

Key changes to note in the new Incorporated Societies Act 2022

The new Incorporated Societies Act 2022 (new Act) was passed into law on 5 April 2022 and significantly changes the way incorporated societies are regulated in New Zealand.

The new Act replaces the Incorporated Societies Act 1908 (**1908 Act**), modernising its legal, governance and enforcement settings. It is important for existing incorporated societies to note these changes and the timeline for when they will become live.

Implementation

The new Act does not immediately apply to existing societies. There will be a re-registration period beginning in October 2023. An existing society must re-register by cut off for re-registration (**transition date**), or it will cease to exist. The new Act's transition date is the later of 1 December 2025, or two and a half years after clause 4 of Schedule 1 of the new Act comes into force. It is unclear when clause 4 will come into force at this stage. The Companies Office suggests that the transition date will be in April 2026.

Existing societies

Existing incorporated societies will remain subject to the rules in the 1908 Act until they re-register, then will be subject to the new Act from when they re-register. An incorporated society may choose to apply for re-registration at any time during the re-registration period. However, societies should not delay in preparing for re-registration. Most societies will need to update their constitution/rules before they can re-register and should develop a plan to meet these requirements before the transition date.

Incorporated societies currently registered under the Charitable Trusts Act 1957 can choose to re-register under the new Act or remain registered under the

Charitable Trusts Act 1957. After the re-registration period begins, unincorporated societies will no longer have the option of incorporating under the Charitable Trusts Act 1957 and will have to incorporate under the new Act.

New societies

A society or other group wishing to incorporate before the re-registration period begins will need to register under the 1908 Act and later re-register under the new Act. A group wishing to incorporate after the re-registration period has commenced will need to register under the new Act.

Key Changes

Existing societies will need to consider the following matters to ensure they meet re-registration requirements. These include:

- having a compliant constitution/rules;
- establishing a committee;
- developing and recording a dispute resolution process;
- complying with new financial reporting standards; and
- maintaining the minimum number of members required under the new Act.

These requirements are discussed in further detail below.

Constitution

A society's "rules" are referred to in the new Act as its "constitution". Those familiar with the language used in the 1908 Act will notice a shift in terminology, with the new Act using many updated terms, such as members, officer and committee.

The new Act sets out a number of details that must be included in a society's constitution:

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- the name and purpose of the society;
- the process for becoming a member and how membership ends;
- procedures for amending the society's constitution, noting the different requirements between ordinary amendments or minor or technical ones.
- information about committee members, the number of members on a committee, the functions and powers of the committee and the procedures for committee meetings (such as voting and quorum requirements);
- information about each 'officer' position in the society, including appointment process, terms of office and grounds for removal;
- processes for managing and controlling the society's finances;
- a provision nominating a not-for-profit entity to which the society's assets may be distributed on wind-up/liquidation;
- arrangements to keep the society's register of members updated;
- appointment and replacement of the society's contact person;
- a dispute resolution process; and
- a process for members to make complaints.

Societies re-registering under the new Act will need to review their constitutions to assess whether they comply with these matters or if their constitution needs to be updated before re-registering.

Committee

Societies will be required to have a committee as its formal governing body. The committee must comprise at least three members. Those who serve on the committee must give consent to do so and this must be recorded. A person may be disqualified from being an

officer of the society under the new Act (for example if they are under 16 years of age, an undischarged bankrupt or convicted of a dishonesty offence).

Dispute Resolution

The 1908 Act was silent on how a society's internal disputes should be dealt with. The dispute resolution process in a society's constitution must address both disputes between the members of the society and those between a member and the society itself.

The constitution must also set out a formal process for filing complaints in relation to any dispute and the process for dealing with complaints.

A society can determine its own dispute resolution process if the process follows the rules of natural justice. Schedule 2 of the new Act sets out a dispute resolution procedure that, if referred to in a society's constitution, will meet the natural justice requirements. Societies may wish to review the process in this Schedule to inform its own procedures.

It is a mandatory for a society's constitution to have an explicit dispute resolution procedure to re-register under the new Act. The Schedule 2 dispute resolution process will not apply by default if a society's constitution has no dispute resolution provisions.

Financial Reporting

Societies must keep formal accounting records, file annual returns and prepare and file financial statements that comply with generally accepted accounting practices (also known as GAAP). The applicable accounting standards will depend on the size of the society.

A small society has the option of complying with minimum requirements under the new Act as an alternative to GAAP. A society is a 'small' society if in the previous two years it has total operating payments under \$50,000, total assets under \$50,000 and is not a "donee organisation" for tax purposes.

