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## Important changes for Incorporated Societies

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### What is an Incorporated Society?

An incorporated society is a membership-based not-for-profit legal entity that was, up until 5 October 2023, required to be registered pursuant to the Incorporated Societies Act 1908 (*Existing Act*).

There are over 24,000 incorporated societies operating in Aotearoa New Zealand, many of which are sports clubs and associations.

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### New Act and Regulations

The Incorporated Societies Act 2022 (*New Act*) and its associated regulations (*New Regulations*) came into force on 5 October 2023. The New Act:

- provides for the repeal of the Existing Act; and
- replaces the Existing Act with a more modern legal, governance and accountability framework for incorporated societies to operate in New Zealand.

From 5 October 2023, all existing incorporated societies are required to re-register under the New Act, and they have until 5 April 2026 to do so (this is referred to as the “Transitional Period” under the new Act). The provisions of the New Act will not apply to an incorporated society until it has re-registered under the New Act (the provisions of the Existing Act will continue to apply to that society in the meantime). Any society which fails to re-register by 5 April 2026 will cease to exist after that date.

Any new society wanting to incorporate as an incorporated society must now register under the New Act.

### Key changes

The following is a summary of the key changes introduced by the New Act:

- **Members / consent.** An incorporated society must, as a pre-requisite to being registered, have no fewer than 10 members (under the Existing Act, the requirement is for at least 15 members). Each member must consent to become a member of the society.
- **Committee.** An incorporated society must have a governing body (or committee) made up of no fewer than 3 members (called “Officers”). Importantly, a majority of Officers on the committee must be members. Under the existing Act there is no requirement for a committee. The Act also sets out certain qualifying criteria for Officers.

- **Constitution.** An incorporated society must have a constitution which complies with certain requirements of the New Act, including a dispute resolution procedure to govern any internal disputes in a way that is consistent with natural justice. The constitution replaces the “rules” under the Existing Act. It is incumbent upon the society to ensure that its constitution is compliant with the New Act - the Registrar of Incorporated Societies does not review these, like they did the rules under the Existing Act.
- **Officers duties.** Officers (which include the committee members, general manager/CEO, treasurers etc.) now have certain broadly expressed duties to the society which have been modelled on the directors’ duties in the Companies Act 1993. These include to:
  - o act in good faith and the best interests of the society;
  - o exercise powers for proper purposes only;
  - o comply with the New Act and the society’s constitution;
  - o exercise reasonable care and diligence;
  - o not create a substantial risk of serious loss to creditors; and
  - o not incur an obligation the officer does not reasonably believe the society can perform.

Officers are directly and personally liable to the incorporated society, whose members may apply to the Court to enforce them. The New Act allows societies to keep and maintain insurance for Officers in respect of such liability.

- **Contact person.** An incorporated society must have a dedicated contact person whose details are provided to the Registrar of Incorporated Societies (and will otherwise not be publicly available). The contact person need not be a member – but could be an accountant, lawyer or other business advisor.
- **Financial and other reporting.** Incorporated societies must now use XRB accounting standards in the preparation of financial statements (this requirement does not apply to “small societies” – being societies which are not registered charities and have total operating payments of less than \$50,000 and total current assets of less than \$50,000, for the last two financial years). An incorporated society is required to file financial statements and annual returns within 6 months of its balance date in every year.
- **Language.** the documents and records of an incorporated society, such as the constitution, bylaws and financial records can be written in either English or te reo Maori. Similarly, the name of the society must have a name that ends with either or both of “Incorporated”, “Inc” or “Manatapu”.
- **Amalgamation.** The New Act prescribes a process for amalgamation of two or more societies (such process being a similar to the process for amalgamation of companies under the Companies Act 1993).
- **Criminal acts.** The New Act makes it a criminal offence to:
  - o make a false statement;
  - o fraudulently use or destroy property;
  - o falsify documents;
  - o defraud creditors;
  - o dishonestly operate under a name for which the word “Incorporated”, “Inc” or “Manatapu” is the last word, when that organisation represented has not been incorporated under the New Act or any other act allowing for the use of those words; and
  - o breach a banning order (which is a court order disqualifying a person from being an Officer of a society due to criminal or reckless conduct or incompetence etc.).

## Comments

The changes introduced by the New Act are, in the main, likely to improve the way that sports clubs, associations and other not-for-profit organisations are governed in Aotearoa New Zealand.

The requirements of the New Act may not, for some of the larger and more sophisticated organisations, have a significant impact on governance practices. For smaller organisations (or those largely run by volunteers), the changes may be considerable and, in some cases, onerous: some may struggle to recruit and retain Officers particularly if there is little to no funding allowance for liability insurance. Others may struggle to meet the cost of compliance.

Societies should use the Transitional Period to ensure that they are in a position to be compliant with the New Act at the time of re-registration. This may include:

- reviewing their existing rules in order to assess what changes are needed in order to have a compliant constitution under the New Act;
- reviewing existing member application processes to identify the changes needed to ensure the consent of every new member is obtained (and in respect of all existing members, collecting their consent);
- formation of a committee and/or revising the composition of an existing committee in order to ensure the committee has a majority of members (as opposed to independent Officers);
- considering whether the existing/new Officers will meet the officer qualifying criteria under the New Act;
- considering who the Registrar's contact person will be; and
- identifying which tier of the XRB accounting standards applies to the particular society and considering the potential outsourcing of certain tasks to a professional consultant, such as preparation of financial statements.

Societies should also consider the extent to which they wish to keep and maintain insurance for the liability of their Officers – it may otherwise be practically difficult to attract Officers to those roles, given the additional liability created by the new duties.

Please contact Kelly Johnson (or your usual contact at Greenwood Roche) if you have any queries in relation to the New Act and how it may affect your incorporated society.

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