
INCORPORATED
SOCIETIES:
NAVIGATING
REREGISTRATION

PARRY FIELD LAWYERS

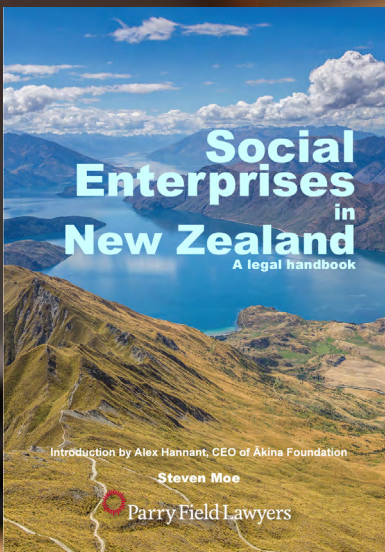


ParryField
Lawyers



To the heart of what matters.

Other free guides at www.parryfield.com include:



[CLICK TO DOWNLOAD](#)



[CLICK TO DOWNLOAD](#)



[CLICK TO DOWNLOAD](#)



[CLICK TO DOWNLOAD](#)

ParryField
Lawyers



GUIDE TO INCORPORATED SOCIETIES ACT 2022

TABLE OF CONTENTS

INTRODUCTION	1
PART 1 The Main Changes	
Brief history	2
Membership	2
Governance	3
Financial Reporting	4
Meetings	4
Constitutional Amendments	5
Conflicts of Interest	5
Dispute Resolution Procedures	6
Enforcement and Criminal Offences	6
Name, Purposes and Winding Up	7
PART 2 What You Should Do	
Re-registration Process	9
What happens to your society after re-registering?	9
The Consequences of Inaction	10
Registering a New Society	10
PART 3 Governance: What You Need to Know	
What does the new act provide?	11
Do these duties apply now?	11
What else is relevant?	11
Next steps for governance upskilling	12
PART 4 Which Model is Right For You?	
Incorporated Society	13
Charitable Trust	13
Steven Moe and Craig Fisher discuss the pros and cons	14
PART 5 FAQ: Questions and Answers	
FAQ arising from our series of online discussions	17

REVISED AND UPDATED OCTOBER 2023

PARRY FIELD LAWYERS

Guide to INCORPORATED SOCIETIES ACT 2022



New Zealand has about 24,000 incorporated societies covering a broad range of activities and interests, from sporting clubs and hobbyists to community support organisations and they all need to reregister.

The legislation that defines the rights and responsibilities of those bodies and those who run them has recently undergone a long-overdue revision, resulting in the Incorporated Societies Act 2022 (the “new Act”) which received Royal Assent in April 2022.

As every one of those 24,000 Incorporated Societies will need to take some action to meet the new provisions we set out key things to know here and continue to constantly update our [Information Hub here](#).

At the least, all will need to adopt a new constitution to be eligible for re-registration. The changes may possibly be minor for some but will be more complex for others. For some, the new rules may be an opportunity to consider whether they continue as an incorporated society or whether a Charitable Trust structure, for example, would be more suitable.

Here you will find the information you need to empower you to proceed with confidence.

Parry Field Lawyers have a long history of supporting community organisations and we would be happy to discuss your situation with you, especially when it comes to amending your society's constitution to meet the new requirements. We have also recently released the “Charities Healthchecks” which you may find helpful. You can contact us any time by email or phone. With 80 staff and 4 offices we can also support with property, disputes and contracts.

We have had a few dozen online discussions on the new Act. Some very valuable questions and answers have come out of those sessions and these are included in an FAQ section at the back of this booklet.

NGĀ MIHI NUI
STEVEN MOE &
SOPHIE TREMEWAN

PART 1 THE MAIN CHANGES

How can we help?

We have reviewed many rules and can give guidance on what is needed to comply. We offer free calls to answer any questions you may have. Contact us on societies@parryfield.com to arrange.

Brief History

Incorporated societies are a membership based legal structure. The incorporated society itself is a legal entity separate from its members, which allows the society to continue beyond its initial membership and makes the society liable for debts, for example. An incorporated society cannot exist for the financial gain of its members – it must exist for some other purpose.

The first New Zealand statute that provided for incorporated societies was the Unclassified Societies Registration Act 1895. This Act was only 18 sections long and allowed societies to become incorporated.

Thirteen years later, Parliament introduced the Incorporated Societies Act 1908. Its 41 sections were barely changed over the next 114 years. In 2011 the Law Commission began its review of the old Act, focusing on modernising the old Act and giving more guidance to those running an incorporated society.

Membership

Membership is a key point of difference for incorporated societies compared to other legal forms. It is a source of strength, as a member-led organisation can draw on the enthusiasm of its member base.

Under **Section 74** of the new Act, a society must have at least 10 members to register as a society. This is a decrease from the 15 members required under the old Act (the Incorporated Societies Act 1908).

However, the old Act had no requirement for a continuous minimum membership; the new Act requires a minimum of 10 at all times, not just at registration. This will be something that societies need to keep an eye on – especially smaller ones.

A body corporate is still treated as being three members for the purpose of determining the number of members, as per **Section 14** of the new Act.

Under **Section 75**, if a society has fewer than 10 members the Registrar may intervene and give the society six months to increase its membership, failing which the Registrar may apply to the High Court to put the society into liquidation or remove it from the register.

The new Act does not require a society to include the membership minimum in its constitution, but it may wish to do so because of the consequences of falling below 10 members.

Member Details

Both the old Act and the new Act provide that a society's constitution must set out how a person becomes and ceases to be a member of the society.

Under **Section 76**, a society's constitution must contain a requirement that a person consents to being a member of the society. Where a member is a body corporate, consent may be given in writing by a person acting under the body corporate's express or implied authority.

Under **Section 79**, and section 13 of the Incorporated Societies Regulations 2023 (the "Regulations"), a society must keep a register of its members which contains the following details for each member:

- Name;
- Last known name;
- Last known contact details (which at least includes a phone number, along with a physical or email address);
- The date on which they became a member;
- The name of each person who has ceased to be a member of the society within the previous 7 years; and
- The date on which each person ceased to be a member.

The register must be updated as soon as practicable after the society becomes aware of the need for an update. The society's constitution must include its arrangements for keeping its register up to date.

Governance

COMMITTEE

The old Act only required a society to have officers. Under the new Act, a society must have a committee. The committee is responsible for managing the operation or affairs of the society and is defined in the Act as “the governing body of the society, however described (for example, a board)”.

The society's constitution must stipulate the number of members that must or may be on the committee, and **Section 45** of the new Act sets a minimum of three. A majority must be members of the society, or representatives of bodies corporate that are members of the society.

FUNCTIONS AND POWERS

The society's constitution must also include the functions and powers of the committee. These are set out in **Section 46** of the new Act, which explains that the committee's function is to manage or directly supervise the operation and affairs of a society. The committee must therefore have all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of the society.

OFFICERS

Under the new Act, a member of the committee of a society is an officer, but an officer may also be a natural person occupying a position that allows them to exercise significant influence over the management or administration of the society (such as a treasurer or chief executive). The society's constitution must include the requirements for the election and appointment of officers. **Section 47** of the new Act requires that the officer:

- is a natural person;
- has consented in writing to be an officer; and
- certifies they are not disqualified under Section 47(3) of the new Act.

There is a long list of disqualifications under section 47(3), but the list is largely similar to that in legislation regulating other legal entities. For example, it disqualifies those under 16 years of age or someone who is an undischarged bankrupt.

A society could include the qualifications of officers in its constitution alongside the procedure for their election or appointment, although the qualifications of officers could also be kept as a separate policy document.

REMOVAL OF OFFICERS

The new Act requires the society's constitution to include the grounds for an officer's removal from office. **Section 50** says that an officer may cease to be an officer if they are removed in accordance with the society's constitution, or if the officer:

- resigns;
- becomes disqualified from being an officer under Section 47(3);
- dies; or
- otherwise vacates office in accordance with the society's constitution.

FURTHER REQUIREMENTS

The new Act requires the constitution to also include the following information:

- the terms of office of the officers;
- how the chairperson (if any) will be elected or appointed and whether that person will have a casting vote if there is an equality of votes; and
- the quorum and procedure for committee meetings, including voting procedures.

The intention behind all of these new requirements is to improve governance for incorporated societies by setting out how they need to act.

OFFICERS' DUTIES

The new Act codifies some existing common law officers' duties. These duties are owed to the society, not its members, and are set out in **Sections 54-61** of the new Act.

In short, 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.

CONTACT PERSON

Section 113 of the new Act introduces a new requirement for a society to have at least one (or up to three) contact persons at all times, available for the Registrar to contact if and when needed. Contact persons must be at least 18 years old and ordinarily resident in New Zealand (in accordance with **Section 114** of the new Act).

How the contact person or persons will be elected or appointed must be set out in the society's constitution.

For more on governance why not listen to **Board Matters**, the podcast that Steven Moe hosts for the Institute of Directors on governance.

Financial Reporting

Part 3, Subpart 7 of the new Act sets out new accounting standards. Societies will need to prepare their financial statements in accordance with the standard that suits their size. For example, 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.

