ rather than ‘audited’ (a less stringent process). The Incorporated Societies Act 2022 does not include any requirements for ‘reviews’.

is “of a kind prescribed by the regulations” must ensure that its financial statements are audited by a qualified auditor.

87. In this regard, section 254(1)(l) empowers the Governor-General to make regulations prescribing kinds of societies for the purposes of section 105. However, the Minister can only make a recommendation for such a regulation if he or she has had 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 Incorporated Societies Act 2022 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.
88. Below, we examine each of these factors in turn.

2.2.12.1 Audit requirements for companies and other entities

89. Two statutes provide for audit requirements of relevant entities: the Financial Reporting Act 2013 and the Charities Act 2005. In the table below, we list the thresholds they apply (noting that the thresholds must be met for each of the two years preceding the year for which financial statements are being prepared):

Statute	Terminology	Assets	Revenues / Expenditure ²⁷
Financial Reporting Act 2013	Large entity	\$66 million	\$33 million (rev)
	Large overseas company	\$22 million	\$11 million (rev)
Charities Act 2005	Large charitable entity ²⁸	n/a	\$1.1 million (exp)

90. We have attempted to determine roughly what proportion of entities meet these thresholds, with a view to seeing what thresholds would capture a similar proportion of incorporated societies. However, especially given the requirement that the thresholds be met across two years, this has proven challenging.

²⁷ Expenditure can be a more stable indicator of the size of certain entities, for example charities and incorporated societies whose *revenue* can be quite variable yer-to-year due to large bequests or donations in certain years. In any event, expenditure tends to even out with income in the long run.

²⁸ We also note that ‘medium’ charitable entities (defined as those entities having annual expenditure in excess of \$550,000 per year) must have their financial statements “audited or reviewed”.

- 91. What we can say is that:
 - a. According to data downloaded from the public charities register, the proportion of charities that met the ‘large charitable entity’ threshold in their most recent annual return (i.e. a single financial year) was close to 8%.²⁹
 - b. Around 3,000 companies who filed GST returns for the FY 2021 had total sales (aka revenue) of \$30 million or more. This would represent around 0.45% of the 679,617 New Zealand companies that were on the companies register as at 31 March 2021. We will assume that 0.4% of New Zealand companies would have exceeded the \$33 million threshold.
- 92. If we were to try to capture 8% of incorporated societies (that are not registered charities) then the expenditure threshold for a single year would be around \$250,000.³⁰
- 93. If we were to try to capture 0.4% of incorporated societies (that are not registered charities) then the expenditure threshold for a single year would be around \$7.1 million.³¹

2.2.12.2 Avoiding burdens and costs

- 94. Audits cost money. There has been a shortage of auditors, leading to anecdotal reports of higher pricing and fewer auditors having time to act pro bono. In this context, it is important to estimate what additional burden different audit thresholds would place on incorporated societies. We can make such an estimate by first estimating the proportion of incorporated societies (not registered as charities) that already, voluntarily have their statements audited.
- 95. In this regard, since late 2019, societies have been asked to confirm, when filing their financial statements with the Registrar, whether “an audit or review report” is attached to the statement. For the 2021 financial year,³² 42% responded ‘yes’, broken down as follows:

Expenditure threshold	Societies under threshold that had statements audited or reviewed	Societies at or above threshold that had statements audited or reviewed
\$200,000	38%	77%
\$500,000	39%	87%
\$1 million	40%	93%
\$2 million	41%	95%
\$3 million	41%	95%
\$5 million	41%	93%

²⁹ These figures are approximate. The proportion that qualified as ‘medium’ was around 5%. While ‘large charitable entities’ must have their statements audited, ‘medium charitable entities’ can have their statements audited or ‘reviewed’ (a less stringent standard).

³⁰ To put it another way, the proportion of incorporated societies (who are not registered charities) that have expenditure in excess of \$250,000 each year is 8%.

³¹ To put it another way, the proportion of incorporated societies (who are not registered charities) that have expenditure in excess of \$7.1 million each year is 0.4%.

³² The precise start and end dates of the 2021 financial year will vary according to the society in question. Not all societies had filed their FY 2021 financial statements at the time of writing.

96. However:
- a. the data should be treated with caution, as most societies are not expert in assurance issues, so they may not have been certain about the meaning of the question; and
 - b. in any event, we are only interested in the proportion of societies (that are not charities) that have their statements *audited* (not reviewed).

2.2.12.3 The four principles

97. Section 3(d) of the Incorporated Societies Act 2022 provides that the purposes of the Act include recognising the principles that:
- a. societies are organisations with members who have the primary responsibility for holding the society to account;
 - b. societies should operate in a manner that promotes the trust and confidence of their members;
 - c. societies are private bodies that should be self-governing in accordance with their constitutions, any bylaws, and their own tikanga, kawa, culture, and practice, and should be free from inappropriate Government interference; and
 - d. societies should not distribute profits or similar financial benefits to their members.
98. It is impossible to quantify these principles in terms of their impact on the threshold for audits. What we think we can say is that the principles suggest a balance must be struck between, on the one hand, allowing societies to govern themselves as they see fit and, on the other hand, ensuring societies do in fact act in ways that promote the trust and confidence of society members (such as by having their financial statements audited). We think that, broadly speaking, the principles suggest that a higher, rather than lower, threshold for audits is appropriate.

2.2.12.4 Promoting confidence

99. Section 254(1)(l) of the Incorporated Societies Act underlines the desirability of promoting confidence in the integrity of the financial reporting of incorporated societies. What explains this desirability, and whose confidence are we concerned with?
100. Members of a society obviously have an interest in their society's financial situation being accurately represented, so that they can hold their committee members to account if, say, rash spending decisions are being made. Third-party funders of societies (e.g. sponsors, donors...) have a similar interest.
101. Members of other societies also have an interest in a given society's financial situation being accurately represented, so that they can, for example, compare their sports club's finances to those of comparable clubs (in an effort to assess their own club's performance).

102. But the general public also has an interest in making sure societies' financial situations are being accurately represented, because the general public – through the Government – has allowed societies to benefit from certain legal advantages. These include not paying income tax on the first \$1,000 of revenue each year, and limited legal liability for their members.
103. That said, these interests should not be overstated. We are concerned with setting an audit threshold for societies that are not registered as charities. Charities enjoy a complete exemption from income tax, whatever their revenue, meaning the public interest is much higher in the integrity of their accounts compared with societies not registered as charities.
104. 0.4% of companies are subject to auditing requirements. 8% of charities are subject to auditing requirements. Given our analysis above, we think it make sense for the proportion of incorporated societies not registered as charities to sit somewhere between these two extremes.

