



COVERSHEET

Minister	Hon Scott Simpson	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Treatment of Residents' Associations under the Incorporated Societies Act	Date to be published	10 November 2025

List of documents that have been proactively released

Date	Title	Author
October 2025	Treatment of Residents' Associations under the Incorporated Societies Act	Office of the Minister of Commerce and Consumer Affairs
8 October 2025	Treatment of Residents' Associations under the Incorporated Societies Act ECO-25-MIN-0157 Minute	Cabinet Office

Information redacted

YES

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Some information has been withheld for the reason of Confidential advice to Government.

[In Confidence]

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Policy Committee

Treatment of Residents' Associations under the Incorporated Societies Act 2022

Proposal

- 1 This paper seeks policy decisions for an amendment to the Incorporated Societies Regulations 2023 (the **Regulations**) to give residents' associations (**RAs**) an extended transitional period to either meet the requirements of the Incorporated Societies Act 2022 (the **2022 Act**) or restructure to an alternative form.

Relation to government priorities

- 2 This paper addresses a specific issue faced by RAs seeking to comply with the 2022 Act.

Background

- 3 The 2022 Act replaced the Incorporated Societies Act 1908 (the **1908 Act**), putting in place modern governance and administration arrangements for societies. All existing societies must reregister under the new Act, with a compliant constitution, by 5 April 2026. The 2022 Act followed a review of the 1908 Act by the Law Commission.
- 4 One of the Law Commission's recommendations, to which Parliament agreed, was that the distribution of surplus assets to members when a society winds up should be prohibited (the **surplus assets provision**). They considered that permitting this (as the 1908 Act does) was contrary to the principle that incorporated societies should not operate for the financial gain of their members.

The surplus assets provision creates an issue for certain residents' associations seeking to reregister under the 2022 Act

- 5 RAs are entities structured as incorporated societies that manage, and sometimes also own, common property on behalf of residents in a residential development. They are increasingly common in residential developments comprising of separate houses with freehold titles (as opposed to, say, apartment buildings which have a body corporate structure under the Unit Titles Act 2010).
- 6 Under the 2022 Act, RAs that own property on behalf of residents would not be able to distribute that property to residents if they wind up. (This might occur, for example, if the residents wished to sell the common property for subsequent development.) Instead, they would have to nominate a not-for-profit entity for those assets to go to. The result is that residents would lose any rights to the property that, with justification, they see as belonging to them.

- 7 The New Zealand Law Society and the Law Association raised this issue last year with the previous Minister and officials. They seek an urgent legislative change to exempt RAs from the surplus assets provision. More recently – with the reregistration deadline approaching – two law firms that work closely with incorporated societies have been in touch with my officials, sharing their concerns about the uncertainty the current situation is generating.
- 8 In the absence of any intervention, these RAs will either have to restructure into different ownership form, or reregister with a compliant constitution by 5 April 2026.

Analysis of options

- 9 I have considered four options to address this issue:
- 9.1 **Option 1** Keep the status quo.
 - 9.2 **Option 2** Use the regulation-making power in section 256 of the 2022 Act to give RAs an extended transitional period (to 5 October 2028) to either restructure or comply with the 2022 Act.
 - 9.3 **Option 3** Amend the 2022 Act to grandparent the 1908 Act treatment of surplus assets for existing RAs only. New RAs would have to comply with the 2022 Act.
 - 9.4 **Option 4** Amend the 2022 Act to provide an exemption from the surplus assets provision for all RAs (both those seeking to reregister and new ones).
- 10 My officials undertook targeted consultation with the Law Association, New Zealand Law Society, Iain Blakeley (a lawyer and member of a RA), Crockers Property Management (who manage over 200 RAs in Auckland) and Auckland Council Planning and Resource Consent Department (because consent for a residential subdivision usually requires the establishment of some form of entity to manage common property and this is often an incorporated society).
- 11 I recommend that Cabinet agree to Option 2 for the following reasons:
- 11.1 The extent of the problem is not great. Of the approximately 560 RAs still registered under the 1908 Act, only around 12 per cent of these (an upper estimate) own common property. This equates to around 70 RAs, covering an estimated 1700 residents in total.
 - 11.2 There are other ownership structures available to RAs, even if they all have pros and cons. These include body corporates, companies, direct shared ownership of common property, and trusts.
 - 11.3 Some existing RAs have already reregistered under the 2022 Act, and officials estimate that around 8 per cent of these own common property. Therefore at least some RAs that own property have found a way to comply with the surplus assets provision.
 - 11.4 Three years is ample time to prepare to convert to another form if that is what residents decide to do.