Under section 105 of the new Act, larger societies will need to have their financial statements audited.

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.

Meetings

The new Act expands on the old Act in setting out several requirements for general meetings in **Sections 84 to 93**. Meetings are important for an incorporated society – they are one of the key differences from other entities, so it makes sense that there are rules about them which had been lacking before.

TIMING OF ANNUAL GENERAL MEETINGS

The intervals between annual general meetings ("AGMs") must be set out in the society's constitution. Under **Section 84**, a society must call an AGM no later than 6 months after the society's balance date and no later than 15 months after the previous AGM. An exception may apply for the first AGM of a newly incorporated society, but this would not apply to an existing society re-registering under the new Act.

PROCEDURE AT AGMS

Unlike the old Act, the new Act is prescriptive and requires the constitution to provide for the information that must be presented at general meetings. As set out in **Section 86**, the required information is:

- an annual report on the operations and affairs of the society during the most recently completed accounting period;
- the society's financial statements for that period; notice by officers of conflict of interest disclosures under **Section 63**; and
- under **Section 84** of the new Act, minutes must be kept.

RESOLUTIONS IN LIEU

Under the new Act, a society's constitution should include whether and how resolutions may be passed in lieu of a general meeting. If allowed under the constitution, **Sections 89 to 92** of the new Act will apply.

NOTIFICATION AND QUORUM

A society's constitution must provide for the manner and timing of calling general meetings, including notices of motion. It must also provide for a quorum and set out voting procedure for general meetings, including rules for proxies, and whether the quorum takes into account members voting by proxy, postal, or electronic means (if allowed).

Amendment Procedures

Section 30 of the new Act says a society may amend its constitution, in a manner provided by the constitution.

Every amendment must be in writing, approved at a general meeting by a resolution passed by the relevant majority (or by resolution passed in lieu of a meeting in accordance with section 89), and otherwise made in accordance with the society's constitution.

A 'relevant majority' means either a simple majority of the valid votes cast, or a higher majority if that is required by the constitution.

MINOR AMENDMENTS

Section 31 of the new Act sets out the procedure for minor amendments, such as amendments that have no more than a minor effect, correct errors or make similar technical alterations.

The committee must ensure written notice of the amendment is sent to every member in accordance with the society's constitution. It must include the text of the amendment and the member's right to object to it. If the committee does not receive an objection within 20 working days (or a longer period if specified in the constitution), the committee may make the amendment.

If an objection is received, then the committee may not make the amendment. This section 31 procedure must be set out in the society's constitution.

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.

Conflicts of Interest

The new Act requires an officer to disclose when they are interested in "a matter". A matter is defined in section 62(4) of the new Act as meaning a society's performance of its activities or exercise of its powers, or a transaction made or entered into, or proposed to be entered into, by the society.

Under **Section 62** of the new Act, an officer is interested in a matter if they or one of their relatives may obtain financial benefit from it, or has a financial interest in a person to whom the matter relates, or if they are interested in the matter because the society's constitution says so.

However, an officer is not interested in a matter:

- simply because they receive indemnity, insurance cover, remuneration, or other benefits authorised under the new Act; or
- if the officer's interest is the same or substantially the same as the benefit or interest of all or most other members of the society due to their membership; or
- if the officer's interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the officer in carrying out their responsibilities under the Act or the society's constitution; or
- the officer's interest is of a kind that is specified in the society's constitution for the purposes of section 62(2)(d).

The starting point then is to work out if there is a conflict using those criteria. Not everything is a conflict.

DUTY OF DISCLOSURE

Under **Section 63** of the new Act, as soon as practicable after an officer becomes aware of their interest in a matter, the officer must disclose the details of the nature and extent of the interest (including monetary value if possible) to the committee, and record it on the interests register.

That register must contain all disclosures made under section 63. It is kept and maintained by the committee, and may be inspected by an officer at any reasonable time as set out in **Section 73** of the new Act.

CONSEQUENCES OF AN OFFICER'S INTEREST

An officer with an interest in any matter cannot vote or take part in a decision of the committee relating to the matter, or sign any pertinent document, but if the committee allows it the officer may take part in discussion relating to the matter and be present when it makes a decision. If half or more of the officers are interested in the matter and therefore cannot vote, the committee must call a special general meeting to determine the matter under **Section 64(3)**.

The new Act covers a number of other procedures to be followed in case of a conflict of interest, including the committee's responsibility to inform members as soon as practicable if it becomes aware of a failure to comply with sections 63 or 64.

The new Act gives some flexibility, with some permissible amendments to the conflict of interest disclosure procedure. For example, under **Section 67** of the new Act, a society's constitution may negate, limit or modify any provisions of sections 63, 64, 65(1) and 73 as long as the changes still satisfy the conditions prescribed by regulations (noting the Regulations have not prescribed any).

But some parts of the new Act cannot be altered by the society's constitution, including:

- **Section 65(2)-(3)**, which explains that any failure to comply with section 63 or 64 does not affect the validity of the new act, but this does not limit a person's right to apply for judicial review.
- **Section 66**, which says that regulations may require every member of the society to be notified or for notification to be made to the members as a group. The Regulations do not include a requirement to this effect.
- **Section 68(2)-(4)**, which says that a transaction cannot be avoided under section 68(1) where the society received fair value under it. Fair value is defined in **Section 69** and the onus of proving fair value is set out in **Section 70**. Additionally, a transaction can only be avoided on the ground of the officer's interest, and a constitution cannot allow a transaction to be avoided in any circumstances other than those set out in the new Act.

- **Section 71**, which explains that if a third party has acquired property from a person other than the society for valuable consideration and without knowledge of the circumstances of the transaction under which the other person initially acquired the property from the society, the avoidance of a transaction will not affect the third party's title or interest to or in the property.

- **Section 72**, which reiterates that the conflict of interest procedure does not apply in relation to salary, wages or other payments paid to officers in accordance with section 24(1)(h), or an indemnity given or insurance provided in accordance with subpart 6.

Dispute Resolution

Unlike the old Act, the new Act requires, under **sections 38 to 44**, that the society's constitution includes dispute resolution procedures.

A society can develop its own dispute resolution procedures, so long as they are consistent with natural justice. (**Section 39**).

Clauses 2 to 8 of schedule 2 set out the disputes resolution procedures a society may decide to include. Should a society include the schedule 2 procedures, its dispute resolution procedures will be presumed to be consistent with natural justice according to **section 41**.

If a society's constitution does not contain dispute resolution procedures, under clause 6 of **schedule 1** the constitution will be treated as including those procedures set out in the Act.

Enforcement and Criminal Offences

Part 4 of the new Act sets out civil law enforcement provisions that explicitly state the orders 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.

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.

Name, Purposes and Winding Up

NAME

Similar to the old Act, the new Act requires the society's constitution to include its name. The Registrar must refuse to incorporate a society under a particular name if it doesn't meet requirements set out in **section 11**. These include:

- The name must not contravene legislation;
- The name cannot be identical or almost identical to the name of another society, company or body corporate;
- The last word or words of the name must be one or more of “Incorporated”, “Inc”, or “Manatōpū”.

PURPOSES

Similar to the old Act, the new Act requires the society's constitution to include its purposes.

The Registrar must refuse to incorporate a society if its purposes include an unlawful purpose or the financial gain of any of its members.

WINDING UP

The new Act expands on the old Act, setting out particular requirements for the distribution of the society's property on liquidation.

The society's constitution must nominate a not-for-profit entity, or a class of not-for-profit entities, to which the society's net surplus assets should be distributed on liquidation or removal from the register. **Section 216** describes the procedure in more detail, such as where more than one entity has been nominated as the beneficiary.

The Regulations

In September 2023, the Regulations were released. So what do you need to know?

Alternative method of filing documents may be allowed by the Registrar where it is not practicable for the society to use the internet site (but internet preferred).

Infringement fees listed in the draft regulations have been kept the same (table below). There is no cap for the amount of fees a society can receive if multiple offences occur at the same time. The infringement process has also been released.

NATURE OF INFRINGEMENT OFFENCE	FEE
Failure to notify the Registrar of amendments to the constitution	\$100
Failure to notify the Registrar of elections or appointments and other changes relating to officers	\$100
Failure to maintain a register of members	\$100
Failure to call annual general meeting	\$500
Failure to properly hold, and keep minutes of, annual general meetings	\$500
Failure to send copy of passed resolution in lieu of meeting to certain members	\$200
Failure to register financial statements	\$500
Failure to register an annual return	\$100
Failure to have a registered office	\$100
Failure to give the Registrar notice of change of contact person	\$200

Transitional period until 5 October 2028 allows for a) societies to continue to restrict AGM attendance, if their constitution allowed it prior to 5 October 2023; and b) have more than 50% independent officers on their committee, if their constitution allows.

Members' register must include past members, but only those who ceased to be a member within the last seven years.

Application for re-registration will include the prescribed information set out in the Regulations, which will be explained later in this Guide.