2.2.12.5 Conclusion

105. We have analysed data on the incorporated societies register 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

106. It has not been possible to estimate these figures across two years of financial data.
107. Nevertheless, bearing in mind the statutory criteria discussed above, we think a threshold that captures 1% of incorporated societies that are not registered as charities would be appropriate. That corresponds to a threshold of \$3 million expenditure per year. This will mean that some, but not many, societies that have not yet been auditing their financial statements will need to start doing so.³³
108. In this context, we propose that the Governor-General make regulations under section 254(1)(I) prescribing that the kinds of societies that must ensure their financial statements for a given accounting period are audited by a qualified auditor are:

³³ The table in section 2.2.12.2 of this discussion paper notes that 95% of societies with expenditure of \$3 million or more had had their financial statements 'audited or reviewed' in their 2021 financial year.

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

12 Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(l)? For example, do you agree that focusing on the proportion of societies that should be captured is appropriate?

2.2.13 Setting infringement fees

109. 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.
110. In the table below, we have identified all the provisions in the Act where such fees are envisaged and indicated our initial thoughts on what the level of those fees should be.
111. In setting the levels proposed, we have not found much assistance in the penalties set out in the Incorporated Societies Act 1908 e.g. failure to submit financial statements to the Registrar makes “every officer of the society” liable to “a fine not exceeding 1 shilling for every day during which the default continues”.³⁴
112. We have also had limited assistance from other ‘corporate governance’ statutes. The infringement fee in the Companies Act is set at \$7,000,³⁵ which exceeds our statutory limit. Meanwhile there are no infringement offences under the Limited Partnerships Act 2008, the Friendly Societies and Credit Unions Act 1982, or the Building Societies Act 1965 – they only provide for criminal offences. The same is true for the Charitable Trusts Act 1957, the only truly comparable regime, inasmuch as both incorporated societies and charitable trusts are strictly not-for-profit entities.
113. In this context, we have instead considered whether the proposed penalty is proportionate for the behaviour in question, and sufficient to deter offending. We have also borne in mind that the Registrar has prosecutorial discretion in whether to take enforcement action when infringement offences are committed. This has given us the figures set out in the table below.

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 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

³⁴ See section 23(3) of the Incorporated Societies Act 1908

³⁵ See section 207X of the Companies Act 1993.

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

114. As the table indicates, we have proposed \$500 as the infringement fee for three of the infringement offences: failure to call an annual general meeting; failure to properly hold an annual general meeting; and failure to register financial statements. This is because we consider these three matters to be the most serious. Annual general meetings, for instance, are the key occasion on which society members can hold committee members to account – a failure to call them, or to hold them in accordance with the society’s constitution, would strike at the very heart of the principle – set out in section 3(d) of the Incorporated societies Act 2022 – that societies should operate in a manner that promotes the trust and confidence of their members.
115. We have not set the infringement fee for these three infringement offences higher than \$500 because we are concerned that, against the backdrop of almost three years of pandemic disruption, the finances of many societies are, and will remain for some time, in a fragile position.³⁶
116. We have proposed \$200 as the infringement fee for two of the infringement offences: failure to send a copy of a passed resolution in lieu of meeting (made under section 89) to certain members; and failure to give Registrar notice of change of contact person. These failures are serious ones – for example, because resolutions often take place remotely and in lieu of general meetings, it is right that members who voted against the resolution, or who abstained, promptly receive notice if the resolution passes. However, failure to do so would not represent as great a threat to the trust and confidence of members as, say, failing to call an annual general meeting.
117. Finally, we have proposed \$100 as the infringement fee for the five remaining infringement offences: failure to notify the Registrar of amendments to the constitution; failure to notify the Registrar of elections or appointments and other changes relating to officers; failure to maintain a register of members; failure to register an annual return; and failure to have a registered office. This is because we consider these five matters to be the least serious.

13

Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(m)?

2.2.14 Prescribing the information to be included in infringement and reminder notices

118. When issuing an infringement notice or a reminder notice, the Registrar must ensure that it contains a number of pieces of information, set out in section 164 of the Incorporated

³⁶ See, for example, JB Were, ‘2021 New Zealand Cause Report’, September 2021, at pp.20 et seq.

Societies Act 2022 e.g. details of the alleged infringement and the amount of the infringement fee.

119. Section 254(1)(n) empowers the Governor-General to make regulations prescribing *additional information* to be included in such notices. However, at this stage, we are satisfied that the list of information in section 164 is sufficient. We therefore do not propose recommending that the Governor-General make regulations under section 254(1)(n) prescribing any such information.
120. Section 254(1)(n) also empowers the Governor-General to make regulations prescribing the *form* that infringement notices must take, and section 167 does the same in respect of reminder notices.
121. Often, in prescribing the form that an infringement notice must take, regulations will take the information that must be provided and set it out in a given order: see, for example, Schedule 8 of the Outer Space and High-altitude Activities (Licences and Permits) Regulations 2017.
122. We propose to do the same. We have set out in Annex 1 and Annex 2 what we propose an infringement notice and a reminder notice should look like.

14

Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(n)? For example, do you agree with the proposed forms set out in Annexes 1 and 2?

2.2.15 Removal and restoration of societies from the register

123. Subpart 1 of Part 5 of the Incorporated Societies Act 2022 (which corresponds to sections 174-190) concerns scenarios where the Registrar removes a society from the register.
124. Section 254(1)(o) of the Incorporated Societies Act 2022 empowers the Governor-General to make regulations prescribing matters for the purposes of subpart 1 of Part 5.
125. In the table below, we have identified all the provisions in the Act where such matters are envisaged, and indicated our initial thoughts on what the regulations should prescribe:

Section	Description	MBIE proposal
177(1)(a)	Persons to whom the Registrar must give notice when proposing to remove a society	The contact person of the society Charities Services (for those registered as charities) Inland Revenue
177(2)(a)	Minimum period (number of working days) that Registrar can set for objections to his notice of intended removal	20 working days
177(2)(b)	Manner in which a notice by the Registrar (that he intends to remove a society) must be given	See section 2.2.2 above (under Communications by the Registrar)
185(1)+(2)	Manner in which a person may make an application for a society to be restored	See section 2.2.2 above (under Communications with Registrar)
186(2)	Manner in which Registrar must give notice of proposed restoration	See section 2.2.2 above (under Communications by the Registrar)
186(3)	Minimum period (number of working days) that Registrar can set for objections to his notice of intended restoration	20 working days

188	People who may apply to the court for a court order requiring restoration	Similar to section 329 of the Companies Act, we propose that the following persons have the right to apply: any officer of the society; any member of the society; any creditor of the society; any party to legal proceedings against the society; any person with an undischarged claim against the society; any liquidator or receiver of the society.
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Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(o)?

