

The Incorporated Societies Act 2022: What changes result?

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TE HUNGA HAUĀ MAURI MŌ NGĀ TĀNGATA KATOA



Purpose

Part 1 Preliminary provisions

3 Purposes

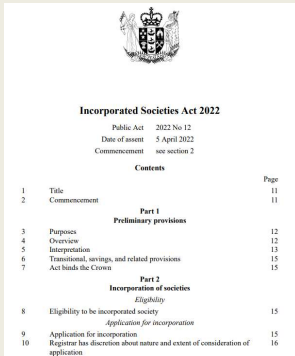
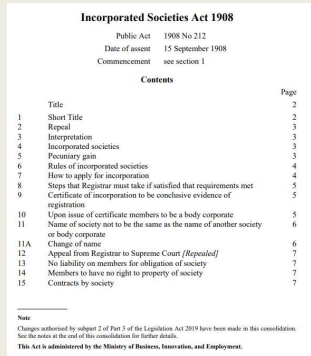
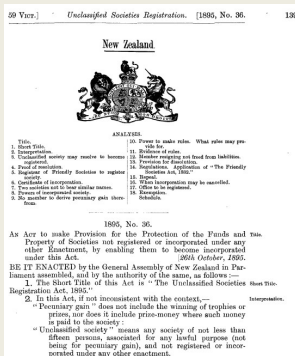
The purposes of this Act are to—

- (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.

Purpose of the new Act

Background

- Unclassified Societies Registration Act 1895 (18 sections)
- Incorporated Societies Act 1908 (41 sections)
- Incorporated Societies Act 2022 (270 sections!)



1895 statute – first NZ statute providing for incorporated societies.

23 years later the 1908 was introduced. 1908 Act was barely changed over the next 114 years.

The 2022 Act received royal assent on 5 April. Many of the 2022 Act's sections are modelled on the Companies Act. The new Act reflects good governance of incorporated societies, introduces protections for when things go south and codifies some of the common law in relation to societies.

The 2022 Act comes into force in stages up until the transition date.

<https://www.legislation.govt.nz/act/public/2022/0012/latest/LMS100809.html>

What does it mean for existing societies?

Change is coming! All 24,000 societies must re-register by the transition date, which is 2.5 years after clause 4 of schedule 1 comes into force. The re-reregistration period should be October 2023 – April 2026.



Once clause 4 is in force, applications for the incorporation of a society may no longer be made under the 1908 Act.

While societies cannot yet register under the 2022 Act, we recommend they start talking about the changes they will need to make now.

If a society fails to re-register by the transition date, it will cease to exist. However, the Registrar (or the court in prescribed circumstances) has the power to restore an existing society to the register. Note that this cannot be done if six years have passed since the society ceased to exist.

Companies Office guidance suggests the reregistration period will be October 2023 – April 2026.

<https://www.parryfield.com/the-new-incorporated-societies-act-2022-reregistering-your-society/>

<https://www.parryfield.com/the-new-incorporated-societies-act-2022-when-will-the-new-act-affect-my-society/>

Top 10 changes to consider

1. New rules required
2. Committee required
3. Officers' duties
4. Changes to membership
5. Conflict of interest procedures
6. Dispute resolution procedures
7. Financial reporting
8. Amalgamation
9. Enforcement
10. Offences

<https://www.parryfield.com/the-new-incorporated-societies-act-2021-what-it-means-for-your-incorporated-society/>

1. New rules required

All societies will need to update their rules to meet the requirements under the new Act, with new requirements being introduced by section 26 for membership, governance, general meetings, amendment procedures, dispute resolution procedures, name, purposes and winding up. Some societies will already have some of this information, or may be doing it in practice.

We have published a series of six articles on this topic

<https://www.parryfield.com/resources-for-the-incorporated-societies-act-2022/>

2. Committee required

The 1908 Act did not require a society to have a committee, only officers. Now under section 45 of the new Act a society must have a committee which comprises of 3 or more qualified officers.

Section 47 of the new Act sets out the definition of an officer, which includes the officer must be a natural person, have consented to being an officer, and have certified they are not disqualified under the new Act. There are a long list of disqualifications under the new Act, but they are largely similar to that in legislation regulating other entities.

<https://www.parryfield.com/the-new-incorporated-societies-act-2022-and-your->

constitution-what-has-changed-for-governance/

3. Officers' duties

The new Act codifies existing common law officers' duties in sections 54-61. These are duties owed to the society. These include:

- duty to act in good faith and in the society's best interests;
- duty to exercise powers for a proper purpose;
- duty to comply with the new Act and the society's constitution;
- duty of care;
- duty not to create substantial risk of serious loss to creditors; and
- duty not to agree to the society incurring obligations that it cannot perform.

These last two were subject to some criticism in the final reading of the Bill, with some MPs arguing that they are more appropriate for commercial contexts where directors are well compensated. However, they have now been adopted here.

As a result of these new officers' duties and the wide definition of officer in the new Act, we suggest that incorporated societies have director and officer insurance.

4. Changes to membership

Under the old Act, 15 members were needed to register as a society. This has changed to 10 members under section 74 the 2022 Act. A body corporate is still treated as being 3 members for the purpose of determining the number of members under section 14.

There is also a continuous minimum membership requirement under the new Act of 10 members. This will be something for smaller societies to keep an eye on.

Under section 75 of the new Act, if a society has fewer than 10 members the Registrar may intervene and give the society six months to increase its membership. If the society fails to increase its membership, the Registrar may apply to the High Court to put the society into liquidation or remove the society from the register.

The new Act also introduces a requirement for members to consent to being a member and for the society to keep a register of members with details such as the name of the member, last known contact details and the date they became a member.