PART 2 WHAT YOU SHOULD DO NOW

An incorporated society will continue to be subject to the old Act until it re-registers under the new Act. However, the Companies Office advises that as long as a society's constitution complies with the old Act, it can make changes to its constitution that reflect and include references to the new Act.

This means that your society can start to think now about what changes it will need to incorporate into its constitution. Parry Field Lawyers can help you with this, just as we have already helped many societies update their rules to reflect the new Act.

We encourage you to begin discussions with your society around the changes. It will take time to agree to the required changes for your society's constitution, and you may even find that a society is not the best legal vehicle for you (see Part III).

Re-registration Process

From 5 October 2023 until 5 April 2026, all 24,000 incorporated societies in New Zealand must re-register under the new Act.

Companies Office wants to make the re-registration process as simple as possible with no fees. There will be an online form to complete with a few key pieces of information for your society:

- New Zealand Business Number and registration number;
- the physical address of your proposed registered office;
- your balance date;
- who your contact person is;

- the name of the proposed officers and for each officer:
 - i. their physical address (note this won't be publicly available);
 - ii. their written consent to being an officer; and
 - iii. a certificate confirming they are not disqualified from holding office as an officer – Companies Office have made a template for this available online;
- confirmation your society has 10 members; and
- confirmation that an officer considers the proposed constitution complies with the Act.

Your society will also need to upload a constitution that complies with the new Act. We are helping many incorporated societies review and update their constitutions in preparation for the new Act – if this is something you would like assistance with please feel free to get in touch.

There may be grounds for the Registrar to refuse to incorporate a society, including non-compliance of its name, purposes or constitution. However, the Registrar may still re-register the society on condition that the non-compliance is addressed within a reasonable time. If it is not, the society may be removed by the Registrar.

What Happens to Your Society After Re-registering?

Clause 11 of Schedule 1 of the new Act provides that a society will continue as the same legal entity after re-registration. Subject to rights or obligations imposed by the new Act or its new constitution, the property, rights and obligations of the existing society will not be affected, nor will any proceedings of the existing society.

The Consequences of Inaction

Where an existing society does not re-register and is still incorporated under the old Act, they will cease to exist at the transition date and be deemed to have been removed by the Registrar as per **clause 12**.

If this happens, its surplus assets will be distributed according to **part 5 subpart 5** of the new Act. However, the Registrar, or the court in prescribed circumstances, has the power to restore an existing society to the register under **section 185** or **section 188**. Note this cannot be done if six years has passed since the existing society ceased to exist. Clause 12(3) of schedule 1 sets out what happens where a society's application to re-register has not been fully determined by the transition date.

Registering a New Society

Now that the re-registration period has opened, any wholly new society will need to incorporate under the new Act. Therefore we recommend a new society drafts its constitution to comply with the new Act to make re-registering more straightforward. Companies Office has advised that as long as a society's constitution complies with the old Act, a society can make changes to its constitution that reflect and include references to the new Act.

PART 3

GOVERNANCE: WHAT YOU NEED TO KNOW

The new Act codifies the common law that already applied to officers in the past by setting out their duties. In other words, it makes clear what the requirements are for officers. In this section we will talk about what those duties are, when they apply and what other considerations are relevant, such as where an incorporated society is also a registered charity.

What does the new Incorporated Societies Act provide?

The new Act provides that one of its “purposes” is actually to address the point of governance by providing: *“a legislative framework that promotes high-quality governance of societies”*.

The governance duties are set out in sections 54 to 61 of the new Act. For those familiar with the Companies Act duties (sections 131-137 of that Act), there will be a consistency of wording that is apparent – this is deliberate with a harmonisation of governance being aimed for across different entity types.

The duties are not new as a Court would have held that officers need to comply with these points - but they had not been set out like this before. They are as follows (we have not put the full duty in this article but the hyperlink will take you to the section directly):

[54 Duty of officers to act in good faith and in best interests of society](#)

[55 Powers must be exercised for proper purpose](#)

[56 Officers must comply with Act and constitution](#)

[57 Officer's duty of care](#)

[58 Duty relating to activities that create substantial risk of serious loss to creditors](#)

[59 Duty in relation to obligations](#)

[60 Use of information and advice](#)

[61 Duties owed to society](#)

In our view, if Officers focus on the first and last of these duties then all the others will take care of themselves – provided there is no fraud or negligence at play! This is because acting in the best interests of the society and always considering to who you owe your duties should mean that you are acting with integrity in decision making, avoiding conflicts, being clear on your purpose and working together as a group of officers for the higher call of advancing what the entity is there to do.

But do these duties apply now?

One question we have seen asked is whether a Board needs to comply with these provisions if they have not reregistered – that period doesn't close until April 2026. Our view is that a Board and its officers should comply with these duties – and should have anyway – and that they represent best practise which all groups should be aiming for, even now.

What else is relevant?

In addition to these duties in the Incorporated Societies Act it is also important to remember that there are “other” rules to always comply with – for example, the Privacy Act, Employment Relations Act, Tax Act, and so forth.

The other major piece of legislation that affects many is the Charities Act – this has had a refresh in 2023 however they were mainly “tweaks” rather than a wholesale review. That legislation is mainly concerned with the operating of charities which are registered but does impose some duties such as the need to be reporting in on how the charity is performing. The main legislation for duties of officers is the Incorporated Societies Act though.

We have written another [article here](#) outlining key provisions relating to committees/boards and how they operate.

What might your next steps be for governance upskilling?

A Board should always seek to be learning and upskilling and it may be that some training on governance and requirement will be of help. A few starting points might be:

- [Board Matters](#), a podcast series on governance and leadership that we helped host for the Institute of Directors here, season 2 is about to be released.
- We have helped release a series of [Charities Healthchecks](#) which are free downloads and one of them focusses on governance so many Boards are using that as a way to check their operations and how they operate as a Board.
- Charities Services provide a good [overview on governance](#) here.
- We have an information hub devoted to everything you need to know about [Incorporated Societies](#) here.

We commonly attend Board meetings and speak about governance and answer questions that anyone has so that is always an option to arrange as well. We have many clients across the country who are dealing with the same issues you likely are, and our team is happy to provide support in any way that we can.

PART 4 WHICH MODEL IS RIGHT FOR YOU?

For those who are interested in pursuing a purpose or cause that benefits the community, the vehicle you use may be critical in ensuring your efforts are effective and that any assets you hold are protected.

At Parry Field Lawyers we believe that the advent of the Incorporated Societies Act 2022 is an opportune time for some incorporated societies to consider whether that structure remains the most appropriate model for their aims and activities.

For some groups, a charitable trust may be a more appropriate vehicle.

Incorporated Society

- Governed by the Incorporated Societies Act 1908, now being replaced by the Incorporated Societies Act 2022.
- Members can come and go without affecting the vehicle's identity.
- Minimum number of 15 members, or 10 under the new Act (body corporate members count as three individuals).
- Usually used by sports clubs, cultural groups, etc. that see benefit in wider involvement.
- **ACCOUNTABILITY:** officers are accountable to the members.
- **ADMINISTRATION COSTS:** annual financial statements must be filed and annual general meetings held.
- **CONTROL:** democratic control of the vehicle and its activities by its members. Inefficiency may result if majority of the members hinder the society's purposes. There are some stories of members ousting officers, but in our experience this would be very rare.

Charitable Trust

- Governed by the Charitable Trusts Act 1957 / Trust Act 2019.
- We recommend at least three trustees (or an odd number) to prevent conflict.
- **ACCOUNTABILITY:** individuals (a.k.a trustees) need to operate in accordance with the trust's deed or be held personally liable for breaching their duties as trustees.
- **ADMINISTRATION COSTS:** proper records required for activities undertaken, etc. Trustees must meet regularly to make decisions as required by the trust deed.
- **CONTROL:** decisions are made by a select few which may mean greater stability and efficiency.

Conflict between the trustees however could adversely affect the performance of the trust. As trustees appoint each other, the ability to change hands of controlling power may be difficult.

Various factors must be considered before committing to a vehicle. We generally find that a charitable trust is the most flexible of the two. However, it is important that you consider how your operations are likely to look like. Imagine the future. Will your vehicle advance or hinder your ability to effect your purpose?

Is the Incorporated Societies Model Right for Your Organisation?

By Steven Moe & Craig Fisher, this article first appeared in Law News of the Auckland District Law Society

The Incorporated Societies Act was first passed in 1908. After a reform process kicked off in 2011 and many years of delays, a new and updated Act has finally received Royal Assent. The changes focus on improving the governance framework and modernising the provisions that apply to this form of entity.

With about 23,000 entities registered as incorporated societies with the Companies Office, and an estimated 9,000 of those being registered charities with Charities Services, many groups will be affected.

Because there must be a minimum of 15 members of an incorporated society under the 1908 Act, a lot of people should be interested in this change. And yet how many of us can relate to the occasional difficulty in securing a quorum for the AGM? As with any requirement to revisit the foundation constitution of an organisation, which this new legislation will require, we think this is an excellent time to ask some bigger questions of incorporated societies. Some such fundamental questions might include:

- is there still a need for our organisation?
- is a membership organisation the most appropriate structure?
- should we merge or join another organisation to be more impactful? and
- should we be structured as we currently are? For example, should we have branches?