2.2.16 Prescribing certain matters relating to surplus assets

126. Subpart 5 of Part 5 of the Incorporated Societies Act 2022 (which corresponds to sections 214-226) concerns certain matters relating to the removal of a society from the register or its liquidation.
127. Section 254(1)(p) empowers the Governor-General to make regulations prescribing matters for the purposes of subpart 5 of Part 5.
128. In the table below, we have identified all the provisions in the Act where such matters are envisaged, and indicated our initial thoughts on what the regulations should prescribe:

Section	Description	MBIE proposal
216(2)(b)	People (other than the society) who can apply to the Registrar for a different distribution under s.216(1)(d)	A liquidator or receiver of the society
216(2)(b)	Manner in which such people, or the society, must make the application for a different distribution under s.216(1)(d)	See section 2.2.2 above (under Communications with Registrar)
216(2)(c)	Circumstances that must be present for sections 216(2) to apply (in turn being relevant to whether the conditions of section 216(1)(d) are met)	At this stage, we do not propose that the regulations require any such circumstances to be present
225(2)	Manner in which an application to the Registrar of Land must be made	<p>Section 225(2) of the Incorporated Societies Act 2022 resembles section 27(5) of the Incorporated Societies Act 1908. Schedule 2 of the Incorporated Societies Regulations 1979 (made under the 1908 Act) sets out the form of an application to the Registrar-General of Land to register the vesting of land in a person.</p> <p>Although they may spike somewhat if many societies fail to reregister by April 2026, such applications are likely to be relatively uncommon.</p> <p>We consider it makes sense to align these applications to the regime already in place under the Land Transfer Act 2017 for registering transmissions (i.e. where land is acquired by operation of law – see s87 Land Transfer Act 2017). We therefore propose that regulations be made under section 225(2) prescribing the manner in which applications</p>

		<p>must be made to the Registrar-General of Land. We propose that those regulations require that the application:</p> <ul style="list-style-type: none"> - be presented in the form of a transmission instrument under the Land Transfer Act 2017; - be made by the person in whom the land has vested under the direction given by the Registrar of Incorporated Societies under section 221(a); - specify the Record of Title for the vested land; - include a copy of the direction given by the Registrar of Incorporated Societies.
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16

Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(p)?

2.2.17 Prescribing procedural requirements for surplus asset ‘resolutions’

129. If a society winds up, then once it has paid all its debts there may be assets still left over e.g. a few thousand dollars in the bank. Those are its ‘surplus assets’. Meanwhile, ‘resolutions’ are a way for a society to make significant decisions without having to wait for an annual general meeting or schedule a special general meeting.
130. Subpart 6 of Part 5 of the Incorporated Societies Act 2022 (which corresponds to sections 227-230) brings these two concepts together by empowering societies to make *resolutions* to, amongst other things, distribute their *surplus assets*.
131. Section 254(1)(q) empowers the Governor-General to make regulations prescribing “procedural requirements” for sub-part 6 resolutions related to surplus assets.
132. At this stage, we do not propose recommending that the Governor-General make regulations under section 254(1)(q) prescribing any such procedural requirements.

17

Do you agree with MBIE’s proposal that no regulations should be made at this stage under section 254(1)(q)?

2.2.18 Prescribing how documents must be served on a society

2.2.18.1 Service on a society

Introduction

133. Section 16 of the Incorporated Societies Act 1908 provides: “Any summons, notice, order, or other document required to be served upon a society may be served by leaving the same at the society’s registered office, or by sending it through the post in a registered letter

addressed to the society at that office.” The current regime thus makes no distinction between service of documents in the context of legal proceedings and service of documents in other contexts.

134. The Incorporated Societies Act 2022 has a different approach:
 - a. Section 125(1) of the Incorporated Societies Act 2022 provides that a “document in a legal proceeding” may be served on a society “in the manner prescribed by the regulations”.
 - b. Similarly, section 125(2) of the Incorporated Societies Act 2022 provides that a “document, other than a document in a legal proceeding” may be served on a society “in the manner prescribed by the regulations”. This might capture, for example, notices served on a society by the registrar under section 119 of the Incorporated Societies Act 2022, requiring the society to change its name.
135. Section 254(1)(r) empowers the Governor-General to make regulations prescribing the manner of serving both sorts of documents on a society.
136. Below, we examine in turn what regulations should be made under section 254(1)(r) in respect of service in legal proceedings, and what regulations should be made under section 254(1)(r) in respect of service in other contexts.

Service in legal proceedings

137. Section 387 of the Companies Act 1993 provides a useful starting point for prescribing how a document in any legal proceedings may be served on a society.
138. Based on that provision, we propose that regulations be made under section 254(1)(r) requiring documents in a legal proceeding to be served on a society as follows:
 - a. by delivery to the society’s contact person; or
 - b. by delivery to an officer of the society; or
 - c. by delivery to an employee of the society at the society’s registered office; or
 - d. by leaving it at the society’s registered office or address for service; or
 - e. by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or
 - f. in accordance with an agreement made with the society; or
 - g. by serving it at an address for service given in accordance with the rules of the court having jurisdiction in the proceedings or by such means as a solicitor has, in accordance with those rules, stated that the solicitor will accept service.

Service in other contexts

139. Section 388 of the Companies Act 1993 provides a useful starting point for prescribing how a document may be served on a society in contexts other than legal proceedings.
140. Based on that provision, we propose that regulations be made under section 254(1)(r) requiring documents other than documents in a legal proceeding to be served on a society as follows:
- a. by any of the following methods mentioned in the context of service of documents in legal proceedings:
 - i. by delivery to the society's contact person; or
 - ii. by delivery to an officer of the society; or
 - iii. by delivery to an employee of the society at the society's registered office; or
 - iv. by leaving it at the society's registered office or address for service; or
 - v. in accordance with an agreement made with the society; or
 - b. by posting it to the society's registered office or address for service or delivering it to a box at a document exchange which the society is using; or
 - c. by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company's registered office or address for service or its head office; or
 - d. by emailing it to the society at an email address that is used by the company.

2.2.18.2 Receipt of documents

141. Sections 125(3) of the Incorporated Societies Act 2022 provides that a "document that is served on a society" must be treated as received by the society "when specified by the regulations".
142. Section 254(1)(r) empowers the Governor-General to make regulations prescribing when documents served on a society are treated as received.
143. In this regard, section 392 of the Companies Act 1993 provides a useful starting point for prescribing when a document served must be treated as being received.
144. Based on that provision, we propose that regulations be made under section 254(1)(r) prescribing that documents served on a society are treated as received at the following times:
- a. a document that is to be served by delivery to a natural person is deemed to have been received when it is handed to the person or, if the person refuses to accept the document, when it is brought to their attention and left in a place accessible to them;

- b. a document posted or delivered to a document exchange is deemed to be received 5 working days, or any shorter period as the court may determine in a particular case, after it is posted or delivered;
 - c. a document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent;
 - d. a document sent by email is deemed to have been received on the working day following the day on which it was sent.
145. We also propose that regulations be made under section 254(1)(r) prescribing how to prove service, as follows:
- a. in proving service of a document by post or by delivery to a document exchange, it is sufficient to prove that:
 - i. the document was properly addressed; and
 - ii. all postal or delivery charges were paid; and
 - iii. the document was posted or was delivered to the document exchange;
 - b. in proving service of a document by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile machine to the person concerned
 - c. in proving service of a document by email, it is sufficient to prove that
 - i. the document was properly addressed; and
 - ii. the document was properly sent to the email address.
146. Finally, we propose that regulations be made under section 254(1)(r) prescribing that a document is not to be deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

18

Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?

