

Legal Update

Changes for incorporated societies under new Act

August 2022

On 5 April 2022, the Incorporated Societies Act 2022 (**New Act**) was passed into law.

Upon its commencement, the New Act will replace the Incorporated Societies Act 1908 (**1908 Act**) and have a significant effect on existing incorporated societies.

In this update, we summarise the most important changes for existing incorporated societies and what needs to be done between now and the end of the “transition period” for the New Act, which ends on 1 December 2025.

BACKGROUND

The world has changed in the more than a century since the 1908 Act was passed – in particular, it is now much easier for people to travel and to communicate with one another and there is also an expectation that things will happen much more quickly.

This has become even more apparent in a post-COVID world. For example, most incorporated societies have become accustomed to (and in many cases have embraced) holding their meetings by way of video conferencing technology.

The purpose of the New Act (according to David Clark, the MP in charge of the Bill that has now been adopted as the New Act) is to “*put in place a modern framework of basic legal, governance, and accountability obligations for incorporated societies and those who run them*”.

HOW THE NEW ACT WILL AFFECT EXISTING INCORPORATED SOCIETIES

• **Members:**

- Incorporated societies will now only have to have a minimum of 10 members (down from 15).
- Body corporate members will be counted as if they were three members who are natural persons.
- Each member will now be required to consent to being a member.

• **Committees and Officers:** The New Act:

- requires incorporated societies to be managed by a committee of at least three persons (**officers**);
- provides that in order to qualify as an officer, a person must satisfy the eligibility criteria set out in the New Act;
- provides that certain persons are disqualified from being an officer;
- requires officers to disclose conflicts of interest; and
- imposes duties on officers akin to directors’ duties.

• **Contact Person:** The New Act will require incorporated societies to appoint between one and three persons as a **contact person** who the Registrar can contact as necessary in relation to the society.

- **Adoption of New Constitution:** Prior to the end of the transition period, existing incorporated societies will need to adopt a new constitution which complies with the New Act.

The new constitution will need to include clauses in relation to (amongst other things):

- the composition and role of committees;
- dispute resolution;
- the holding and calling of annual general meetings;
- control and management of the incorporated society’s finances; and
- how any surplus assets will be distributed upon the winding up of the incorporated society.

Existing incorporated societies should be careful to ensure that they comply with the requirements of their existing constitution when adopting a new one (for example, if the existing 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).

- **Re-registering:** The New Act provides that, once the Act commences, existing incorporated societies may apply for re-registration under the New Act at any time before 1 December 2025.

An incorporated society does not have to register under the New Act – however, if it does not, it will immediately cease to exist from 1 December 2025.

- **Registrar’s Powers:** The New Act substantially expands the powers of the Registrar. Under the New Act, the Registrar will now have the power (amongst other things) to:

- issue incorporated societies with infringement notices; and
- if the Registrar considers it in the public interest to do so:
 - remove or omit any information relating to an incorporated society from the Register of incorporated societies (**Register**); and
 - prevent or restrict public access to any information on the Register in relation to an incorporated society or any individual.

- **Offences:** The New Act includes a wide range of offences, including:

- more serious offences such as:
 - making false statements;
 - fraudulent use or destruction of property; and
 - operating fraudulently or dishonestly incurring debt; and

Legal Update

- infringement offences, such as failing to:
 - notify the Registrar of amendments to the Incorporated Society's constitution;
 - maintain a register of members; or
 - hold, and keep minutes of, annual general meetings.

These offences should be borne in mind by incorporated societies when amending their constitutions to help minimise the risk of an offence being committed.

- **Further considerations:**

- **Regulations**

The New Act allows the Governor-General, by Order in Council, to make regulations for various purposes under the Act.

Once passed, the Regulations may prescribe such things as:

- the amount of infringement fee payable in relation to infringement offences;
- the manner in which a society is to provide any required notice to the Registrar (such as a change of name, amendment to its constitution or the appointment or election of new officers to its committee); and
- the circumstances in which a person who would otherwise be disqualified under the Act from being elected or appointed as an officer can be appointed or elected.

- **Incorporated Societies registered under the Charitable Trusts Act**

Incorporated Societies registered under the Charitable Trusts Act will need to decide whether to remain registered under that Act or re-register under the New Act.

WHEN

The New Act will commence upon date(s) to be appointed by the Governor General by Order in Council.

However, subpart 3 of Part 6 of the New Act (which allows the Governor General to make regulations) commenced on 6 April 2022, being the day after Royal assent was given.

Once commenced, the transition period for the new Act will continue until 1 December 2025.

This may seem like a long time but it is likely that incorporated societies will have a lot to do between now and then to finalise their new constitutions and work their way through the re-registration process.

OBSERVATIONS

The New Act means that existing incorporated societies will need to consider what effect the new Act will have on them. As well as amending their constitution and re-registering under the new Act, they will also need to take practical steps to:

- ensure that their register of members is up to date and includes all of the information required under the New Act;
- obtain written consents to membership from all current members and consents to act from all current officers;
- ensure that their officers understand and are in a position to comply with the new conflict of interest rules imposed under the Act and establish a register of interests;
- ensure that officers understand and are in a position to comply with their new officers' duties (and allow officers the opportunity to undertake some limited due diligence to make sure that they are comfortable with the financial position of the incorporated society and the way in which it is being managed);
- consider taking out a directors and officers (D&O) insurance policy if it has not done so already.

To assist with this, incorporated societies may also wish to put in place some new policies and procedures and/or, if permitted under the new constitution, consider whether any bylaws are required to further govern the society's operations or affairs.

The sooner an incorporated society gets started on this process, the more likely it is that they will be ready to adopt their new constitution and re-register under the new Act well before the end of the transition period.

FURTHER INFORMATION

For further information or to discuss how the New Act may affect your incorporated society, please call or email one of the Jackson Russell business lawyers listed.

[Click here](#) to view the New Act.

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