When we purchase a car we think about what we will use it for – convertible, or off road? In the same way, the ‘legal vehicle’ we use to achieve our purpose may need updating from time to time. This is the perfect time for incorporated societies to ask themselves questions about their legal structure.

Many are also nearly as old as the 1908 Act. The world and how we do things has moved on. So, is the incorporated society in question still fit for purpose to carry on successfully and sustainably into the future? With so many of these entities in existence, they clearly have a part to play, particularly for member-based groups like sports clubs.

However, the requirements introduced by the new Act provide the chance for such organisations to revisit their structures. This is because the new legislation will require every incorporated society to re-register and update its constitution as well as ensuring its officers meet the requirements to hold their positions.

If a group is going through that process, then it might also be timely to ask the bigger question at the same time: is this structure best? Operating in this area we have seen a trend in recent years of incorporated societies shifting to become charitable trusts. With officers who are elected, the member-based approach of an incorporated society tends to become far more political than a charitable trust structure. The president of an incorporated society might call to say there are rumblings of discontent from a small but vocal minority and they will let us know how the AGM goes.

The next week a new voice might be on the end of the line, saying he or she was the new president and the direction of the incorporated society has drastically changed. Elections can also be disputed, with a newly-elected set of officers unable to obtain the bank account information and logins from former officers who claim the election was not valid and they are, in fact, the ones still in charge.

While some incorporated societies are small, others have significant amounts in their accounts. Resolving such situations takes time, results in damaged relationships and is costly. Crucially, this activity and the energy it demands also detracts from the actual core business that the incorporated society was established to deliver.

It will be appropriate for most incorporated societies to simply continue on with revised constitutions but for some a switch to a charitable trust structure may be better. Charitable trusts often have a more stable governance board with less risk of politicisation or being taken over. If a group chose to go down this path, it could still keep its registered charity number and tax donee status, a fact that many are not aware of.

However, the new charitable trust that takes on the legacy of continuing the purpose of the incorporated society would be a new legal entity, meaning contracts, employees and insurance must be moved across before it is wound up. Organisations are established to deliver on a specified purpose. Their choice of legal entity can have considerable impact on their effectiveness and efficiency at doing this

Steven Moe is a partner at Parry Field Lawyers and Craig Fisher is a consultant with RSM and a member of the ADLS Council



STEVEN MOE
stevenmoe@parryfield.com
ph. 021 761 292



KRIS MORRISON
KrisMorrison@parryfield.com
ph. 021 735 407



SOPHIE TREMEWAN
sophietremewan@parryfield.com



AISLINN MOLLOY
aislinnmolloy@parryfield.com



YANG SU
yangsu@parryfield.com



JESS SANTICH
jesssantich@parryfield.com



MICHAEL BELAY
michaelbelay@parryfield.com



ANNEMARIE MORA
annemariemora@parryfield.com



We see the client in a rounded way and want to help them with ‘what really matters’, for legal services and beyond, when appropriate.



PART 5 FREQUENTLY ASKED QUESTIONS

We received dozens of questions while running video sessions about the changes introduced with the Incorporated Societies Act 2022. These may answer many of the questions you may have.

Q01: I'm particularly interested to understand your thoughts/concerns about the operation of the new Act in relation to Residents Societies arranging insurance for their properties.

A01: In short, the new Act is silent on insurance – it just talks about indemnity insurance and so forth for officers.

Q02: Does the new Act also affect charitable trusts?

A02: No, only incorporated societies. For charitable societies incorporated under the Charitable Trusts Act 1957, they may choose to either continue to be incorporated under the Charitable Trusts Act 1957 or re-register under the new Act, per section 261. When the Act comes into force, societies will no longer be able to incorporate under the Charitable Trust Act 1957.

Q03: Is there a template “model constitution”?

A03: Not yet. As Companies Office had a constitution builder under the old Act we suspect they will do the same with the new Act.

Q04: Do you think (as part of the updating process) that the first step should actually be to determine what the best structure is?

A04: Yes! As we discussed in our talk now is a great time to determine whether the incorporated society model is the right legal vehicle for your entity.

Q05: If you are already registered, and are asserting compliance with the Incorporated Societies Act at today's date, would you say 1908 or 2022?

A05: We are in an unusual limbo period, where the old Act is still in force but the new Act is coming into force in stages. So, as your society is already complying with the old Act, we recommend you also comply with the new Act.

Q06: Do they have to be paying members or could they be life members?

A06: Subpart 5 of Part 3 of the new Act sets out the law around members. It is up to the society whether their members are paying members, however under section 26(1)(d) a society's constitution must include “how a person ceases to be a member of the society”. So, a society can have life members, but there will still need to be a way for a person to stop being a member of that society.

Q07: Where do ‘boards’ fit? As different to a committee?

A07: A “committee” is defined in section 5 of the new Act as meaning “in relation to a society, means the governing body of the society, however described (for example, a board)”. So as long as a board is the governing body of the society, it has the same meaning as a committee.

Q08: When drawing up the new rules/constitution by the committee, is it best to ask members to review this before finalising and registering the updated under the new Act i.e., do we need special meetings to pass this new constitution?

A08: Clause 9 of schedule 1 of the new Act explains the procedure for societies amending their constitution to allow them to register under the new Act. The amendments must be:

- a. in writing; and
- b. either
 - i. approved at a general meeting of the existing society by a majority vote of those members entitled to vote and voting on the question; or
 - ii. approved in the manner prescribed by the regulations; and
- c. signed by at least two members of the society.

You will therefore need to call a general meeting to pass this new constitution according to these procedures.

Q09: I've heard that there are higher personal liabilities on officers of a society if e.g., a building we own burns down for example. Could you tell us a bit more about this?

A09: The new Act has not radically changed liability – it depends on the situation and the insurance cover that the society has in place. The new Act explicitly mentions an officer is liable where they act in contravention of a banning order that disqualifies the person from being an officer (see subpart 7 of part 4 of the new Act), and when a society is deregistered the liability of officers for any act or omission while the society was registered (section 183 of the new Act). Sections 54-61 of the new Act also sets out existing officers' duties – these were already enforced by the court but not written in legislation.

Q10: When can we start an amalgamation? Is this part in effect before the regulations are released?

A10: As the amalgamation procedures are in the new Act, our understanding is that you will need to be registered under the new Act before an amalgamation can begin. The amalgamation procedures are set out in subpart 2 of part 5 of the new Act.

Q11: Will part of the re-registration of an incorporated society allow for an organisational name change?

A11: As long as the society's rules allow for a name change, and the new name complies with the requirements set out in section 11 of the new Act, then a society will be able to change its name on re-registration.

Q12: Can an incorporated society submit new rules now that do not comply with the new Act with a view to submit compliant rules in the future when it intends to re-register?

A12: Yes - up until clause 4 of schedule 1 of the new Act comes into force (Companies Office guidance suggests this will be October 2023) a society can submit rules under the old Act, meaning those rules do not need to comply with the new Act. However, for the sake of efficiency, we suggest societies looking to update their rules do so in light of the new Act.

Q13: In terms of the offences – I tend to do a lot of this sort of filing paperwork without discretion from the Board as it won't otherwise get done. In terms of the offences – should employees get specific instructions in writing from the Board when filing paperwork with the Registrar?

A13: We suggest it is best practice to have the Board sign off on documents before they are filed with the Registrar.

Q14: Can a charitable company be formed following a formal conventional company for the purpose of community housing or cooperative housing?

A14: To become a charitable company, the company will need to adopt a constitution including a charitable purpose. We have written a helpful article on charitable purposes (which you can find [here](#)) and would be happy to discuss your structure with you.

Q15: Would be interested in more detail on section 94 of the new Act – cannot indemnify officers. What about D&O liability insurance?

A15: Section 94 of the new Act sets out that a society can only effect insurance for “an officer, a member, or an employee of the society for—

- a. liability for any act or omission in their capacity as an officer, a member, or an employee of that society; or
- b. costs incurred by the officer, member, or employee of that society in defending or settling any claim or proceeding relating to that liability.”

Section 97 of the new Act sets out the types of insurance permitted for certain liability or costs.

Section 98 of the new Act allows a society to effect insurance for an officer for liability for a failure to comply with their officers' duties or any other duty imposed on the officer in their capacity as an officer. However, the society's constitution must expressly authorise the insurance for officers. This means that a society can have D&O liability insurance, but only where it is expressly provided for in the society's constitution.

Thanks to Robert Clarke, Acting Principal Policy Advisor at MBIE for your input on questions 2,8,12,19 and 22. It is appreciated.

Q16: The new Act is clear on what small societies need to do, and small societies are also clearly defined (less than \$50k in assets and expenses), but what about societies that don't meet the definition of a small society?

A16: To provide the answer, we contacted the XRB (where Steven is on the XRB Advisory Panel) and received this response – “I have jumped through the trail of definitions in legislation, provided below for your information:

End result, an incorporated society that is not small will be required to report using the following XRB NFP Standards from the first year-end (balance date) after which the Society re-registers under the new Act.