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A 'large' society, as defined in section 45 of the Financial Reporting Act 2013, must have its financial statements audited.

If an incorporated society is a registered charity, it may opt to solely submit annual returns and financial statements to Charities Services, and not under the new Act.

Societies may wish to consult with accounting advisors to determine how they will comply with relevant financial reporting obligations under the new Act.

Minimum Membership

The minimum number of members for societies decreases from 15 to 10 under the new Act. This is a continuous minimum requirement which applies even after a society is incorporated. If the membership of a society ever falls below 10, the Registrar may issue a notice to the society requesting it to comply. A body corporate member (e.g. a company or another incorporated society) will continue to count as three ordinary members for the purposes of meeting the minimum number of members.

Additional changes

The new Act has made several other changes that societies should take note of.

Amalgamation Regime

There is now a process by which two or more societies may amalgamate. This allows for easier integration of members, transfer of assets and maintenance of existing contractual commitments. The process for keeping one of the society's names for the new society, or re-naming the society is also simplified.

Availability of Information

A procedure by which members can request information from officers is set out in the new Act. Officers must

provide the information unless certain grounds for refusal apply.

Conflicts of Interest

The 1908 Act was silent on conflicts of interest. The new Act states that any member's interests must be disclosed, recorded and appropriately managed in the society's interests register (previously societies were not required to maintain an interests register under the 1908 Act).

A member or officer who is 'interested' (i.e. conflicted) in a matter cannot vote or sign documents in relation to the conflict, without permission from the society's committee. However an interested member can participate in any discussion about the matter and can be present when the committee makes its decision.

Enforcement

The new Act contains enforcement provisions which clearly state who may apply for Court orders and what sort of orders can be made in relation to a society and its affairs.

These provisions set include penalties that may be imposed where an officer has breached their duties to the society (see further discussion regarding officer's duties below).

Offences

The new Act provides several new criminal offences relating to dishonest and fraudulent behaviour in relation to an incorporated society. The liability for the most serious of these offences include imprisonment of up to 5 years and/or a fine of up to \$200,000. These offences include:

- knowingly making false or misleading statements in relation a society;
- fraudulently taking and applying a society's property for personal use or benefit;
- destroying or concealing property belonging to a

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society;

- falsifying or destroying any register, record or document required by the new Act or a society's constitution;
- dishonestly using the position of officer for financial gain;
- knowingly operating the society fraudulently or dishonestly incurring a debt; and
- dishonestly operating under a name ending in "Incorporated", "Inc" or "Manatōpū".

The new Act also includes infringement offences which, if breached, may require the society or officer to pay a regulated fee or a fine of up to \$3,000 imposed by the Court.

Consent

A person must consent to becoming a member of a society. Societies should develop clear processes to request and record a member's consent, the date on which they became a member and their contact details. Not having a record of a member's consent will prevent a society enforcing its constitution against a person claiming never to have consented to be a member

This is critical for when a society seeks to use dispute resolution or disciplinary processes against the member under its constitution.

Officers' Duties

The new Act codifies the duties imposed on a society's officers and place a more substantial burden on those governing societies. An officer is defined in the new Act as a member of the committee or someone occupying a position that allows that person to exercise significant influence over the management or administration of a society, such as a treasurer or chief executive.

The officers' duties are:

- the duty to act in good faith and the best interests

of the society;

- the duty to use powers for a proper purpose;
- the duty to comply with the new Act and the society's constitution;
- the duty to exercise the care and diligence that a reasonable person would in the circumstances;
- the duty not to carry out the activities of society in a way that creates substantial risk of serious loss to the society's creditors; and
- the duty not to incur an obligation if the officer believes the society will not be able to meet the obligation.

Officer's duties are owed to the society and members may apply to the Court to enforce these duties. Officers are entitled to rely on information and advice from management and advisors, providing they are acting in good faith and making proper inquiries.

Societies may wish to consider obtaining directors' and officers' insurance as officers are personally liable for any breach of these duties. A society may indemnify its officers for criminal liability and/or third-party liability arising from a failure to act in good faith, and any costs associated with these liabilities. A society cannot indemnify an officer for the officer's liability to the society.

If a society wishes to obtain insurance for other types of liability regarding third parties, this must be explicitly authorised in its constitution.

Want to know more?

If you have any questions about how the Incorporated Societies Act 2022, how it may affect your incorporated society or need assistance drafting a compliant constitution, please contact our specialist [Sarah Simmers](#).