

## Incorporated Societies Act 2022: What you need to know

New Zealand has an estimated 24,000 incorporated societies, previously governed by the Incorporated Societies Act 1908. The new Incorporated Societies Act 2022 creates a modern framework for the governance and accountability of incorporated societies.

### The key things to note in the new framework are:

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#### 1. Capacity & powers

Once incorporated, a society will be a body corporate with full capacity and powers, subject to its constitution. If an incorporated society acts outside its capacity or power, the act is no longer automatically invalid but may be vulnerable to enforcement action under the Act.

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#### 2. Membership

The minimum membership requirement has decreased from 15 members to 10 and all members must consent to being a member. If membership falls below 10, the Registrar of Incorporated Societies may intervene and give the society six months to increase membership. A body corporate that joins a society is treated as equal to three members for the purpose of membership numbers.

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#### 3. Financial gain

A society must not be carried on for the financial gain of its members (previously pecuniary gain). If this occurs with an officer's authority, permission, or consent, that officer can be liable for a fine up to \$50,000.

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#### 4. Constitution

Societies must have a constitution which complies with the 2022 Act ("rules" under the 1908 Act). The constitution must include information on the details of the society and how it will operate. The constitution can include bylaws, tikanga, kawa, culture, and practices. It will bind the society, members, and officers in the same way a company is bound by its constitution. The constitution can be amended at general meetings or by resolutions in lieu of meetings.

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#### 5. Committee, officers & contact person

Societies must be governed by a committee to manage the affairs and operation of the society. The committee needs a minimum of three officers who meet the eligibility requirements. The officers can be elected or appointed to the role. Former officers remain liable for acts, omissions, and decisions made while that person was an officer.

Societies must have between one and three contact persons. A contact person must be over 18 and ordinarily live in New Zealand.

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## 6. Officers' duties

Officers' duties are now similar to directors' duties under the Companies Act 1993. These duties are owed to the society and include:

- Acting in good faith and the best interests of the society.
- Exercising their powers for a proper purpose.
- Complying with the Act and the constitution.
- Acting with due care and diligence a reasonable officer when exercising powers and carrying out duties.
- Not engaging in activities that will, or are likely to, create a substantial loss to creditors.
- Not undertaking obligations without believing on reasonable grounds that the society can perform them.
- Disclosing conflicts of interest to the committee and recording them in an interests register.

Officers can rely on information and advice that they receive when they exercise their powers and carry out their duties, provided that they are acting in good faith, make proper inquiry, and they have no knowledge that it is unwarranted to rely on the information and advice.

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## 7. Annual general meetings

Societies must have an annual general meeting every year, called in accordance with the constitution. At the meeting, the committee must present an annual report on the operations and affairs of the society and its financial statements.

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## 8. Accounting records

All societies must now keep accounting records. Most societies will need to use generally accepted accounting practice (GAAP) to prepare their reports, but small societies may be eligible to use less exacting requirements if they have both income and assets less than \$50,000 per year. Larger societies may need to have their records audited.

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## 9. Dispute resolution

The constitution must include procedures for making complaints and resolving any disputes involving members, officers, or the society itself. A society can choose to adopt the procedures in the Act or create their own. All dispute procedure must comply with the principles of natural justice, meaning the process should be fair and free from any bias. If a society adopts all the dispute resolution procedures in the Act, they will be treated as consistent with natural justice.

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## 10. Amalgamation

The Act sets out a process for amalgamating two or more societies, similar to the process for amalgamating companies in the Companies Act. Each committee must send to all members and creditors an amalgamation proposal stating the terms of the amalgamation and proposed constitution, together with any information required by the regulations. Each committee must resolve that amalgamation is in the society's best interests and the amalgamated society must fulfil the solvency test on amalgamation.

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## 11. Offences

It is now an offence to make false statements, fraudulently use or destroy society property, falsify registers, records, or documents, operate fraudulently, dishonestly incur debt, and use the terms "Incorporated", "Inc", or "Manatōpū" to describe an unincorporated body. Penalties for offences differ, with the maximum being a term of imprisonment not exceeding five years and/or a fine not exceeding \$200,000. There are also fines up to \$3,000 if a society fails to comply with the Act.

## What do existing incorporated societies need to do?

Existing societies will need to re-register under the new Act by applying to the Registrar of Incorporated Societies. Existing incorporated societies should consider:

- Whether the society meets the requirements to re-register under this new Act.
- Whether the society has a constitution that complies with the new requirements.
- Whether all members have consented to being a member of the society.
- Whether officers are aware of their duties and obligations.
- Whether they have procedures for resolving disputes. Societies can use the dispute resolution provisions in the new Act or use their own, provided that they comply with the principles of natural justice.
- Whether the society needs to change how it maintains financial records.

## What happens next?

The Act will come into force once the Government issues an Order in Council. Existing incorporated societies will have until the later of 1 December 2025 or two and a half years following the commencement of the new Act to re-register. Any existing society that does not reregister in time will cease to exist after that date.

Do you have any questions? Get in touch with one of our experts below.



**Peter Fanning**

Partner

+64 7 838 6051  
+64 21 461 007

[Email Peter](#)



**Peter Duncan**

Partner

+64 7 838 6029  
+64 21 987 333

[Email Peter](#)



**Campbell Stewart**

Partner

+64 7 838 6024  
+64 27 340 2046

[Email Campbell](#)



**Robert Bycroft**

Special Counsel

+64 9 309 1025  
+64 27 431 4479

[Email Robert](#)



**Cheri-Lee Atkinson**

Associate

+64 7 245 1612  
+64 27 694 4422

[Email Cheri-Lee](#)