- Incorporated Societies with over \$30 million annual expenditure — Tier 1 NFP XRB Standards
- Incorporated Societies with over \$2 million annual expenditure — Tier 2 NFP XRB Standards
- Incorporated Societies with annual operating payments over \$140,000 — Tier 3 NFP XRB Standards
- Incorporated Societies with annual operating payments less than \$140,000 — Tier 4 NFP XRB Standards.

REPORTING REQUIREMENTS PER THE NEW ACT:

Generally accepted accounting practice (GAAP) is defined by the new Act as:

Section 5(1) of the Financial Reporting Act 2013 defines GAAP as having the meaning as defined in section 8 of the Financial Reporting Act 2013 Act.

Section 5(1) of the Financial Reporting Act 2013 defines financial reporting standards as:

Section 5(1) of the Financial Reporting Act 2013 defines the Board as the XRB

A non-GAAP is defined by the XRB as a Tier 4 Standard. The Tier 4 Standard can be applied by an incorporated society that is not a “specified NFP entity”. A specified NFP entity is one that has operating payments less than \$140,000.

This assumes an incorporated society meets the XRB definition of a Public Benefit Entity (PBE).

PBE's are reporting entities whose primary objective is to provide goods or services for community or social benefit and where any equity has been provided with a view to supporting that primary objective rather than for a financial return to equity holders.

It is assumed that the majority of incorporated societies will meet this definition. But if for any reason, a society cannot, they will be required to report in accordance with XRB's Tier 2 For-Profit Standards – NZ IFRS with reduced disclosures.”

Note that this question was answered before the regulations became available – MBIE have more detail on the new financial reporting requirements which you can find [here](#).

Q17: For financial statements does this mean that the charities services 4 tier system of reporting will still be used and then another set of financial statements per the new Act?

A17: See the answer above.

Q18: Will there be a model/sample rules published to guide societies in creating new rules?

A18: Most likely - as Companies Office had a constitution builder under the old Act we suspect they will do the same with the new Act.

Q19: Do you have templates for dispute resolutions?

A19: Not yet – we are working alongside our litigation team to develop a well-rounded template for dispute resolutions. Societies can also use schedule 2 of the new Act as a template for dispute resolution clauses.

Q20: Date became a member – is this the historical date which may not be known?

A20: Yes – section 79 of the new Act says that the register must contain the date on which the person became a member. You could ask members what date they became a member, or ask them to approximate the date. Another option would be to say “member at re-registration date” or something similar.

Q21: Is there any part of the Act about where the members need to reside (in NZ only)?

A21: No – the Act does not specify where members need to reside. However, the new Act says a society must have its registered office in New Zealand (section 110) and the society's contact person must ordinarily reside in New Zealand (section 114).

Q22: What is the procedure to change to a charitable trust?

A22: As we discussed in the talk you are setting up a new entity, which means you would need to set up a charitable trust deed and get trustees. The new charitable trust will also need to get a new IRD number, transfer contracts and employees over to the new entity. Charities Services will let you keep your charities registration number and you will keep your tax status (as long as your rules are charitable) if you also update the IRD. We have helped several societies with this so feel free to reach out if you have any more questions.

Q23: Is an incorporated society that has charitable status actually a charitable trust?

A23: No, it is an incorporated society with charitable status.

Q24: Do all registered charities need to also be an incorporated society?

A24: No – an incorporated society can choose to register as a charity.

Q25: How do we define a member? We have an AGM every year and invite everyone on our email list. Different people turn up every year. Our constitution does not require members to be financial members by way of annual subs, donations are voluntary.

A25: This depends on how your constitution defines a member. Under the new Act members will need to consent to becoming a member and the society will need to keep a register of members, which may make it clear who is an actual member of the society.

Q26: Is Community Networks Aotearoa a good source of resources?

A26: Yes – Community Networks Aotearoa has some great governance resources, which you can find here. The first module on governance is free! They also are linking to our resources, and we had the CE Ros Rice share on a recent Impact Call here: <https://www.parryfield.com/aotearoa-impact-sector-updates/>

Q27: Do you have any resources that discuss whether a charitable trust or an incorporated society is better?

A27: Yes – we have an article on Charitable Trusts vs Incorporated Societies: Which is best? Additionally, Steven Moe and Craig Fisher (from RSM) wrote an article for the Auckland District Law Society on this topic (See Part III)

Q28: Do members have to be financial members?

A28: No – it is up to the society whether they are paying members.

Q29: When will the regulations come out?

A29: The regulations came out in September 2023.

Q30: Is it a challenge to convert from an incorporated society to another entity e.g., a charitable trust?

A30: It is a relatively straightforward process, with the key stages being the drafting of your new Trust Deed and moving everything from the Society to the Trust. We have done this many times and would be happy to support you at every step of this transition.

Q31: Is it \$50,000 profit or turnover to be a small society under the new Act?

A31: Section 103(2)(b) of the new Act explains a society is, in respect of an accounting period, a small society if, -

(i) in each of the 2 preceding accounting periods of the society, the total operating payments of the society are less than \$50,000; and

(ii) as at the balance date of each of the 2 preceding accounting periods, the total current assets of the society are less than \$50,000; and

(iii) at the balance date of the accounting period, the society is not an entity described in section LD 3(2) of the Income Tax Act 2007 (a donee organisation).

Q32: Do we need to ask existing members whether they agree to being a member?

A32: Section 76 of the new Act explains that a person must consent to become a member of a society, so we interpret this as meaning existing members do not need to consent. However, under section 79 of the new Act you will need to record the date on which each person became a member, so when asking current members for this date you could always check in to make sure they agree to being a member of the society.

Q33: In regards to disputes resolution, does this refer to disputes within members/Committee members or within the wider delivery of the organisation (e.g., client complaints etc)?

A33: Section 38 of the new Act explains it refers to internal disputes, which could be disputes between members, officers and the society.

Q34: We've had the same seven members since inception – we are non-compliant with the 10-member minimum and so what do we do?

A34: To register under the new Act you will need 10 members, so you could ask friends and family whether they are interested in becoming members. Now would also be a great opportunity to consider whether a society structure is right for your entity – please feel free to get in touch with us and we would be happy to talk this through with you.

Q35: Presumably new regulations could impact how we might write up our constitutional changes?

A35: They have had a slight impact on what you need in your constitution, but now they are out it is a great time to consider the changes that you will need to make in your constitution.

Q36: Do members need to renew each year at AGM?

A36: They don't need to under the new Act. However, your society's constitution may have specific requirements for membership renewal that you need to check.

Q37: Members have to be natural persons? So, members cannot be other charities?

A37: It is officers who need to be natural persons. Members can be natural persons or bodies corporate. So yes, another charity could be a member.

Q38: Can the members of the Governance board be personally and financially liable?

A38: The short answer is yes, they can, but shouldn't be if they keep to the straight and narrow. For example, the offences in section 154, section 155, section 156 and section 157 of the new Act apply directly to officers.

Q39: Our incorporated society is also a registered charity. Currently any changes to our constitution and rules needs to be approved by Charities Services. How will this be handled when our new constitution is put together?

A39: Companies Office hold your rules, so you will have to fill in a form and upload them there as part of the re-registration process. If you are a registered charity (not all incorporated societies are), you will need to upload your rules there as well.

Q40: Is it appropriate for a person employed by the incorporated society to be part of the governance body? Would this be a conflict of interest under the new rules?

A40: It would be possible for the person to be employed, but they shouldn't be the ones making a decision about their own employment. The key is that as long as the person employed is declaring conflicts and are not the one making decisions, it will be fine. Your rules may say something about paying officers, too.

Q41: What if an organisation thinks being an incorporated society is not for them, so look into being a charitable trust – but do not meet the requirements of being a charitable trust?

A41: Come and have a chat to us – if you're a registered charity and a society then you will likely be able to meet the requirements under the charitable trust format. When it comes to structure, you want to adopt the tool that will have the maximum impact and cause the least amount of stress. You can also build membership into the charitable trust structure.

Q42: Is there a distinction between a member of an incorporated society and a volunteer for an incorporated society?

A42: They are different because a member is someone who consents to being a member. You may want to clarify with volunteers what they are allowed to say if there is an issue with some of them representing the society – for example, in an agreement for volunteers.

Q43: Can membership of incorporated societies be free, if the person consents to being a member?

A43: Yes – it is up to each society whether membership is free or paid.

Q44: If you are a charitable trust then do you need to update your rules?

A44: You do not need to update your rules under the new Act. However, it may be wise to review your trust deed because of changes to the law brought in by the Trusts Act 2019.

Q45: Do you need a common seal under the new Act?

A45: No – under section 123 of the new Act a common seal is optional.

Q46: The register of members that has to be kept, do you have to have a specific/exact start date or can you just say a year?

A46: Our view is that putting an approximate year will be fine, particularly for people who have been members for a very long time. The regulations have more detail around when someone ceases to be a member. Section 13 of the Regulations states the society must keep the name of a person who ceased to be a member and the date they ceased to be one for seven years.

Q47: If we adopt new rules, will this affect our charity registration status?

