What You Need to Know: Incorporated Societies Changes





**Is Your Incorporated Society Prepared for the Law Changes?**

Incorporated Societies have been governed by the Incorporated Societies Act 1908 (“the 1908 Act”) for the last 114 years. While this Act has held up relatively well for this time, a new Act (Incorporated Societies Act 2022 “the 2022 Act”) has come into force from **5 October 2023**.

Because the law surrounding Incorporated Societies has remained unchanged for so many years, big changes are on the horizons for Incorporated Societies.

If you are a member or officer of an incorporated society now is the time to take proactive action to get your incorporated society compliant for 2025.

**Key Changes Made by the New Act**

Some of the key changes that the Act introduces include:

1. The need for members to consent to becoming society members
2. The need for member of society committees to consent to hold office
3. The imposition of statutory duties of care and diligence on committee members backed up by penal provisions
4. The requirement that conflicts of interest of those in governance be recorded and managed
5. The requirement for greater accountability of those in governance

**Key Dates**

* From the **5th of October 2023** existing societies will need to re-register under the new Act
* Incorporated Societies wishing to re-register must have done so by the **1st December 2025** **(**L**ast date to re- register**)
* On the 5th April 2026, any Incorporated Societies that have not re-registered will be removed from the register.

**Opt in/ Opt Out**

The most fundamental decision for Incorporated Societies involves electing whether or not to retain their incorporated status by seeking reregistration. Every existing incorporated society must make this decision in the next 2 years and must be re-registered by the **1st December 2025.**

If a society chooses not to seek re-registration, they have two options. They can actively decide to de-register and appoint a liquidator or apply to be dissolved. Alternatively, if society does nothing, the society will cease to exist and the Act gives the Registrar the right to distribute assets and hold members liable for debts. The society will not be able to enter into any contracts and loses its right to its name.

**Registration**

If a society elects to seek reregistration, they must ensure that they are compliant with the 2022 Act as this will be the governing law for re-registered societies. To re-register, societies must apply to be re-registered as a society under the 2022 Act before the transition date – 1 December 2025. If a society does not apply for re-registration, they will be removed from the register on the 5th April 2026.

**Constitution**

 The 2022 Act requires considerably more in a constitution than the 1908 Act. Some of these requirements of s 26 are set out below:

* A requirement that a person must consent to being a member;
* Arrangements for keeping the society’s register of members up to date;
* More specific information around general meetings;
* Procedures for resolving disputes & procedure for how a complaint may be made;
* The nomination of a not-for-profit or cause to which any surplus assets of the society should be distributed on the liquidation or removal or the society from the register;
* More specific information around the appointment of officers of the society;
* The method by which the constitution may be amended.

**Governance**

The introduction of the 2022 Act sees rules on the governance of incorporated societies introduced for the first time. Under the 1908 Act no such provisions existed. This will be a big change for current incorporated societies.

The 2022 Act requires the operation and affairs of every incorporated society to be managed by a committee consisting of a minimum of three officers. All officers must consent in writing to being an officer and must not be disqualified from being an officer (under a 47 (3)).

Committee members of an incorporated society will be subject to specific statutory duties which are similar to those duties owed by directors under the Companies Act 1993. Although this may seem daunting, the introduction of statutory duties merely codifies what the Court has considered to be duties of incorporated societies members.

Other key governance provisions include:

* Conflicts of interest
* Members must disclose any conflicts of interest, in particular those where they may obtain financial benefit;
* Every incorporated society must obtain an interests register which should be discussed at every AGM;
* Liability of officers
* A society officer ceases to be an officer on death or resignation;
* BUT they remain liable for past acts, omissions, and decisions after resignation;
* Change of officers
* The Registrar of Incorporated Societies must be advised within 20 working days of all changes of a society’s officers;
* Contact persons
* A society must at all times have between 1-3 contact persons whom the registrar can contact when needed.

 **Membership**

There are several new rules that deal with onboarding new members and the rights of existing members. They include:

* Minimum numbers
* Under the 2022 Act, section 8(1) requires a minimum of 10 persons to incorporate a new society. Under the 2022 Act, an incorporated society must maintain the minimum membership numbers.
* Joining an incorporated society
* Section 6(1)(c) of the 2022 Act a person must consent to become a member of society.
* Upon joining an incorporated society new members should be provided with a copy of the society’s constitution.
* Society membership registers
* Under section 79, an incorporated society must record the names of each member, the date on which they became a member and the last known contact details of each member.
* Member access to general society information
* Under section 80 a member may at any time make a written request to a society for information held by the society.
* The grounds for refusing a request include privacy, commercial sensitivity, relevancy to affairs of the society, and the request is frivolous.
* Developing policies and processes for dealing with requests for information is recommended
* Member access to financial statements and minutes of general meetings
* The committee must at the society’s AGM present an annual report on operations and affair of the society, the annual financial statements and notice of disclosures made.
* Providing this information in a document to all members at the AGM is recommended
* Internal disputes – complaints and grievances
* The 2022 Act defines what is considered a dispute and a grievance. The Act does not provide any hard or fast rules for how societies must deal with these but instead relies on the principles of natural justice.

 **Statutory Sanctions**

The 2022 Act provides a mechanism for the Court to ban certain people from serving as society officers. This includes persons who have been convicted of a crime involving dishonesty, have failed to comply with the Act, been guilty of fraud, or acted recklessly in performing their duties.

Sections 154-159 deal with the more serious offences that can be committed under the 2022 Act. These include: false statements, fraudulent use or destruction of property, falsification of records and documents, operating fraudulently or dishonestly incurring debts. The Incorporated Societies Regulations 2023 sets out the fines for these offences.

**Conclusion**

The key date for current officers of incorporated societies to keep at the forefront of their minds is the 1st December 2025.. This is the date by which all incorporated societies wishing to remain incorporated societies must be registered.

No society should underestimate the time and effort required to get to the end point of re-registration. The process of re-registration will create extra work for your society, but it is crucial that this is not put off or carried out poorly.

**What do You Need to do Now?**

* Officers of Incorporated Societies should brush up on the 2022 Act;
* Hold a vote to decide if your Incorporated Society is to remain incorporated and, if so, re-register under the 2022 Act;
* If the decision is made to re-register, appoint a sub-committee to manage the process;
* Lodge any replacement constitution with the Registrar promptly;
* If necessary, speak to a Solicitor to get assistance with the transition or ask any questions you may have about the legislation or process.

We offer a range of packages depending on the needs of your incorporated society. As we know that incorporated societies may need to seek funding, we can provide a quote to enable you to make funding applications. Please contact us for further information

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We hear it all the time – the relief people have when they find a lawyer who really understands them. Our difference is a deep respect and care for our clients, beyond down to earth “straight up” communication. Our lawyers genuinely want to do good for people and the communities in and around Nelson and Westport where we offer legal services. We’re proud to say that we are achieving that and the great feedback spurs us on. We are an all-women, highly qualified, team of lawyers with heart, integrity and great heads for business. It’s a combination that makes our clients feel as all clients should – that they have rock solid support, legally and personally.

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