2.2.19 Prescribing how documents must be served on a person

2.2.19.1 Introduction

147. Not all documents that are to be served under the Incorporated Societies Act 2022 will be served on a society. They might be served on other persons e.g. the Registrar, members of a society, creditors, etc.
148. In this regard, section 254(1)(s) empowers the Governor-General to make regulations prescribing how information may or must be given to, provided to, or served on "any person"

under the Incorporated Societies Act 2022. It also empowers the Governor-General to make regulations prescribing “other matters relating to that procedure (including when the information is treated as received, or as having been given, provided, or served, for the purposes of this Act and the regulations)”.

149. Once again, we find useful precedents in the Companies Act 1993, notably:
- a. section 387A, which concerns service of documents on directors in legal proceedings;
 - b. section 388A, which concerns service of documents on directors in other contexts; and
 - c. section 391, which concerns service on documents on shareholders and creditors (including by a liquidator).

2.2.19.2 Service in legal proceedings

150. Based on section 387A of the Companies Act, we propose that regulations be made under section 254(1)(s) requiring documents in a legal proceeding to be served on officers of the society as follows:
- a. by delivery to the officer; or
 - b. by leaving it at the officer’s residential address or address for service; or
 - c. by leaving it at the society’s registered office or address for service; or
 - d. by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or
 - e. in accordance with an agreement made with the officer; or
 - f. by serving it at an address for service given in accordance with the rules of the court having jurisdiction in the proceedings or by such means as a solicitor has, in accordance with those rules, stated that the solicitor will accept service.
151. We would be interested in your views on whether we also need to specify how documents in legal proceedings are served on *members of the society* and *creditors*.

2.2.19.3 Service in other contexts

152. Based on section 387A of the Companies Act, we propose that regulations be made under section 254(1)(s) requiring documents other than documents in a legal proceeding to be served on officers of the society as follows:
- a. by any of the following methods mentioned in the context of service of documents in legal proceedings:
 - i. by delivery to the officer; or
 - ii. by leaving it at the officer’s residential address or address for service; or

- iii. by leaving it at the society’s registered office or address for service
 - iv. in accordance with an agreement made with the officer; or
 - b. by posting it to the officer at the officer’s residential address or delivering it to a box at a document exchange that the officer is using at the time; or
 - c. by posting it to the society’s registered office or address for service or delivering it to a box at a document exchange that the society is using at the time; or
 - d. by sending it by fax machine to a telephone number used for the transmission of documents by fax at the officer’s residential address; or
 - e. by sending it by fax machine to a telephone number used for the transmission of documents by fax at the society’s registered office or address for service or its head office; or
 - f. by emailing it to the officer at an email address that is used by the officer; or
 - g. by emailing it to the society at an email address that is used by the society.
153. We would be interested in your views on whether we also need to specify how documents, other than documents in legal proceedings, are served on *members of the society* and *creditors*.

2.2.19.4 Receipt of documents

154. We propose that the rules on when documents are deemed to be received by an officer, and how service can be proved, should be the same as the rules set out above in section 2.2.18.2 on when documents are deemed to be received by a society.

19

Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(s)?

2.2.20 Prescribing matters relating to the incorporated societies register

155. The Incorporated Societies Act 2022 makes significant provision for matters concerning the register of incorporated societies. For example, section 231(2) provides that the register must be an electronic register, section 233(1) prescribes a long list of information that the register must contain, and section 235 prescribes when the Registrar may make amendments to the register.
156. Nonetheless, section 254(1)(t) empowers the Governor-General to make regulations prescribing procedures, requirements, and other matters for the register, provided they are not inconsistent with the Incorporated Societies Act 2022. The provision specifies that this might include matters that relate to: (i) the operation of the register; (ii) the form of the register; (iii) the information to be contained in the register; (iv) access to the register; (v)

search criteria for the register; and (vi) circumstances in which amendments must be made to the register.

157. In the table below, we have identified all the provisions in the Act where such matters are envisaged, and indicated our initial thoughts on what the regulations should be made:

Section	Description	MBIE proposal
231(3)(b)	At present, under s 231(4), the Registrar is able to suspend operation of the register “if the Registrar considers that it is not practical to provide access to the register”. Section 231(3)(b) allows for regulations prescribing additional circumstances for suspension.	At this stage, we do not propose that the regulations prescribe additional circumstances when the register may be suspended.
233(1)(i)	At present, under s 233(1), the register must contain, amongst other things, the name of the society, its registered office, its registration number, its NZBN, and its financial statements. Section 233(1)(i) allows for regulations prescribing “other information” that the register must contain	See section 2.2.1 above
237(2)(c)	At present, under s 237(2), the register may be searched by reference to the name of the society, its registration number, its NZBN, or the name of its officers. Section 237(2)(e) allows for regulations prescribing “other criteria” by which the register may be searched	At this stage, we do not propose that the regulations prescribe additional criteria by which the register may be searched.

20

Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(t)?

2.2.21 Specifying matters concerning conversion into an incorporated society

2.2.21.1 Introduction

158. From early October 2023, section 30A of the Charitable Trusts Act 1957 will provide that “a society incorporated as a board under this Part may apply to be reregistered as a society under the Incorporated Societies Act 2022”.³⁷ In other words, there will be a path for societies that are currently incorporated as charitable trust boards to ‘convert’ into incorporated societies.

159. Section 257 of the Incorporated Societies Act 2022 opens up the possibility of ‘conversion’ to entities other than societies incorporated as charitable trust boards. Once in force, it will extend to any “body corporate or other association that is formed or incorporated by or under an Act that is specified by the regulations for the purposes of this section”. Such entities will be able to be “reregistered as an incorporated society under this Act in accordance with Schedule 3”.