A47: No it will not, because the new rules will mirror/be similar to your previous rules. The only way it would affect your registration is if you adopted new rules that did not advance charitable purposes.

Q48: Do you include life members on the membership register? What about honorary members?

A48: The new Act doesn't differentiate between different types of members, but only talks about members of the society. For example, the new Act defines a "member" in section 5 as meaning a member of the society. If, for example, your honorary members act more as patrons of the society or your life members hold more of a life membership award, then it may be worth removing the term "member" from the role to avoid confusion.

Q49: Is the offences section just codifying what exists in current practice or is it adding new liability?

A49: Offences under the old Act were the generic offences set out in the Crimes Act 1961. Rather than introducing brand new liability, the new Act has six serious offences that supplement the dishonesty provisions in the Crimes Act. These offences are set out in subpart 6 of the new Act and are more targeted towards societies than those in the Crimes Act.

Q50: Can an incorporated society own a company?

A50: Yes, as long as the society's rules allow for it.

Q51: Can you explain the essential differences between an incorporated society and charitable trust?

A51: One of the key differences is an incorporated society is more of a democracy – it is a member based organisation. By contrast, in a charitable trust the trustees are not elected. However, you can build members into your charitable trust model. In Part III we talk about these differences in more detail. Charities services also has an article on incorporated societies and charitable trusts, which you can find [here](#).

Q52: What, if any, is the requirement to have an audit or a review? The cost for some entities can be heavy in relation to their income or assets.

A52: We are not accountants, but the requirements for auditing or review depend on whether the society is a small society under [section 103\(2\)\(b\)](#) of the new Act or which [Charities Services Reporting Standard](#) the society falls under.

Q53: Are organisations required to include a clause on the act of borrowing in their constitution or is it optional?

A53: [Section 46](#) of the new Act sets out the committee has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of the society. The act of borrowing is caught by these powers and therefore doesn't need to be specified in a society's constitution.

Q54: For church groups – are they automatically classified as a charitable trust?

A54: Stepping back, it's important to remember there are two registrations for charities: the first is with Companies Office, the second is with Charities Services.

Incorporated societies are one legal vehicle that can be used and registered with Companies Office. The others include charitable trusts and companies.

Churches are not automatically registered with Charities Services, you have to apply. There are two key reasons to apply: firstly for the reputation and standing in the community that charities have, secondly for the tax benefits.

Q55: Does the new Act have any effect on unincorporated societies?

A55: No, the new Act only effects incorporated societies. We encourage unincorporated societies to incorporate, as it protects the individuals involved. This is because members are potentially liable in unincorporated societies.

Q56: Can members that “count” be non-financial members?

A56: The new Act doesn’t differentiate between different types of members, but only talks about members of the society. For example, the new Act defines a “member” in [section 5](#) as meaning a member of the society. So a member can be a non-financial member or a financial member – it is up to you!

Q57: What options are available under the new Act for a society that has branches of varying sizes and financial means?

A57: There are several options available that really depend on the individual situation of each society – we have given a general answer below but please get in touch if you want to talk about your situation further.

Some societies may have incorporated branches under the Incorporated Societies Amendment Act 1920, in which case [clause 17 of schedule 1](#) of the new Act applies.

Option 1: A society with branches may decide for each local branch to be an incorporated society, with all local branches being overseen by the national branch (which is also an incorporated society). The national branch could roll out a standardised template constitution for the new Act that the local branches then tweak, adopt and reregister with. This would ensure each branch has the same processes and procedures in place and they all comply with the new Act. The template constitution could refer back to their affiliation with the national branch and procedures that help concrete the relationship between the entities. An option for smaller branches would be to have the national branch as a member, which for the purpose of counting members would be the equivalent of 3 members.

Option 2: The organisation could be a single incorporated society that operates all of the branches under the same society. This would mean there would be one entity that does all of the accounts, one AGM, one committee etc.

The committee would be able to delegate out some of its powers so it is only directing or supervising the management of certain aspects of the society. This would streamline the affairs of the society, but creates more work and liability for the single society.

Option 3: a hybrid approach, where the option 1 approach is taken but there are fewer local branches, so that some of the branches (which are their own legal entity) end up including several of the local branches as they are today (operating like option 2).

Q58: What are the risks to current societies moving into one of the new structure options? i.e. are there new risks to property ownership under a society?

A58: There are several risks/considerations to take into account if a society is moving to a new structure.

It is important to take everyone on the journey with you. That way people understand why the entity structure is changing, feel a part of the process, and makes voting on the issue easier.

You need to do your due diligence and transfer all assets/contracts across to the new entity. This could include property, employment agreements insurance and so forth.

Q59: The reporting standards are yet to be defined, right?

A59: We aren’t accountants, but understand that under the new Act societies will use the XRB accounting standards in their financial statements, unless they qualify as a “small society”. Companies Office has provided some useful guidance on these standards, including links to other resources, which you can find [here](#). Note that this question was answered before the regulations became available – MBIE have more detail on the new financial reporting requirements which you can find [here](#).

Q60: Are there ways for the charitable trust model to involve membership in a meaningful way but without the implications of incorporated societies?

A60: Yes, because charitable trusts are very flexible. We’re working with incorporated societies who want to maintain aspects of their incorporated society membership model but within a charitable trust structure. We do this by setting out the definition of members and powers of members in the charitable trust deed. We often see membership included in a charitable trust in a religious context. The question to ask yourself is: how much power do you want to give to members?

Q61: Please clarify that/if the “old” protections of members and officers from financial liabilities is still in place and unchanged by the new Act and new provisions?

A61: Yes, the same protections are in place for members and officers under the new Act. The new Act does include officers’ duties which exposes them to some liability if they fail to comply with these duties. We discuss officer liability in some detail in Q9.

It is important to remember there is a difference between incorporated societies and unincorporated societies. Incorporated societies are a separate legal entity, whereas unincorporated societies are not. This means officers and members of unincorporated societies are exposed to personal liability for the activities of that society.

Q62: Any update on the audit requirements or are these in the regulations yet to come?

A62: Companies Office guidance, which you can find [here](#), explains that the auditing requirements for societies not registered as charities is set by the regulations. Section 16 of the Regulations states that societies that in each of the 2 preceding accounting periods have total operating expenditure of \$3 million or more are required to be audited by a qualified auditor.

Q63: Have the rules for unincorporated societies changed?

A63: No – they are not covered by the incorporated societies act. They remain unincorporated – BUT it raises a bigger question – is that legal entity type the best because of the personal liability that sits with members of such groups? We think a lot of people would be very surprised to learn that they are potentially personally liable by being part of such a group so we would encourage some questions to be asked e.g. should we set up some charitable trusts to better house what it is we do? Incorporating provides legal protection. Feel free to get in touch if you would like to have a chat about this further.

Q64: The new act is talking about 3 officers. Does this mean a committee/board member who has a particular job/position as chairperson, treasurer etc?

A64: Not necessarily – under [section 5](#) of the new Act an officer is someone who is a member of the committee, whether or not they occupy a particular job/position.

Section 5 also offers another definition of an officer (someone who occupies a position that allows them to exercise significant influence over the management or administration of the society), and we will seek clarity around how this impacts the minimum number of officers in a committee when we make submissions on the regulations.

Q65: For the moment, at the AGM, committee/board members are elected by the collective and only the treasurer/secretary job/position is also officially elected at the AGM. Other jobs/positions like the chairperson are elected within the board. Under the new act, do all (new) 3 officers have to be elected by the collective at the AGM?

A65: Section 26 of the new Act says a society’s constitution must contain the procedures for the election or appointment of officers, the chairperson (if any) and the contact person, but does not prescribe how this is to take place. So it really depends on your constitution. Generally we see societies taking a similar approach to the one you described above.

Q66: If so, when an officer resigns during the year, do we have to call an SGM to elect another officer in replacement, do it during a normal collective meeting (same people as in a SGM) or can the board/committee do it internally?

A66: In light of our answer to your Q65, we think this will depend on your constitution. It may even be that if you still have three officers on your committee the one who resigned does not need to be replaced.

As you can see from our answers the Act gives societies flexibility when it comes to certain matters.

Q67: Can children and young people be members of an incorporated society? And what impact would that have on the binding nature of the constitution on members?

A67: Both the Act and the Law Commission's report are silent on the issue, only talking about the age of officers.

So we turned to commentary on the old act and found that a minor can be a member of a society, but under the Contract and Commercial Law Act 2017 a contract is unenforceable against the minor (unless the Court says otherwise) but otherwise has effect as if the minor were of full age.

We think this answer is unsatisfactory – what if the child is 4? And if the contract is unenforceable (being the contract between the member and the society, the terms of which are set out in the constitution), then how can the member enforce the constitution against the society or vice versa – whether that be dispute resolution, fees, enforcement in the courts and so forth?

We don't think the Act clearly covers this point, as members are defined as "members of the society" and then the Act proceeds to set out rules in relation to members, more than were covered in the old Act. But on the flipside the Act is codifying a lot of case law, so the answer may still be the same. We will be able to make submissions so plan to do so.

