

The Incorporated Societies Act 2022 was passed into law in April 2022. The new Act intends to make incorporated societies more robust from a governance standpoint.

What is an incorporated society?

It is where a group or association can choose to organise itself in a certain way, to help it run effectively and achieve its goals. An incorporated society must register itself, which gives its own legal identity, separate to that of its members. It means that while the membership may change, the society's identity does not. It also means that the members are not personally liable for the society's debts or other obligations and cannot have a personal interest in any property or assets owned by the society.

Becoming an incorporated society suits an organisation that is likely to be operating for a long period of time, and for a purpose other than making a profit.

A wide range of organisations can become incorporated societies. These include sports and social clubs, cultural and religious groups, and special interest groups and activity organisations.¹

With the new Act, there is a transition period during which incorporated societies will continue to be subject to the 1908 Act until they decide whether they wish to re-register under the new Act or consider new options.

The timeline:



Summary of the key changes to the Act:

- Consent of members² needs to be obtained
- Register of members
- Must appoint at least one contact person
- Officers have new duties including:
 - Acting in good faith and in best interest of society
 - Complying with the 2022 Act and constitution
 - Exercising the care and diligence a reasonable person would in the circumstances
- The majority of officers on the committee/board must be members
- Dispute resolution processes must be included in constitution and processes must be consistent with rules of natural justice
- New rules define when an officer has a conflict of interest and a duty to disclose conflicts

¹ Source: <https://is-register.companiesoffice.govt.nz/help-centre/getting-started/about-incorporated-societies/>

² In this context, a member is a person who has registered to be part of your organisation

- Societies can provide insurance and indemnify officers and employees
- New financial reporting requirements

FURTHER DETAILS OF THE CHANGES

What is member's consent?

Members will need to give consent to become a member of a society. For example, filling in an application form will generally be considered as the member has given their consent. On the other hand, you cannot specify in your constitution that, everybody who lives within your suburb is regarded to be a member of your society.

Committees and Officers

Each society will need to have a governing body (for example, a committee) — it won't be enough just to have officers.

Committees will need to have at least three members and the majority of the committee members must be members of the society.

The new law sets out who qualifies to be an officer of a society;

- A person must consent in writing and certify that they are not disqualified.
- They must be 16 years of age or older.
- A person cannot be:
 - an undischarged bankrupt³
 - prohibited from being a director or promoter of a company
 - disqualified from being an officer of a charitable entity
 - convicted and sentenced for certain offending (for example, a crime involving dishonesty)
 - subject to particular orders (for example, a banning order)
 - unable to comply with any qualifications for officers contained in the society's constitution.

The officers will also have defined duties similar to those of company directors including, such things as acting in good faith and in the best interests of the society or club.

Please note that these duties have always existed, but under the new act, they are specifically identified.

Contact person for the society

Each society will be required to have at least one contact person who the [Registrar of Incorporated Societies](#) can contact when necessary. The contact person doesn't need to be an officer of the society. Often this is a duty held by the secretary, but it can be anyone. Societies will also be able to have more than one contact.

New financial reporting standards

The new Act will introduce changes for how some societies prepare their financial statements. New thresholds will determine which societies will also need to have their financial statements audited.

From October 2023, once a society re-registers, it will have to start using [External Reporting Board](#) (XRB) accounting standards in its financial statements, unless it qualifies as a 'small society'.

What is a small society?

A 'small society' is defined in [section 103 of the Incorporated Societies Act 2022](#). Under this provision, in any given financial year, a society is considered small if the following criteria apply:

1. it spent less than \$50,000 in each of the two preceding financial years, AND
2. it had current (that is, liquid) assets of less than \$50,000 at the end of the two preceding financial years, AND
3. it is not a 'donee organisation'⁴ for tax purposes and/or a registered charity.

³ An undischarged bankrupt person means you can no longer direct, or own a company until you are discharged. Source: <https://www.cab.org.nz/article/KB00001943>

⁴ For more information on donee organisations, please see: <https://www.ird.govt.nz/roles/not-for-profits-and-charities/setting-up/donee-organisations>.



Documented dispute resolution procedures

All societies will need to have procedures for resolving disputes and other grievances between members as well as between members and the society. These procedures must then be set out in your constitution. Schedule 2 of the new Act contains a set of dispute resolution procedures which your society may choose to adopt. If your society includes these procedures in your rules, your society will be guaranteed to comply with the new Act. Read more [here](#).

You'll need to re-register

Societies will have some time to transition and complete their re-registration. The re-registration period will run for 2½ years — from October 2023 to April 2026.

The re-registration process will involve re-registering on the [Incorporated Societies Register](#) and providing an up-to-date constitution. Until then, societies will continue to operate under the existing legislation, Incorporated Societies Act 1908.

The regulations being developed over the coming months will provide more information about what societies will need to do to re-register.

