

The Incorporated Societies Act 2022 - a long time coming

Julia Gabrielle

4 April 2022

In response to a 2013 report published by the New Zealand Law Commission identifying numerous deficiencies with the Incorporated Societies Act 1908 (the 1908 Act), the Incorporated Societies Bill (the Bill) was introduced to Parliament last year and has now passed its third Parliamentary reading. We anticipate that Royal Assent to the Bill will be given by the Governor-General in the coming week at which point in time the Bill will pass into law as the Incorporated Societies Act 2022 (the 2022 Act). Once in force, all existing incorporated societies will have a transitional period of approximately three and half years within which they must re-register with the Registrar of Incorporated Societies and accompany such application with the filing of a constitution that is compliant with the 2022 Act.

The current status

For over 100 years incorporated societies in New Zealand have been regulated by the 1908 Act. However, since the 1908 Act's inception the incorporated societies sector has grown considerably and in this modern age incorporated societies can be complex entities holding significant assets and/or operating substantial businesses. The 1908 Act does not respond to the present-day requirements of incorporated societies and provides very little practical guidance to incorporated society officers in relation to operational matters. The 2022 Act is intended to make incorporated societies more robust, assist with self-governance and provide constructive options when disputes arise.

Key changes

The 2022 Act will make a number of key changes to the current governance framework, as follows:

- Codifying officer duties by prescribing that all officers must:
 - act in good faith and in what the officer believes to be in the best interests of the incorporated society
 - exercise their powers for proper purposes
 - exercise the care and diligence that a reasonable person with the same responsibilities would in the same circumstances
 - not agree to, cause or allow for, the activities of the incorporated society to be carried on in a manner that is likely to create a substantial risk of serious loss to creditors
 - not agree to the incorporated society incurring an obligation unless the officer believes on reasonable grounds that the incorporated society will be able to perform the obligation when required to do so
 - not act, or agree to the incorporated society acting, in a manner that contravenes the 2022 Act or constitution of the incorporated society,

resulting in officers having duties akin to those of company directors (which has attracted some negative comment that the duties may be disproportionately burdensome for officers of incorporated societies operating in the not-for-profit sector, particularly in today's challenging economic climate)

- Requiring certain incorporated societies (to be prescribed in regulations) to have their financial statements audited
- Requiring all incorporated societies to have a procedure contained in their constitutions to resolve disputes which must be consistent with the rules of natural justice
- Specifying certain factors that will disqualify a person from being an officer of an incorporated society
- Requiring an ongoing minimum number of members (the 1908 Act currently only requires a minimum number on incorporation but does not provide for any ongoing minimum number of members)
- Introducing an amalgamation regime, which is a simplified version of what is provided for in the Companies Act 1993
- Allowing a mechanism for members to obtain information from officers to allow for improved accountability of officers
- Providing for certain criminal offences, such as officers dishonestly using their officer position, providing false or misleading statements (knowing them to be so), fraudulently using incorporated society property and falsifying records, documents or the Incorporated Societies Register.

What do I need to do?

When the 2022 Act comes into force, all existing incorporated societies will be required to re-register with the Registrar of Incorporated Societies by the later of 1 December 2025 and the date that is two years and six months after the commencement of certain transitional provisions contained in the 2022 Act. An application for re-registration must be accompanied by a copy of the incorporated society's constitution, such constitution to be compliant with the requirements set out in the 2022 Act. Now is a timely opportunity for incorporated societies to review their existing rules/constitutions to ensure they will be compliant with the requirements of the 2022 Act and, if not, to take steps to make the necessary modifications. In addition, consideration should be given to whether officers of incorporated societies meet the officer criteria set out in the 2022 Act.

Next steps

Buddle Findlay is well-placed to advise you on how the proposed amendments in the 2022 Act may impact you. In particular, we can guide you through the re-registration process, provide advice on the compliance of constitutions with the 2022 Act and assist with any corresponding modifications that need to be made.

This article was co-authored by partner [Julia Gabrielle](#) and solicitor [Joshua van der Plas](#).

Auckland

188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659