Q68: *Section 3(d)(iv)* of the new Act recognises the principle that "societies should not distribute profits or similar financial benefits to their members". What about a society whose members are charities?

A68: *Section 22* of the new Act says that "a society must not be carried on for the financial gain of any of its members". We then went to section 23 which explains what "financial gain" is within the context of the Act. *Section 23* adopts a wider definition of financial gain than that in section 3(d)(iv), but includes distributing profits or similar financial benefits to its members. In other words, the wording in section 3(d)(iv) fits within the Act's concept of financial gain set out in section 23.

Section 23 is subject to *section 24*, which sets out when a society does not have a financial gain purpose. This includes where: the society distributes funds to a member to further the purposes of the society, is a not-for-profit entity, is affiliated to the society and has the same or substantially the same purposes as those of the society.

A not-for-profit entity is defined in *section 5(3)* of the new Act and includes a charitable entity.

As section 3 is setting the overarching concepts of what the Act is trying to achieve, it leaves out the finer details that are set out in section 22-24. Therefore a society who has charities as its members can therefore distribute funds to them according to section 24 of the new Act.

Q69: Our deed has purposes – is this the rules?

A69: Taking a step back, generally we refer to a "Trust Deed" for charitable trusts and a "Constitution" or "Rules" for a society.

The purposes in your constitution make up a part of your rules, but it is the constitution in its entirety that are the society's rules.

Q70: What is classified as a member – is it related to fee payments or people who utilise or use your services?

A70: The new Act doesn't differentiate between different types of members, but only talks about members of the society. For example, the new Act defines a "member" in *section 5* as meaning a member of the society.

A member isn't someone who uses your services, rather someone becomes a member through the procedure set out in your constitution.

Q71: Do conflicts of interest need to be disclosed at every board meeting?

A71: *Section 63* of the new Act explains that a conflict of interest needs to be disclosed to the committee and in an interest register kept by the committee as soon as practicable after the officer becomes aware that they are interested in the matter.

So a conflict of interest may need to be disclosed at every board meeting – it just depends on when and how frequently conflicts of interest arise.

Q72: I understand that a person with a conflict of interest can't vote on the issue, can they participate in the discussion about the issue?

A72: Under *section 64(1)(c)* of the new Act a person with a conflict of interest may take part in any discussion of the committee relating to the matter unless the committee decides otherwise.

We think it depends on the conflict as to whether the person should take part in the discussion. For example, if the committee was deciding whether to use an officer's catering company for an upcoming event, that officer should leave the room while the discussion takes place and the decision is made. This is because the decision cannot be called into question later, as the conflicted person was not even in the room.

Q73: What provisions are there in the new Act to deal with a hypothetical situation where an officer does not declare a conflict of interest (and the other officers are aware of the conflict of interest)?

A73: Where an officer has failed to disclose an interest, the committee must notify the members of the society of their failure to do so and of any transactions affected as soon as practicable after becoming aware of the failure according to [section 65](#) of the new Act. This would open the door to members bringing complaints under the dispute resolution procedures against the officer for breaching a duty under the constitution or the new Act.

By not disclosing their conflict, an officer could also be in breach of their duty to comply with the Act and constitution ([section 56](#)), duty to exercise their power as an officer for a proper purpose ([section 55](#)) and/or duty of care ([section 57](#)). The officer would also be in breach of their duty to disclose the interest ([section 63](#)). Depending on the situation, some of the offences set out in subpart 6 of part 4 of the new Act.

We would hope that in this situation the other officers feel comfortable to discuss the conflict of interest with that officer rather than having it escalate, as good governance can involve having difficult conversations like this.

Q74: How do we decide if we need to be an incorporated society? Can we just be a charity?

A74: There's a difference between the legal entity type and charities registration. An incorporated society can be a registered charity. An unincorporated society, charitable trust and company can also be a registered charity.

Q75: What is a contact person – is this a position or an actual person?

A75: Under [section 114](#) of the new Act a contact person is an actual person who is at least 18 years of age and ordinarily resident in New Zealand. The contact person could also be the secretary or the

chairperson of the society, but a society's constitution must address how this contact person is elected or appointed per [section 26\(1\)\(g\)](#) of the new Act.

Q76: Do you know of any tool/resource that can guide groups in identifying the best legal vehicle for their purpose?

A76: Feel free to get in touch with us – we are currently having free 20 minute phone calls with societies to discuss their structure and would be happy to assist.

Q77: What are the types of legal structure that can “apply” to become a registered charity?

A77: There are four key legal structures that can apply for charities registration: an incorporated society, unincorporated society, charitable trust and company.

Q78: What is the cost to change from an incorporated society to a charitable trust?

A78: This depends on the situation - feel free to get in touch with us and we would be happy to provide a fee estimate.

Q79: Do we need to be an incorporated society to be a registered trust?

A79: Incorporated societies and charitable trusts are two different legal vehicles that can both register with charities services.

Q80: Does changing to a charitable trust affect how you are able to apply for funding to run your organisation?

A80: We don't think it does, as both incorporated societies and charitable trusts are for purpose organisations. It will come down to what each funder is looking for. Becoming a registered charity may help you get funding, and as discussed above both incorporated societies and charitable trusts can be registered charities.

Q81: Is it possible for an officer of a committee to be an employee of the same organisation?

A81: The Act is silent on this issue. It talks about how a society can employ people and sets out some rules in relation to employees (such as the indemnities or insurance the society may take out for employees), but doesn't say whether or not an officer can be employed by the society. **Section 18** of the new Act explains that an incorporated society can employ people, unless the society's constitution says otherwise.

So it would be possible for an officer to be employed, but they shouldn't be the ones making a decision about their own employment as that would be a conflict of interest. The society's rules may also say something about whether an officer can be an employee (and even whether an officer can be paid for being an officer). The key is that as long as the person employed is declaring conflicts and are not the ones making decisions, it will be fine.

Q82: Is there a public register where we can find the sorts of entities that are registered. This may help us decide which entity we should be – like for like?

A82: You could try the [Charities Services Register](#) - this contains all of the charities in New Zealand, although not every charity will explain which legal entity they are.

Q83: If you have groups that are part of your membership they will count as 3 members? Does that group need to be legally incorporated?

A83: **Section 14** of the new Act explains that a body corporate that is a member of a society is treated as 3 members for the purpose of determining the number of members. This means the group needs to be legally incorporated.

Q84: For the date of membership of old members – is that the date they re-register, or their original membership date?

A84: Please see our answers to Q20 and Q46.

Q85: Is it a conflict of interest if a member of the committee is also a member of one of those subgroups of your membership?

A85: This will depend on the situation. **Section 62** of the new Act sets out the situations where an officer has an interest. In short, this includes situations where the officer or their relatives may obtain a financial benefit from the matter, or where an officer is interested in the matter because the society's constitution so provides.

Feel free to get in touch with us as we are happy to discuss this point further with you in relation to your unique situation.

Q86: Does the full dispute resolution procedure go into the constitution or is it just a reference to following the procedure?

A86: **Section 26** of the new Act sets out what a constitution must contain, which includes the disputes resolution procedures. So yes, the full disputes resolution procedures need to go into the constitution.

Q87: Do officers/committee members have any new liabilities under the new Act?

A87: The new Act has not radically changed liability for officers. Instead, it has set the liabilities of officers out clearly in one place. For more information take a look at Q9.

Q88: What are the reporting ramifications of becoming a charitable trust against being an incorporated society?

A88: If you are registered with Charities Services, your reporting requirements will be the same. We suggest you get accounting input on this point.

Q89: What have you seen work well in incorporated societies to build on the positive aspect of a democratic structure?

A89: Incorporated societies are very democratic legal vehicles. Having good rules and involved members enhances this.

Q90: Do incorporated societies have to charge an annual membership fee to their members or can they choose to have none?

A90: Incorporated societies do not need to charge a membership fee – it is entirely up to each society.

Q91: If you have a smaller Board and use committees who is actually subject to liability under section 154-159?

A91: It depends on the offence. Each offence specifies whether it applies to an officer, member or employee of the society, or a person. For the offences that apply to officers these cover people who are a member of the committee or who occupy a position in the society that allows them to exercise significant influence over the management or administration of the society (per **section 5** of the new Act).

Q92: We've been asked how much will it cost to re-register? Is there any update in the regulations?

A92: There is no fee for re-registration.

Q93: My understanding is that the new Act still has "draft" regulations but these are now not offered for public consultation? Is this correct?

A93: That is correct – consultation on the regulations closed in November last year. We made a submission that included some questions/comments that had been raised during our webinars, so thank you for all of your input!

Q94: If an incorporated society is also a charity how does rewriting rules impact on charitable status – once approved by Companies Office does that automatically follow that charitable status will also continue?

A94: There are about 24,000 incorporated societies, and around 9,000 of these incorporated societies are also registered charities. For those incorporated societies who are also a registered charity it should just be a matter of updating Charities Services with your new rules once they have been approved by Companies Office for reregistration.

Q95: Can officers count as members?

A95: Yes! Generally officers will also be members of the society.

Q96: Will the committee be subject to health and safety legislation?