160. There are three regulation-making powers that are relevant here:

³⁷ See section 266 of the Incorporated Societies Act 2022, read in the light of section 2(3)(b) of the Incorporated Societies Act 2022

- a. section 254(1)(u) empowers the Governor-General to make regulations specifying Acts for the purposes of section 257 and Schedule 3;
- b. section 254(1)(v) empowers the Governor-General to make regulations specifying any preconditions that must be met for a body corporate or other association to be reregistered as an incorporated society under section 257 and Schedule 3; and
- c. section 254(1)(w) empowers the Governor-General to make regulations specifying terms and conditions that must be complied with by an entity after it has reregistered as an incorporated society under section 257 and Schedule 3.³⁸

161. However, under section 254(4) of the Incorporated Societies Act 2022, the Minister can only make a recommendation for such regulations if:

- a. the Minister is satisfied that allowing the entity, or an entity of that type, to reregister as an incorporated society:
 - i. is not materially inconsistent with the purposes of the specified Act; and
 - ii. is otherwise appropriate (having regard to the purposes of this Act and whether the matter would be more appropriately dealt with by way of parliamentary enactment); and
- b. in the case of a specified Act that imposes significant duties or requirements on the entity or on an entity of that type, the Minister is satisfied that an entity that is reregistered as an incorporated society will continue to be subject to substantially similar, or stricter, duties or requirements (subject to any minor or technical changes); and
- c. the Minister has consulted the persons (or representatives of the persons) that the Minister considers will be substantially affected by the regulations, and those persons have had the opportunity to comment to the Minister.

2.2.21.2 Regulations under section 254(1)(u)

162. We propose that regulations be made under section 254(1)(u) specifying the New Zealand Library Association Act 1939 (under which the Library and Information Association of New Zealand Aotearoa (LIANZA) was incorporated) for the purposes of section 257 and Schedule 3.

163. We consider that allowing LIANZA to reregister as an incorporated society is not materially inconsistent with the purposes of the New Zealand Library Association Act 1939 and is otherwise appropriate.

³⁸ And, under section 175 of the Incorporated Societies Act 2022, the Registrar may remove a society if he or she believes it has not complied with a condition imposed under regulations made pursuant to section 257(1)(w)

164. For example, section 3 of the New Zealand Library Association Act 1939 already provides that LIANZA is subject to sections 13-18 and section 20 of the Incorporated Societies Act 1908.
165. We also consider it would be appropriate to specify the Libraries and Mechanics Institutes Act 1908, under which— to our knowledge — only three associations are currently incorporated:
- a. the Ballance Athenaeum;
 - b. the Naseby Athenaeum; and
 - c. Stirling Athenaeum.

2.2.21.3 Regulations under section 254(1)(v)

166. We propose that regulations be made under section 254(1)(v) specifying, as a precondition for reregistration, that LIANZA and each of the three athenea must obtain a resolution of their members approving the specification of their Act.
167. 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.
168. We also propose that, as a precondition for reregistration, the draft constitution LIANZA submits as part of the reregistration process should maintain the following two rules from its founding statute:
- a. that any local authority that has established, or has the power to establish, a public library may be admitted to and become a member of LIANZ (see section 5 of the New Zealand Library Association Act 1939); and
 - b. that any corporate body may be admitted to and become a member of LIANZA, unless the objects of LAINZA (as defined in its constitution) are ultra vires of such corporate body (see section 6 of the New Zealand Library Association Act 1939).

2.2.21.3 Regulations under section 254(1)(w)

169. We do not consider that the Acts proposed for specification impose “significant duties or requirements on the entity or on an entity of that type”. As a result, the Minister need not be satisfied that LIANZA or the three athenea, if any of them chose to reregister as an incorporated society, will continue to be subject to substantially similar, or stricter, duties or requirements.
170. Nevertheless, we propose that regulations be made under section 254(1)(w) specifying the following terms and conditions that must be complied with by LIANZA after it has reregistered:
- a. that LIANZA maintain a rule in its constitution that any local authority that has established, or has the power to establish, a public library may be admitted to and become a member of LIANZ (see section 5 of the New Zealand Library Association Act 1939); and

- b. that LIANZA maintain a rule in its constitution that any corporate body may be admitted to and become a member of LIANZA, unless the objects of LAINZA (as defined in its constitution) are ultra vires of such corporate body (see section 6 of the New Zealand Library Association Act 1939).

171. We do not propose to require that the entities whose statutes are prescribed take any steps towards repealing their founding statute, after reregistration.

21

Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(u), (v) or (w)?

3 Regulations under section 255

3.1 Context

172. Section 255 of the Incorporated Societies Act empowers the Governor-General to make regulations prescribing fees and other amounts payable to the Registrar.
173. Section 255 resembles section 372 of the Companies 1993.

3.2 Specific regulations

3.2.1 Setting fees for the performance of functions or the exercise of powers

174. Under section 255(1)(a) of the Incorporated Societies Act 2022, the Governor-General may, by Order in Council, make regulations prescribing fees or other amounts payable to the Registrar for the performance of functions or the exercise of powers under this Act or the regulations.
175. Provisions in the Incorporated Societies Act 2022 that expressly envision fees include:
- a. section 9(f) – concerning fee that must accompany an application for incorporation;
 - b. section 197(d) – concerning the fee that must be paid when two societies amalgamate; and
 - c. clause 3(f) of Schedule 3 – concerning the fee that must accompany an application for an entity to convert into an incorporated society.³⁹
176. MBIE is currently undertaking a system-wide assessment of what fees (and, potentially, levies)⁴⁰ should be payable by all registered entities, including companies, limited partnerships, credit unions, and incorporated societies.
177. In this context, we are not using this discussion document to propose specific fees, or fee levels, that should apply to incorporated societies under the Incorporated Societies Act 2022.
178. However, we are interested to hear any thoughts you may have on this issue. We can then consider those thoughts as part of our wider system review.

³⁹ It seems arguable that such fees could also be prescribed under section 254(1)(b) of the Incorporated Societies Act 2022.

⁴⁰ See the Companies (Levies) Amendment Bill 2022, currently before Parliament

3.2.2 Setting late fees

179. Under section 255(1)(b) of the Incorporated Societies Act 2022, the Governor-General may, by Order in Council, make regulations prescribing amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by or under the Act. Such amounts will not be included in the system-wide assessment of fees mentioned in the previous section. As a result, we discuss them here.
180. The Incorporated Societies Regulations 1979 do not contain a table of amounts payable to the Registrar of Incorporated Societies for late document delivery. By contrast, the Companies Act 1993 Regulations 1994 do. Their Schedule 2 provides, in its Part 2, for a penalty of:
- a. \$25 (including GST) for delivery of a document to the Registrar of Companies within 25 working days after the prescribed deadline; and
 - b. \$100 (including GST) for delivery of a document to the Registrar of Companies beyond 25 working days after the prescribed deadline.
181. In addition, regulation 9 of the Charities (Fees and Other Matters) Regulations 2006 provides for 'administrative penalties' of \$100 (for failure to provide a notice of change within 3 months) and \$200 (for failure to provide an annual return within 6 months after balance date). However, these are payable to Charities Services, which may have different costs from the Companies Office.
182. We consider the levels set out in the Companies Act 1993 Regulations 1994 to be appropriate for incorporated societies, as the costs to the Companies Office are the same whether it is dealing with a late filing from a company or an incorporated society. If the amounts payable were set any lower, there is a risk that they could be less than the cost incurred by the Registrar in collecting them.