<https://www.parryfield.com/the-new-incorporated-societies-act-2022-and-your-constitution-what-has-changed-for-membership/>

5. Conflict of interest procedures

Sections 62-73 of the new Act introduces a conflict of interest procedure requiring officers to disclose when they are interested in a matter.

If an officer is interested in a matter, they cannot vote or take part in a committee decision, or sign any document relating to that matter.

If more than half of the committee are interested in a matter and therefore cannot vote,

the committee will need to call a special general meeting to determine that matter.

Some of the procedures can be negated or limited in the society's constitution – we have written a detailed article on the procedures which we will put in the chat.

<https://www.parryfield.com/the-new-incorporated-societies-act-2022-and-conflicts-of-interest-what-needs-to-be-disclosed/>

6. Dispute resolution procedures

The new Act requires a society's constitution to include dispute resolution procedures, including provision for how complaints can be made. If a society's constitution does not include disputes resolution procedures, the constitution will be treated as including those procedures set out in the Act.

Schedule 2 of the Act sets out disputes resolution procedures that a society may choose to adopt or amend. Among other matters, the procedures set out who a complaint is made to, provides for the respondent's right to be heard, and sets out that the dispute must be investigated and determined as soon as reasonably practicable after the complaint is made under the constitution.

The society can develop its own procedures, so long as these are consistent with natural justice.

<https://www.parryfield.com/the-new-incorporated-societies-act-2022-and-your-constitution-dispute-resolution-procedures/>

7. Financial reporting

Part 3, subpart 7 of the new Act introduces new accounting standards. The incorporated society will need to prepare their financial statements according to the standard that suits the size of their society.

The Act is explicit as to the standard for small societies (less than \$50,000). A small society may prepare their financial statement according to generally accepted accounting practice, a non-GAAP standard that applies for the purposes of section 102, or the requirements set out in section 104.

Societies that are not small will need to use the XRB NFP Standards from the balance date after which the Society re-registers under the new Act.

Within six months of the balance date (which is the date specified in the constitution, adopted by the committee or 31 March), the society must:

- complete the society's financial statements for that balance date;
- date and sign those financial statements by or on behalf of the society by 2 members of the committee; and
- give copies of those financial statements to the Registrar for registration.

8. Amalgamation

The Law Commission noted in its report that the old Act had limited restructuring options, including no provision for amalgamation.

In response to this, the new Act sets out a simplified version of the Companies Act 1993 amalgamation process in [part 5, subpart 2](#).

This should allow societies to join together, either into one of the societies or a new society.

9. Enforcement

[Part 4](#) of the new Act sets out civil law enforcement provisions that explicitly state the order a court may make and who may apply for a court order. This could help, for example, a member of a society to apply to the court where they believe the society's constitution has been breached.

10. Offences

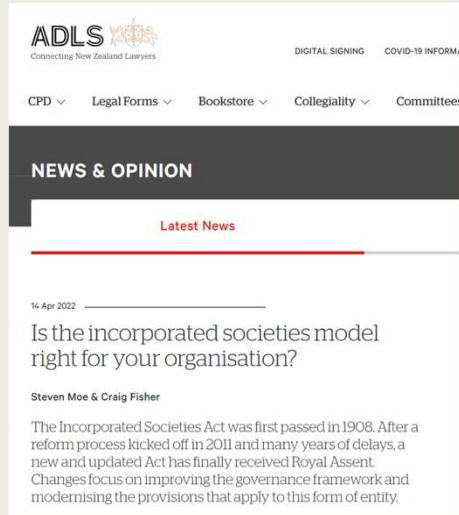
[Subpart 6 of part 4](#) of the new Act sets out criminal offences. Infringement offences are less serious and include matters such as failing to notify the Registrar of amendments to the constitution. A society that commits an infringement procedure may be liable to a fine not exceeding \$3,000.

The new Act also sets out several serious offences, such as: making false statements; fraudulent use or destruction of property; falsification of register, records, or documents; operating fraudulently or dishonestly incurring debt; improperly using "Incorporated", "Inc", or Manatōpū. These provisions supplement the dishonesty provisions in the Crimes Act 1961 and some of the offences could result in a fine of up to \$200,000 and/or a term of imprisonment of up to 5 years.

Is it still the best structure?

Other options to consider:

- Charitable Trust
- Charitable Company



https://adls.org.nz/Story?Action=View&Story_id=516

Resources

The screenshot shows a web browser window with the URL <https://www.parryfield.com/home/blogs/resources-for-the-incorporated-societies-act-2022/>. The page features a red navigation bar with the Parry Field Lawyers logo and a menu including Home, Our People, Services, Resources, Careers, Terms of Engagement, About, and Contact. The main content area has a dark blue header with the text "Incorporated Societies Act 2022: Information Hub". Below this, the text reads: "Kia ora, We've created this Information Hub because all 24,000 Incorporated Societies are going to need to take action under the new Incorporated Societies Act 2022. Here you will find articles, guides, videos, FAQs, links to upcoming free seminars and more so you can be empowered to take the right next steps. Check out our other resources too, like the free Charities Legal Handbook and monthly Impact Calls. We welcome your questions and there is an FAQ with dozens of questions and answers below." To the right of this text is a small portrait of Steven Moe. Below the text, it says "Ngā mihi nui" followed by contact information for Steven Moe: Partner, Member of Charities Services Sector Group, XBB Advisory Panel, EHF Fellow, stevenmoe@parryfield.com, and phone number 021 761 292.

<https://www.parryfield.com/resources-for-the-incorporated-societies-act-2022/>

Questions?

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