

New Incorporated Societies Regulations published

September 2023

On 7 September 2023, the new Incorporated Societies Regulations 2022 (**Regulations**) were published.

The Regulations will commence on 5 October 2023, the same day on which the Incorporated Societies Act 2022 (**New Act**) will take effect in full.

In this update, we summarise the most important provisions of the Regulations and what incorporated societies (**societies**) need to do to register under the New Act.

REGULATIONS

The Regulations:

- specify information which societies must provide to the Registrar in addition to that required under the New Act, for example:
 - in their applications for incorporation or re-registration under the New Act;
 - in the society's register of members;
- specify the fee for applications to incorporate under the New Act - \$88.89 (GST exclusive);
- require that any information, notice or application to be lodged with the Registrar is to be lodged online - unless the society is able to satisfy the Registrar that it is not reasonably practicable for it to do so;
- set out the fees for infringement offences under the New Act. These range from \$100 for more minor offences (for example, if a society fails to maintain its register of members) to \$500 for more major offences (for example, if a society fails to call an AGM or lodge its financial statements);
- prescribe the form of:
 - infringement notices that the Registrar may issue if they believe that the society is committing or has committed an infringement offence; and
 - reminder notices issued if the infringement fee is not paid by the due date;
- set out the manner in which documents may be served on a society and/or its officers; and
- set out the criteria for societies which need to have their annual financial statements audited.

WHAT SHOULD SOCIETIES DO NOW?

There are a number of practical steps that societies need to take to comply with the New Act and the Regulations. The most important steps are summarised below:

- **Adopt a New Constitution:** Societies which intend to register under the New Act need to adopt a new constitution which complies with the New Act.

Existing societies should be careful to ensure that they comply with the requirements of their current constitution when adopting a new one - for example, if the current constitution requires that any amendments be made by a resolution passed at a general meeting, that they hold a

general meeting to pass the resolution.

- **Membership:** Societies should ensure that:
 - they have at least 10 members (noting that body corporate members will be counted as three members);
 - their register of members is up to date and includes all of the information required under the New Act and the Regulations; and
 - written consents to membership are obtained from all current and future members.
- **Committees and Officers:** Societies should ensure that:
 - they are managed by a committee made up of at least three persons (**officers**);
 - their officers satisfy the eligibility criteria set out in the New Act (or apply to the Registrar under the Regulations for that criteria to be waived);
 - written consents to act are obtained from all current and future officers;
 - their officers understand and are in a position to comply with the new conflict of interest rules imposed under the Act;
 - they have established a register of interests; and
 - all current and future officers disclose any conflicts of interest.

The New Act imposes duties on officers akin to directors' duties so societies should also:

- ensure that their officers understand and are in a position to comply with their new officers' duties; and
- consider taking out a directors and officers (D&O) insurance policy (if they have not done so already).
- **Contact Person:** Societies must now appoint between one and three individuals as a **contact person** who the Registrar can contact as necessary in relation to the society.
- **Apply for re-registration:** Once a society has its new constitution in place and is satisfied that it can comply with the requirements of the New Act and the Regulations, it can apply for registration under the New Act.

Societies have between 5 October 2023 and 1 December 2025 to do this. Societies which do not register by 1 December 2025 will immediately cease to exist.

OBSERVATIONS

To assist with transitioning to the New Act, societies may also wish to put in place some new policies and procedures and/or, if permitted under their new constitution, consider whether any by-laws are required to further govern the society's operations or affairs.

FURTHER INFORMATION

For further information or to discuss how the New Act and Regulations may affect your society, please contact one of the Jackson Russell lawyers listed.

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