Before the start of the re-registration period (October 2023), the [Registrar of Incorporated Societies](#) will provide detailed information to societies on what's involved in re-registering.

Some of the things you can't do until your society re-registers

Your society won't be able to:

- reduce its membership to ten (there have to be at least 15 members, for now)
- stop using its common seal
- take appeals against decisions by the Registrar to the District Court (currently, these go to the High Court).

Some of the things you can't do once your society has re-registered

Once your society has re-registered, it won't be able to:

- ignore complaints from members, you will have to run a dispute resolution process that meets minimum [natural justice standards](#)
- appoint as an officer a member who:
 - is an undischarged bankrupt
 - has been prohibited from being a director or
 - has been convicted of certain offences.
- present its financial statements to its members later than six months after the end of your financial year
- after winding up, divide any surplus assets between the members (you will have to give them to a not-for-profit entity named in your rules).

Comparisons – 1908 Act vs 2022 Act⁵

Topic	1908 Act	2022 Act
Minimum number of members	15	Ten
Internal disputes	No requirement to have internal dispute resolution procedures	A society must have adequate dispute resolution procedures, and these must be specified in its constitution
Committee requirement	Committee not required	Must have a committee of at least three members
Independent members of committee	N/A	Unless regulations prescribe otherwise, majority of committee must be society members

⁵ Source: <https://is-register.companiesoffice.govt.nz/law-changes-for-societies/key-changes/>



Topic	1908 Act	2022 Act
Concept of an officer	Not explicitly defined	Includes all committee members, as well as others, for example, treasurer, CEO
Officers' duties	Duties are not clearly articulated	Six broadly expressed duties modelled on directors' duties in the Companies Act 1993 to: <ol style="list-style-type: none"> 1. Act in good faith and in the best interests of the society 2. Exercise powers for proper purposes only 3. Comply with the Act and the constitution 4. Exercise reasonable care and diligence 5. Not create a substantial risk of serious loss to creditors 6. Not incur an obligation the officer doesn't reasonably believe the society can perform
Annual General Meeting (AGM)	No guidance	Must be held within six months of the society's financial year end
Financial statements filed with Registrar	Must be filed annually	Must be filed within six months of the society's financial year end
Annual return	No requirement to file an annual return	Must be filed annually as outlined in section 109
Manner of preparing financial statements	A society is not required to apply XRB accounting standards, unless it's also a registered charity	Only a ' small society ' not registered as a charity is exempt from using XRB accounting standards
Distribution of surplus assets⁶ after winding up	Surplus assets can be given to any party	Surplus assets must be given to a not-for-profit organisation
Amalgamations	No legislative framework for amalgamations of 2 or more societies	Amalgamations can take place as outlined in the Companies Act 1993, but follow a more simplified process
Criminal offences	Generic offences set out in the Crimes Act 1961	Six offences that target egregious conduct including: <ol style="list-style-type: none"> 1. Making false statements 2. Fraudulent use or destruction of property 3. Falsification of documents 4. Defrauding of creditors 5. Improper use of 'incorporated' or its Te Reo version 'manatōpu' 6. Breaching of a banning order

⁶ Defined as: Surplus assets are all assets remaining after the society's outstanding debts are paid. Source: <https://is-register.companiesoffice.govt.nz/law-changes-for-societies/key-changes/>



AKTIVE'S APPROACH

Aktive understands that the changes to this legislation will have an impact on our sector here in Tāmaki Makaurau Auckland. We will attend any sessions/webinars or learning opportunities provided by Sport NZ to ensure that any key information is gathered and shared where suitable.

To date, Aktive has been collating a number of resources and key informational documents that may be of use, please see links below.

Aktive has also been included in the Sport NZ national working group which will see a series of resources made available for the sector.

If there is anything else that you'd like us to consider doing to support you through these upcoming changes, please get in touch to discuss. We're keen to help you as much as possible.

OTHER USEFUL LINKS AND RESOURCES

[The Act](#)

[Sign up](#) here for updates directly from MBIE

Sport NZ – [Sport Tutor Course](#) (free of charge)

NB: This is where they will direct any information and resources

General Resources:

[New Zealand Companies Office – New financial reporting requirements](#)

[New Zealand Companies Office – Law changes for incorporated societies](#)

[Institute of Directors New Zealand – What leaders need to know](#)

[Parry Field Lawyers Overview](#)

[Anderson Lloyd Lawyers Overview](#)

[Gibson Sheat Lawyers for Golf New Zealand](#)

[Tennis NZ – Constitution Advice](#)

[NFP Law – Short Guide](#)

[NFP Law – Transitioning to the new act report](#)

[NRP Law – Be prepared for the new act](#)

[New Financial Reporting Requirements – Webinar slides, 24 August 2022](#)

[Governance Institute of Australia Report](#)

For further support or guidance, please contact:

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