Section	Description	Time prescribed 'by or under' the Act?	MBIE proposal
33(1)	The amount payable for failure to give the Registrar a copy of an amendment to the constitution, and the constitution as amended, within 25 working days	By	If delivered not later than 25 working days after the time prescribed: \$25 (including GST)
52(2)	The amount payable for failure to give the Registrar notice of election or appointment of officers within 20 working days	By	
92(2)	The amount payable for failure to give the Registrar a copy of a resolution within 5 working days	By	
102(3)	The amount payable for failure to give copies of its financial statements to the Registrar within 6 months of its balance date	By	
107	The amount payable (by an auditor) for failure to give the Registrar a copy of his/her report within 7 working days, if it indicates the Act has not been complied with	By	
			If delivered more than 25 working days after

109	The amount payable for failure to give the Registrar an annual return within 6 months of the society's balance date [see discussion under s.254(1)(b) above]	Under ⁴¹	the time prescribed: \$100 (including GST)
111	The amount payable for failure to give the Registrar notice of a change in registered office within 20 working days [see discussion under s.254(1)(b) above]	Under ⁴²	
116(2)	The amount payable for failure to give the Registrar notice of a change of contact person within 20 working days	By	
180(4)	The amount payable for failure to give the Registrar notice of a court decision within 5 working days	By	
180(5)	The amount payable for failure to give the Registrar notice of withdrawal of an application to the court	By	

183. Note that, for some of the deadlines in the table, failure to comply is also associated with infringement fees.⁴³ Such fees are designed not to recoup the Registrar's costs but to punish and deter certain behaviours.

23

Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?

3.2.3 Setting other fees

184. Under section 255(1)(c) of the Incorporated Societies Act 2022, the Governor-General may, by Order in Council, make regulations prescribing fees or other amounts payable to the Registrar for any other matter under this Act or the regulations.

185. At this stage, we do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make any regulations under section 255(1)(c).

24

Do you agree with MBIE's proposal that no regulations should be made at this stage under section 255(1)(c)?

⁴¹ See the discussion of regulations made under section 254(1)(b) of the Incorporated Societies Act 2022

⁴² See the discussion of regulations made under section 254(1)(b) of the Incorporated Societies Act 2022

⁴³ See section 160 of the Incorporated Societies Act 2022

4 Transitional regulations under section 256

4.1 Context

186. Section 256 of the Incorporated Societies Act 2022 empowers the Governor-General to make regulations concerning certain transitional matters. However:
- a. this power is time-limited, as section 256 will self-repeal at the close of the “5-year date” (likely 6 October 2028);⁴⁴
 - b. the Minister must not recommend the making of regulations under this section unless the Minister is satisfied that the regulations:
 - i. are necessary or desirable for the orderly implementation of this Act; and
 - ii. are consistent with the purposes of this Act.⁴⁵
187. The regulations may:
- a. provide that certain rules apply;
 - b. provide that certain rules, set out in the Incorporated Societies Act 2022 or other relevant legislation, do not apply or apply in modified form; and/or
 - c. prescribe matters for the purposes of Part 1 of Schedule 1 of the Incorporated Societies Act 2022 (which concerns the process by which existing societies re-register under the new regime).

4.2 Specific regulations

4.2.1 Providing that certain rules apply

188. Section 256(1)(a) is designed to allow the making of time-limited regulations that address any transitional issues that require new secondary legislation.
189. To get an idea of what sort of regulations might be made under section 256(1)(a), it is useful to note that it is similar to clause 90(1)(a) of Schedule 4 of the Financial Markets Conduct Act 2013,^{46 47} and that some regulations have been made under clause 90(1)(a).

⁴⁴ See section 256(3) of the Incorporated Societies Act 2022

⁴⁵ See section 256(2) of the Incorporated Societies Act 2022

⁴⁶ Clause 90(1)(a) of Schedule 4 of the Financial Markets Conduct Act 2013 was inserted by section 59 of the Financial Services Legislation Amendment Act 2019 and will self-expire soon.

⁴⁷ Section 256(1)(a) is also similar to the now-repealed section 154(1)(r) of the Financial Advisers Act 2008.

190. One of those regulations is regulation 27 of the Financial Markets Conduct Amendment Regulations 2020. Regulation 27 inserted new rules into Schedule 1 of the Financial Markets Conduct Regulations 2014 (which concerns transitional matters). One of the new rules (concerning exemptions for portfolio management services)⁴⁸ applied from 15 March 2021 until 14 March 2022, at which point it self-expired.
191. At this stage, we do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make any regulations under section 256(1)(a).

25

Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(a)?

4.2.2 Providing that certain legislative rules do not apply

192. Section 256(1)(b) is designed to allow the making of time-limited regulations to address any transitional issues that require amendments to primary legislation.
193. To get an idea of what sort of regulations might be made under section 256(1)(b), it useful to note that it is similar to the now-repealed section 154(1)(s) of the Financial Advisers Act 2008,^{49 50} and that some regulations were made under section 154(1)(s) while it was in force.
194. Some of those regulations featured in the Financial Service Providers and Financial Advisers Transitional Regulations 2010. Under regulation 4 of those Regulations, the then 'Securities Commission' was prohibited from exercising certain of its legislative powers⁵¹ from 16 August 2010 until 1 December 2010. Under regulation 5 of those Regulations, a certain section of the Financial Advisers Act 2008 was to be applied "as if" certain other sections of the Act were already in force.
195. At this stage, we do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make any regulations under section 256(1)(b).

26

Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(b)?

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

196. Part 1 of Schedule 1 concerns the process by which the existing 24,000 societies re-register under the new regime, which they will be able to do between around October 2023 and April 2026.

⁴⁸ See clause 44, and also clause 45(2), in Schedule 1 of the Financial Markets Conduct Regulations 2020

⁴⁹ Section 154(1)(s) of the Financial Advisers Act 2008 was introduced by section 46 of the Financial Advisers Amendments Act 2011 and self-repealed on 30 June 2013

⁵⁰ Section 256(1)(b) is also similar to clause 90(1)(b) of Schedule 4 of the Financial Markets Conduct Act 2013

⁵¹ Powers under section 55 (specifying 'periods of authorisation') and 67 to 68 (specifying 'qualifying financial entity' status) of the Financial Advisers Act 2008

197. Section 256(1)(c) is designed to allow the making of time-limited regulations prescribing matters for the purposes of Part 1 of Schedule 1.
198. Some clauses in Part 1 of Schedule 1 make express reference to the possibility of regulations. For example:
- a. clause 5(3)(a) references the information “prescribed by the regulations” that must accompany a reregistration application; and
 - b. clause 12(6) references the manner – “prescribed by the regulations” – in which an existing society that misses the deadline for reregistration can apply for restoration to the new register.
199. In addition, clause 9(5) of Schedule 1 of the Incorporated Societies Act 2022 requires, in certain situations, that a copy of amendments to a constitution (amongst other things) must be given to the Registrar “within 25 working days after the amendments are approved”. However, the Incorporated Societies Act 2022 does not set out a late fee for failing to meet this deadline.
200. In this context, we propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make, under section 256(1)(c), the regulations indicated in the table below.
201. In making this proposal, we are asserting that such regulations, as required by section 256(2):
- i. are necessary or desirable for the orderly implementation of the Incorporated Societies Act 2022; and
 - ii. are consistent with the purposes of the Incorporated Societies Act 2022.
202. If you think regulations we are proposing should not be made, or think that regulations we are not proposing should be made, please let us know.