A96: Health and safety legislation is a whole other topic – that we could hold an entire webinar on! It really depends on the makeup of your society. Here are some links to information provided by Worksafe that may be helpful. If you have any further questions please feel free to get in touch.

www.worksafe.govt.nz/managing-health-and-safety/getting-started/introduction-hswa-special-guide/

www.worksafe.govt.nz/managing-health-and-safety/getting-started/understanding-the-law/volunteers/information-for-officers-who-are-volunteers/

Q97: If a society doesn't reregister before the reregistration date, what happens to its assets (e.g. property and bank accounts)?

A97: Under [clause 12](#) of schedule one of the new Act, a society that does not reregister before the reregistration date will cease to exist. If you're interested in what "ceasing to exist" means practically let us know – that is an interesting but entirely separate question!

You'll see that this clause talks about how if the society ceases to exist under subclause 12(2)(b), then subpart 5 of part 5 applies to the society. This subpart sets out what takes place when a society is removed from the register or in liquidation.

[Section 216](#) of the new Act sets out the rules for disposal of surplus assets. In short, the assets are to be distributed to the not-for-profit entity/s nominated in the society's constitution, according to the procedure set out in sections 216-217 of the new Act. If this can't happen, then the assets will be distributed as the Registrar directs.

Q98: Can an officer of a society also be an employee?

A98: The Incorporated Societies Act 2022 is silent on this issue. It talks about how a society can employ people and sets out some rules in relation to employees (such as the indemnities or insurance the society may take out for employees), but doesn't say whether or not an officer can be employed by the society.

So it would be possible for the person to be employed, but they shouldn't be the ones making a decision about their own employment as that would be a conflict of interest. The society's rules may also say something about whether an officer can be an employee (and even whether an officer can be paid for being an officer). The key is that as long as the person employed is declaring conflicts and are not the ones making decisions, it will be fine.

Q99: Could the requirement for an officer to consent in writing be met by accepting a nomination and vote being carried and recorded in the minutes?

A99: As the officer will also need to certify that they are not disqualified from being elected or appointed or otherwise holding office as an officer, then they could consent in writing to being an officer at the same time. So yes, we think there would still need to be some written consent beyond what you've suggested above, but this could be done at the same time they certify they are not disqualified under the Act.

Q100: Could you explain more about the “cease to exist” if you don’t re-register?

A100: Under [clause 12 of schedule 2](#) of the new Act, a society that has not reregistered under the Act before the reregistration period ends will cease to exist from that point. The Act will then apply as if the society has been removed from the register.

The Registrar may restore a society to the register up until 6 years after the end of the reregistration period under the grounds explained in [clause 12 of schedule 2](#). This clause also explains what happens in a situation where the Registrar has received an application for reregistration but hasn’t made a decision on that application by the end of the reregistration period.

Q101: Do committee members need to sign something to say they are not disqualified from becoming a committee member?

A101: The Act doesn’t specify, but committee members do need to consent in writing to becoming a committee member. So we suggest they certify they are not disqualified from becoming a committee member at the same time.

Q102: If you are an incorporated society and a registered charity, do you have to keep up entries both on the charities register and as an incorporated society with Companies Office?

A102: From what we understand, if you are a registered charity then your Charities Services financial reporting requirements are prioritised. If you are not a registered charity, then you will need to meet the financial reporting requirements on Companies Office.

Q103: Would it be better to consider amalgamations now and do it before reregistering?

A103: Now is a great time to consider the structure of your organisation. However you will only be able to amalgamate under the provisions of the new Act once you have reregistered under it. We would be happy to discuss potential structure options with your organisation, just reach out.

Q104: Can you register as a new incorporated society and make it a charitable trust at the same time?

A104: Incorporated societies and charitable trusts are two different types of legal vehicles. Both can register with Charities Services and obtain charitable status. There is a third legal vehicle, a charitable society, but this will no longer be an option for groups once [section 261](#) of the new Act comes into force.

Q105: Does the register of members need to include a member’s physical address, or can it be an email address? And are those details made public?

A105: Under the [section 5](#) of the new Act contact details of a person means at least:

- a. a physical or an electronic address; and
- b. a telephone number.

So an email address or a physical address is sufficient (along with the member’s phone number).

There is no requirement in the Act that the register of members is made public – that is up to the society.

As you are collecting details from people now is a great time to make sure you have a privacy policy that explains how you use and hold onto people’s information. Feel free to get in touch with us if this is something you would like to discuss.

Q106: Do we need to include officers’ duties in our constitution?

A106: That’s up to you. They are a legal requirement set out in the Act so officers have to comply with them anyway, but you could include them in your constitution or a separate policy document so that officers are more easily alerted to their duties.

Q107: Under removal of officers, our current constitution covers how a member of the society shall cease to be a member (although does not list death) – do we need to have a separate section regarding removal of officers, or will the membership one cover this, as officers are members also?

A107: You should have a separate section in your constitution about the removal of officers. This is because some of these grounds will be different to those for members, and there may be a situation where a person retires from being an officer but still wants to be a member. [Section 50](#) of the new Act sets out some of the grounds you need to include for removal of officers.

Q108: Are there differences between societies registered with charities services or companies office?

A108: All incorporated societies should be registered with companies office, but only some will choose to register with charities services. Those registered with charities services are registered charities – not all incorporated societies choose to do this.

Q109: In terms of whether incorporated society registration remains fitting, our group disagrees about interpretation of section 24 of the new Act. The header “When society does not have financial gain purpose” suggests that the list in section 24(1) are all circumstances that rule out a breach of the financial gains prohibition, but the subsequent words “A society...is not being carried on...for the financial gain of any of its members merely because it will or may...” appears to convey that disallowed financial benefits may still exist. Is legal counsel not vital if a Society interprets 24(1) as though “merely because” can be replaced with the word “if”?

A109: Financial gain purpose is something we have been looking into, with resources to come. If we take a look at section 24(1) with an example, it might be easier to understand. Let’s take a local swimming club as an example. They exist to bring people together to train and compete. As part of this, they might run tournaments which include trophies or cash prizes for the winners.

On the face of section 22 of the Act this could be interpreted as the society being “carried on for the financial gain of any of its members”, as the society would be giving trophies or cash prizes to members who win the tournaments.

That’s where section 24 comes in – it explains that a situation where the society “will or may” “provide a member with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the society” means that the society “does not have a purpose of being carried on, and is not being carried on, for the financial gain of any of its members”.

So if we think of it as a scale from not financial gain to financial gain, section 24 is giving us examples of one end of the scale (not financial gain) and section 23 gives us examples at the other end (financial gain). We agree that the interpretation of these sections is really important under the new Act, as there will be situations in between section 23 and 24 that will need to be determined whether they are in fact financial gain.

Q110: What policies does a society have to have. I can see that we need a disputes policy and wonder what other ones are required under the new act and do they need to be policies or guidelines?

A110: You’re right that under the new Act a society needs to have a disputes resolution procedure. This procedure needs to be in the society’s constitution.

We would also suggest that societies adopt a conflict of interest policy explaining the default procedures under the new Act. This wouldn’t need to be in the society’s constitution, unless you were amending any of the default procedures.

Beyond the new Act, a privacy policy would be another important policy for an incorporated society to have, as a society holds members’ personal information. This wouldn’t need to be in the society’s constitution.

Q111: Is there a number limit for the committee within the new Act?

A111: There isn’t a number limit, only a minimum of three set out in section 45(2) of the new Act.

Q112: I’m interested in the information disclosure requirements – how can a Board deal with confidential information without being forced to disclose?

A112: That’s a great question and something we are seeking further input from Companies Office on. [Sections 80-83](#) of the new Act deal with access to information for members, with [section 81](#) setting out the grounds for a society refusing a request to access information.

The Act hasn’t made it clear whether the register of members (including the confidential information of members generally) must be provided to members generally – there was some mention of it in the Law Commission report (paragraphs 7.115-118) and the draft bill, but not in the final version. The access to information for members sections explain that a society may refuse to provide information if withholding the information is necessary to protect the privacy of natural persons (section 81), which we think would be sufficient grounds for affected societies to refuse to allow member access to the register.

Q113: Is there a requirement under legislation that we must record all correspondence (inwards and outwards) and that this must be made available to stakeholders/members of associations etc? if there is, what are the parameters for this record keeping?

A113: The Act explains that accounting records ([section 101](#)) and minutes of annual general meetings ([section 84](#)) must be kept, but doesn't specify whether records of correspondence must be kept by a society. When it comes to correspondence we think it is helpful to keep correspondence that relates to key decisions (such as resolutions in lieu of a meeting or transactional decisions) and correspondence with members (such as a member's consent to becoming a member).

In terms of what must be made available to members, this is set out in the access to information provisions discussed at Q116. It could be that the access to information needs to be refused because it would affect the commercial position of the society or the privacy of an individual.

Q114: Can a sport club change to a charitable trust?

A114: Yes, a sports club can transition to a charitable trust, but it depends on what purposes the sports club exists to advance. Feel free to get in touch with us so we can discuss your specific situation.

This document was revised and updated October 2023

ParryField 
Lawyers