

Incorporated Societies Act 2022



This summary was prepared in mid-2022.

The Act will come into force in October 2023, and to function as intended it must be supplemented by regulations. Submissions on these regulations are currently being reviewed. Updates will happen from time to time, and these will be reflected in the name of the document, but you can keep apprised of any updates through the Incorporated Society Website.

As well, there are a range of [Resources](#) referenced at the end of the document.

The proposal is that re-registration to meet the new requirements of the Act 2022 will not be required until the end of 2025, (at the earliest) but discussions should be happening in Clubs around what changes might be needed to develop policies and procedures in order to comply. (This should also be happening to the management of data in relation to Privacy Act 2020.)

The Incorporated Societies website has a really comprehensive online tool for developing a Constitution, <https://isb.companiesoffice.govt.nz/constitutionbuilder/startscreen/> which guides you through Mandatory, Recommended and Optional requirements of a constitution, and the thinking behind each step of the build.

Please note the following paragraph, taken from this website.

“This tool is able to produce a draft document that contains most of the content required in a constitution; however, it should not be considered a substitute for expert legal advice. You should consult a professional before finalising your constitution.”

Background

The new Incorporated Societies Act 2022 (the 2022 Act) was signed into law on 5 April 2022. The 2022 Act replaces the Incorporated Societies Act 1908 which had been in force for over 114 years and was considered outdated for modern-day governance requirements.

There are over 24,000 incorporated societies in New Zealand. They promote a broad range of community activities including sport, recreation, culture, education, health, social services, philanthropy, emergency relief, environmental protection, animal protection and religion. Many are charities and will have already updated some of their legal and governance arrangements when the Charities Act 2005 came into effect. The 2022 Act is intended to make incorporated societies more robust, assist with self-governance and provide constructive options when disputes arise.

The following principles underpin the Act 2022:

- societies are organisations with members who have the primary responsibility for holding the society to account
- societies should operate in a manner that promotes the trust and confidence of their members
- societies are private bodies that should be self-governing and free from inappropriate government interference
- societies should not distribute profits or financial benefits to their members.

What are the changes?

They can be summarized into eight headings, and some reference links are provided at the end of this document that will provide further information.

1. [Committees, and identification of Officer Duties](#)
2. [Audited financial statements](#)
3. [Management of members](#)
4. [Specified procedure around dispute resolution](#)
5. [A regime for dealing with amalgamation of entities](#)
6. [Clarity around enforcement options, and criminal and infringement offences](#)
7. [Re-registration with the Registrar of Incorporated Societies by 1 December 2025](#)

Now is a timely opportunity for incorporated societies to review their existing rules/[constitutions](#) to ensure they will be compliant with the requirements of the 2022 Act and, if not, to take steps to make the necessary modifications. In addition, consideration should be given to whether officers of incorporated societies meet the officer criteria set out in the 2022 Act.

The following is a summary of how societies are affected by the Bill and what they need to consider transitioning to the new regime. For some, compliance change will be minimal, and for others it could be quite comprehensive. Our strong recommendation would be to seek legal advice to ensure compliance, and completeness.

Committee Management and Officer Duties

Governing Body

- Every society will need to have a governing body comprising at least 3 officers who are members of the society and are qualified to be appointed as an officer. (There is currently no requirement for societies to have a governing body, only officers.)
- The operation and affairs of the society must be managed by, or under the direction or supervision of, its committee.
- Committees have specific obligations under the Bill such as keeping an interests register and accounting records.

Officers:

- Officers are defined as natural persons who are members of the committee or persons occupying a position that allows them to exercise significant influence over the management and administration of the society (such as a treasurer or a chief executive) or anyone else declared by regulations to be officers.

- Various people are disqualified from being officers, such as undischarged bankrupts and those convicted of dishonesty offences within the last seven years. The list of disqualifications is extensive and similar to legislation governing other legal entities.
- Officers may be personally liable for the loss or damage suffered by the society because of a breach of duty. The Bill covers insurance and indemnities for officers.