Clause	Description	MBIE proposal
5(3)(a)	Information to accompany a reregistration application	We propose this be the same as the information to be provided by new societies when they register (see section 2.2.1 above) – plus their NZBN.
5(3)(e)	Fee to accompany a reregistration application	At this stage, we simply seek your views on whether you are in favour of, or against, a fee for re-registration (given it would likely be around \$50 if it were introduced). If you are against, please indicate how the costs to the Companies Office of processing re-registrations could be funded.
5(3)(f)	Any additional reregistration application process requirements	Except with the leave of the Registrar given in his or her absolute discretion, every application for reregistration must be filed online through the Internet site designated by the Registrar.
9(3)(b)(ii)	Manner in which a society must approve an amendment to its existing rules, as an alternative to a majority vote at an AGM	At this stage, we do not propose that the regulations set out an alternative to approving the amendments through a majority vote at an AGM.

9(5)	The amount payable for failure to give the Registrar, within 25 working day, a copy of certain amendments to a constitution	If delivered not later than 25 working days after the time prescribed: \$25 (including GST) If delivered more than 25 working days after the time prescribed: \$100 (including GST)
9(5)(b)	Information that must accompany amendments to the rules of an existing society	We propose this be the same as the information to be provided by new societies when they register (see section 2.2.1 above) – plus their NZBN.
10(2)(a)(ii)	Manner in which a society must approve a new constitution, as an alternative to a majority vote at an AGM	At this stage, we do not propose that the regulations set out an alternative to approving the new constitution through a majority vote at an AGM.
12(6)	Manner in which a restoration application must be made, when an existing society misses the deadline for reregistration	Except with the leave of the Registrar given in his or her absolute discretion, every application for restoration must be filed online through the Internet site designated by the Registrar.
17(3)	Manner in which a parent society or a branch of the society must notify the Registrar that sections 6 and 7 of the 1920 Act should no longer apply	Except with the leave of the Registrar given in his or her absolute discretion, notice of any request that sections 6 and 7 of the 1920 Act should no longer apply must be filed online through the Internet site designated by the Registrar.

5 Recap of questions

Part 2 of the discussion document: section 254

	Matter	Question
1	Prescribing information that must be included or provided	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(a)?
2	Prescribing the manner in which things must be done	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(b)?
3	Authorising the Registrar to determine the manner in which things must be done	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(c)?
4	Declaring persons to be, or not to be, officers	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?
5	Prescribing circumstances related to independent committee members	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(e)?
6	Prescribing jurisdictions whose officer disqualifications we will recognise	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?
7	Prescribing the types of changes in officer information that must be notified	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(g)?
8	Regulating constitutional provisions on conflicts of interest	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(h)?

9	Prescribing societies that can restrict general meeting attendance to delegates	Do you have any suggestions regarding regulations that should be made under section 254(1)(i)?
10	Defining the term 'total current assets'	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(j)?
11	Prescribing additional requirements for the financial statements of small societies	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(k)?
12	Determining the class of society that must have its financial statements audited	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(l)? For example, do you agree that focusing on the proportion of societies that should be captured is appropriate?
13	Setting infringement fees	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?
14	Prescribing the information to be included in infringement and reminder notices	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(n)? For example, do you agree with the proposed forms set out in Annexes 1 and 2?
15	Removal and restoration of societies from the register	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(o)?
16	Prescribing certain matters relating to surplus assets	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(p)?
17	Prescribing procedural requirements for surplus asset 'resolutions'	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(q)?
18	Prescribing how documents must be served on a society	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?
19	Prescribing how documents must be served on a person	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(s)?

20	Prescribing matters relating to the incorporated societies register	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(t)?
21	Specifying matters concerning conversion into an incorporated society	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(u), (v) or (w)?

Part 3 of the discussion document: section 255

	Matter	Question
22	Setting fees for the performance of functions or the exercise of powers	Do you have any suggestions on regulations that should be made under section 255(1)(a)?
23	Setting late fees	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
24	Setting other fees	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 255(1)(c)?

Part 4 of the discussion document: section 256

	Matter	Question
25	Providing that certain rules apply	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(a)?
26	Providing that certain legislative rules do not apply	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(b)?
27	Prescribing matters for the purposes of Part 1 of Schedule 1	Do you have any comments on MBIE's proposals regarding regulations under section 256(1)(c)?

Annex 1: Infringement notice

Infringement Notice

Section 162, Incorporated Societies Act 2022

Infringement Notice No:

Date of Notice:

Enforcement authority

Infringement notice issued by: _____, Registrar of Incorporated Societies

Address for correspondence and queries societiesenforcement@companies.govt.nz or Integrity and Enforcement Team, PO Box 5004, Victoria Street West, Auckland 1142, New Zealand.

Infringement notice served on —

Full name:

Full address:

Telephone number:

Alleged infringement offence details

The offence is one against section 160(2) of the Incorporated Societies 2022 in respect of a failure to comply with the provisions listed in subsection (2)[insert relevant sub-paragraph] (which relates to _____).

Date:

Time:

Name of society concerned:

Incorporation number of society concerned:

Address of society concerned:

Details of alleged infringement: The infringement is against section 160(2) of the Incorporated Societies Act 2022 where _____ applies.

The infringement fee payable is _____.

Service details

Infringement notice served by post on _____

Payment of infringement fee

The infringement fee is payable within 28 days after _____

The infringement fee may be paid to the enforcement authority at: Registrar of Incorporated Societies, Companies Office, Level 1, 162 Victoria Street, Auckland 1010 or Integrity and Enforcement Team, PO Box 5004, Victoria Street West, Auckland 1142, New Zealand or deposited into the Ministry's bank account as per the attached form.

Important: Please read the enclosed summary below - if you do not understand it, you should consult a lawyer immediately.

Summary of rights

1. This notice sets out an alleged infringement offence.

Payments

2. If you pay the infringement fee for an alleged infringement offence within 28 days after you are served with this notice, no further enforcement action will be taken for that offence. Payments should be made to the enforcement authority at the address for payment specified in this notice.

If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you enter or have entered into a time-to-pay arrangement with an informant in respect of an infringement fee payable by you, paragraphs 4(b), 4(c), 5, 6, and 7 below do not apply, and you are not entitled either to request a hearing to deny liability or to ask the court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Defence

3. You have a complete defence against proceedings for an alleged infringement offence if the infringement fee has been paid to the enforcement authority, at the address for payment specified in this notice, before or within 28 days after a reminder notice in respect of the alleged offence is served on you. Late payment or payment made to any other address will not constitute a defence.