- 11.5 It preserves a key principle of the incorporated societies regime, namely that societies should not operate for the financial gain of their members.
- 11.6 It only involves the making of regulations, rather than requiring an urgent amendment to the 2022 Act.
- 12 The main downside to Option 2 is that restructuring is likely to be reasonably complex and costly for those involved. This of course depends on the complexity of the current arrangements and the form of the new ownership structure.
- 13 The New Zealand Law Society provided a rough estimate of costs for an RA to convert to a company of a minimum of \$1,000 (excl. GST) per resident and \$10,000-20,000 (excl. GST) for the RA (the cost of which would also be borne by the residents). This would mainly be in the form of conveyancing fees as both the individual titles residents hold and the title to the common property that the RA holds would need to be changed.
- 14 Confidential advice to Government
- 15 There is some risk that the Regulations Review Committee may take an interest in the proposed regulations, especially given the length of the transition period. However, I am satisfied that the statutory prerequisites for making regulations under section 256 are met.

Cost-of-living Implications

- 16 The estimated costs are indicated above in paragraph 13. They are limited to the relatively small number of people in potentially affected RAs.

Financial Implications

- 17 There are no financial implications from the proposals in this paper.

Legislative Implications

- 18 The recommended option would require an amendment to the Incorporated Societies Regulations 2023.

Impact Analysis

Regulatory Impact Statement

- 19 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor economic, social, or environmental impacts.

Climate Implications of Policy Assessment

- 20 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

Population Implications

- 21 There are no population implications from the proposals in this paper.

Human Rights

- 22 There are no human rights implications from the proposals in this paper.

Consultation

- 23 The following government departments have been consulted: Ministry of Justice, Ministry of Housing and Urban Development, Land Information New Zealand, Department of Internal Affairs.
- 24 Targeted consultation with the stakeholders listed in paragraph 10 was undertaken in June 2025.

Communications

- 25 In order to give stakeholders sufficient time to make decisions, I will communicate with them directly once Cabinet has made a decision.

Proactive Release

- 26 I propose to release this paper proactively on the MBIE website within 30 business days, subject to minor redactions if appropriate.

Recommendations

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

- 1 **note** that the existing incorporated societies must reregister under the Incorporated Societies Act 2022 (the **2022 Act**) by 5 April 2026;
- 2 **note** that, under the 2022 Act, incorporated societies are prohibited from distributing surplus assets to members when they wind up;
- 3 **note** that this prohibition is an issue for residents' associations that own common property on behalf of residents in a residential development and that are seeking to reregister under the 2022 Act;
- 4 **agree** to make use of the regulation-making power in section 256 of the 2022 Act to suspend those sections of the Act relating to the prohibition on the distribution of surplus assets for an extended transition period up to 5 October 2028;
- 5 **agree** that residents' associations that wish to make use of this extended transition period have to notify the Registrar of Incorporated Societies;

- 6 **note** I am satisfied that the statutory prerequisites for making regulations under section 256 are met;
- 7 **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendations 4 and 5;
- 8 **authorise** the Minister of Commerce and Consumer Affairs to approve the release of an exposure draft of the Incorporated Societies Regulations if there is time in the drafting process to do so;
- 9 **authorise** the Minister of Commerce and Consumer Affairs to make decisions consistent with the overall policy decisions in this paper on any matters that might arise during the drafting process or as a result of consultation on an exposure draft of the regulations.

Authorised for lodgement

Hon Scott Simpson

Minister of Commerce and Consumer Affairs