Officer duties:

- These are based on the directors' duties in the Companies Act 1993.
- Officer duties are owed to the society and not members.
- The act codifies officer duties by prescribing that all officers must:
 - act in good faith and in what the officer believes to be in the best interests of the incorporated society
 - exercise their powers for proper purposes
 - exercise the care and diligence that a reasonable person with the same responsibilities would in the same circumstances
 - not agree to, cause or allow for, the activities of the incorporated society to be carried on in a manner that is likely to create a substantial risk of serious loss to creditors
 - not agree to the incorporated society incurring an obligation unless the officer believes on reasonable grounds that the incorporated society will be able to perform the obligation when required to do so
 - to comply with the new Act and the society's constitution
- Officers are able to rely on information and advice from management and advisors with some provisos (eg they act in good faith and make proper inquiry).
- Officers have a further duty to disclose financial conflicts of interest and any matter a member may be interested in as specified in the constitution (ie non-financial matters). Guidance on when a person is "interested" and "not interested" is provided.
 - The consequences of being interested in a matter are set out. These include the prohibition of "interested" persons voting on the relevant matter or signing any document relating to the entry into a transaction or the initiation of the matter. However, they may take part in discussions relating to the matter and be present at the time of the decision of the committee (unless the committee decides otherwise).
 - In addition to keeping and maintaining an interests register, committees must also notify members of an officer's failure to comply with the duty to disclose conflicts and/or the consequences of being interested (eg where a conflicted officer voted on a relevant matter).

Audited Financial Statements

- Societies must keep accounting records and also prepare and file financial statements in accordance with generally accepted accounting practice. "
- Incorporated societies that are registered charities can submit annual returns and financial statements solely to Charities Services (under the Charities Act 2005).
- Small" societies have several options available to them, with the Bill setting out basic minimum requirements for them to meet. Societies are "small" if, for the previous two years, they have total operating payments under \$50,000 and total assets under \$50,000 and where they are not a "donee organisation" for tax purposes.

- Every society that is “large” (within the meaning of section 45 of the Financial Reporting Act 2013) must ensure that their financial statements are audited.
- Annual returns must also be filed.

Management of Members

Minimum number

- The minimum number of members required to start a society will change from 15 to 10. Corporate members will continue to count as three members. The new minimum of 10 members will apply at the time of incorporation, as well as after incorporation and if the minimum drops below 10 the Registrar of Incorporated Societies may give notice to a society to increase its membership

Consent

- Every person will need to consent to become a member of a society. In practice for some societies such as sports clubs and union membership bases, consent is not always clear. Issues are likely to arise where societies seek to enforce the terms of a constitution (including dispute resolution and discipline provisions) against a member where it is not clear whether the member has consented. Societies will need to review their membership application processes

Access to information

- A society must ensure there is a mechanism for members to obtain information from officers to allow for improved accountability of officers
- Societies can withhold information in some circumstances (eg where it is necessary to protect someone’s privacy, the information is commercially sensitive or the request is frivolous or vexatious).

Dispute Resolution

- Societies will need to have procedures for resolving disputes and other grievances between members (in their capacity as members) and between members and the society, set out in their constitutions.
- The procedures must be consistent with the rules of natural justice. While societies will be free to develop their own procedures, the new legislation will provide that if the procedures are consistent with Schedule 2 of the Bill, the procedures are presumed to be consistent with the rules of natural justice.
- Societies do not have to progress a grievance or a complaint in some circumstances (eg where the matter is trivial, it appears to be without foundation or the complainant has an insignificant interest in the matter).

Amalgamation Regime

- The new legislation will provide for an amalgamation regime that is a simplified version of the amalgamation process in the Companies Act 1993. This should empower societies to join together without having to be concerned with how members will transition, how assets will transfer and how to deal with ongoing contractual commitments.