Further action

4. You should write to the enforcement authority at the address for correspondence shown on the front page of this notice if you wish to—
 - a) raise any matter relating to the circumstances of an alleged offence for consideration by the enforcement authority; or
 - b) deny liability for the alleged offence and request a court hearing; or
 - c) admit liability for the alleged offence, but wish to have a court consider written submissions as to penalty or otherwise.

The letter should be signed.

5. You have a right to request a hearing. If you deny liability for the alleged offence and request a hearing, the enforcement authority will serve you with a notice of hearing that sets out the place and time at which the matter will be heard by the court (unless the authority decides not to start court proceedings).

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

6. A request for a hearing must—
 - (a) be in writing and signed by you; and
 - (b) be delivered to the enforcement authority at the address for correspondence shown on the front page of this notice; and
 - (c) be delivered within 28 days after you are served with a reminder notice.

7. If you admit liability for the alleged offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter to the enforcement authority,—
- (a) request a hearing; and
 - (b) admit liability for the offence; and
 - (c) set out the written submissions you wish to be considered by the court.

The enforcement authority will then file your letter with the court (unless the enforcement authority decides not to start court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

8. If you do not pay the infringement fee and do not request a hearing in respect of the alleged offence within 28 days after being served with this notice, you will (unless the enforcement authority decides otherwise) be served with a reminder notice.
9. If you do not pay the infringement fee and do not request a hearing in respect of an alleged offence within 28 days after you have been served with the reminder notice, you will become liable to pay costs in addition to a fine (if the enforcement authority decides to start court proceedings against you). The fine will be equal to the amount of the infringement fee or the amount of the infringement fee remaining unpaid.
10. When writing or making payment of an infringement fee, please indicate—
- (a) the date of the alleged infringement offence; and
 - (b) the infringement notice number; and
 - (c) your full name and address for replies.

Note: All queries and correspondence regarding the infringement offence must be directed to the enforcement authority at the address shown on the front page of this notice.

Further details of your rights and obligations are set out in section 21 of the Summary Proceedings Act 1957.

Annex 2: Reminder notice

Reminder notice

Section 167, Incorporated Societies Act 2022

Reminder Notice No: SOC

Date of Notice:

Enforcement authority

Infringement notice issued by: _____, Registrar of Incorporated Societies

Address for correspondence and queries societiesenforcement@companies.govt.nz or Integrity and Enforcement Team, PO Box 5004, Victoria Street West, Auckland 1142, New Zealand

This notice is to remind you that an infringement notice has been issued to the society. The details of the notice are as follows:

Infringement notice served on —

Full name:

Full address:

Alleged infringement offence details

The offence is one against section 160(2) of the Incorporated Societies Act 2022 in respect of failure to comply with the provisions listed in subsection (2)[insert relevant sub-paragraph] (which relates to _____).

Date:

Time:

Name of society concerned:

Incorporation number of society:

Address of society concerned:

Nature of alleged infringement: The infringement is against section 160(2) of the Incorporated Societies Act 2022 where _____ applies.

The infringement fee payable is _____.

The amount of the infringement fee remaining unpaid: _____.

Service details

(To be provided for filing in court)

Infringement notice served by post on _____

Reminder notice served by post at _____ on _____

Payment of infringement fee

The infringement fee was payable to the enforcement authority within 28 days after _____

The infringement fee remains payable to the enforcement authority at: Registrar of Incorporated Societies, Companies Office, Level 1, 162 Victoria Street, Auckland 1010 or Registries Integrity and Enforcement Team, PO Box 5004, Victoria Street West, Auckland 1142, New Zealand.

The last day for payment of the infringement fee is (enter date 28 days after the day to be sent), being 28 days after the date of service of this notice. The payment may be made by posting a cheque to the enforcement authority, or deposited into the Ministry's bank account as per the attached form.

Important: Please read the enclosed summary of rights below - if you do not understand it, you should consult a lawyer immediately.

Summary of rights

1. You have not paid the infringement fee described on the front page, or asked for a hearing, within 28 days after you were served with the infringement notice. That is why you have been served with this reminder notice.

Payments

2. If you pay the infringement fee for an alleged infringement offence within 28 days after you are served with this notice, no further enforcement action will be taken for that offence. Payments should be made to the enforcement authority at the address for payment specified in this notice.

If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you enter or have entered into a time-to-pay arrangement with an informant in respect of an infringement fee payable by you, paragraphs 4(b), 4(c), 5, 6, and 7 below do not apply, and you are not entitled either to request a hearing to deny liability or to ask the court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Defence

3. You have a complete defence against proceedings for an alleged infringement offence if the infringement fee has been paid to the enforcement authority, at the address for payment specified in this notice, before or within 28 days after a reminder notice in respect of the alleged offence is served on you. Late payment or payment made to any other address will not constitute a defence.

Further action

4. You should write to the enforcement authority at the address for correspondence shown on the front page of this notice if you wish to—
 - (a) raise any matter relating to the circumstances of an alleged offence for consideration by the enforcement authority; or
 - (b) deny liability for the alleged offence and request a court hearing; or
 - (c) admit liability for the alleged offence, but wish to have a court consider written submissions as to penalty or otherwise.

The letter should be signed.

5. You have a right to request a hearing. If you deny liability for the alleged offence and request a hearing, the enforcement authority will serve you with a notice of hearing that sets out the place and

time at which the matter will be heard by the court (unless the enforcement authority decides not to start court proceedings).

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

6. A request for a hearing must—
 - (a) be in writing and signed by you; and
 - (b) be delivered to the enforcement authority at the address for correspondence shown on the front page of this notice; and
 - (c) be delivered within 28 days after you are served with this notice.
7. If you admit liability for the alleged offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter to the enforcement authority,—
 - (a) request a hearing; and
 - (b) admit liability for the offence; and
 - (c) set out the written submissions you wish to be considered by the court.

The enforcement authority will then file your letter with the court (unless the enforcement authority decides not to start court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

8. If you do not pay the infringement fee and do not request a hearing in respect of the alleged offence within 28 days after being served with this reminder notice, you will become liable to pay costs in addition to a fine (if the enforcement authority decides to start court proceedings against you). The fine will be equal to the amount of the infringement fee or the amount of the infringement fee remaining unpaid.
9. When writing or making payment of an infringement fee, please indicate—
 - (a) the date of the alleged infringement offence; and
 - (b) the number of this reminder notice; and
 - (c) your full name and address for replies.

Note: All queries and correspondence regarding the infringement offence must be directed to the enforcement authority at the address shown on the front page of this notice.

Further details of your rights and obligations are set out in section 21 of the Summary Proceedings Act 1957.