Enforcement and Infringement Changes

Enforcement:

- New civil law enforcement provisions will be introduced that will clearly state who may apply for Court orders and the type of orders a Court can make. These provide useful guidance for a society or its members when they consider there has been a breach of a constitution or officer duties.

Offences:

- The new legislation will introduce seven criminal offences, including dishonestly using a position of officer for gain, make false or misleading statements, fraudulently taking, applying, or destroying or concealing society property, destroying or altering a register, record or document, knowingly operating the society fraudulently or dishonestly, and dishonestly operating under name ending in “Incorporated”, “Inc” or “Manatōpū” when that person or persons are not an incorporated body. The new legislation will also include a list of infringement offences for less serious matters. Some of these offences attract a fine or up to \$200,000 and a term of imprisonment of up to 5 years.

Infringements:

- Societies have specific duties including notifying the Registrar of various administrative matters. Infringement offences and fines can be imposed on societies that fail to comply with various provisions in the Bill (eg failing to maintain a register of members or not registering financial statements).

Reregistration

- When the 2022 Act comes into force, all existing incorporated societies will be required to re-register with the Registrar of Incorporated Societies by the later of 1 December 2025 and the date that is two years and six months after the commencement of certain transitional provisions contained in the 2022 Act. An application for re-registration must be accompanied by a copy of the incorporated society's constitution, such constitution to be compliant with the requirements set out in the 2022 Act.
- If a society fails to reregister, it will cease to exist. This is going to require most societies to amend their constitution to comply with the new legislation prior to the date they reregister.
- The following are additional provisions that constitutions will need to include:
 - Provisions for the appointment of a contact person who the Registrar of Incorporated Societies can contact when necessary. They must be at least 18 years of age and ordinarily resident in New Zealand. There are no extra duties or offence provisions that are specific to this position/office.
 - Additional information relating to officers, including appointment processes, officer terms and grounds for removal.
 - Additional information relating to committee members including the number of members on a committee, functions and powers of the committee and the quorum and procedure for committee meetings.
 - A dispute settlement procedure.
 - How amendments to the constitution can be made, noting that there are different requirements for ordinary and minor or technical amendments.

Constitutions

- Societies will need to ensure their constitutions are compliant with the Bill. Constitutions must contain specific content (eg the composition, roles, powers, functions and

procedures of the committee (governing body)), which is significantly more than what is currently required under the 1908 Act

- Constitutions can contain other matters that are not inconsistent with the Bill, including providing for how the society can make bylaws and for the society to express its culture or tikanga.
- Societies will have to nominate a not-for-profit entity or a class or description of not-for-profit entities to which any surplus assets of the society should be distributed on liquidation or removal from the register. This differs from the 1908 Act where assets can be distributed to members when a society is wound up.
- The Ministry of Business, Innovation and Employment, through the Incorporated Societies website, has a “[constitution builder](#)” for drafting or revising society rules and it is expected that this will be updated in light of the Bill. Due to the significant changes introduced by the 2022 Act, we highly recommend that all incorporated societies review their existing rules/constitutions to ensure they will be compliant with the requirements of the 2022 Act and, if not, to take steps to make the necessary modifications.

For further information

- <https://is-register.companiesoffice.govt.nz/help-centre/starting-an-incorporated-society/constitution-builder-tool/>
- <https://www.iod.org.nz/resources-and-insights/policy-and-legal/policy-and-bills/what-leaders-of-incorporated-societies-need-to-know-about-the-new-bill/#>
- https://www.bdo.nz/en-nz/accounting-alert-april-2022/incorporated-societies-act-2022-gains-royal-assent?gclid=Cj0KCQjw1N2TBhCOARIsAGVHQc7Z9r8NOQ7Uf5aj9ISFshEyEuC_ZuWPxpsl9NeZFI5x641r2GPzayoaAhugEALw_wcB
- <https://www.buddlefindlay.com/insights/the-incorporated-societies-act-2022-a-long-time-coming/>
- <https://www.al.nz/key-changes-to-note-in-the-new-incorporated-societies-act-2022/>