

Q&A regarding the new Incorporated Societies act 2022 (keep the questions coming!)

Q1: I'm particularly interested to understand your thoughts/concerns about the operation of the new act in relation to Residents Society's arranging insurance for their properties.

A: In short the Incorporated Societies Act 2022 (the "new Act") is silent on insurance - it just talks about indemnity insurance and so forth for officers, as you can see [here](#).

Q2: Does the new Act also affect charitable trusts?

A: No, only incorporated societies.

For charitable societies incorporated under the Charitable Trusts Act 1957, they may choose to either continue to be incorporated under the Charitable Trusts Act 1957 or reregister under the new Act, per [section 261](#).

Q3: Is there a template "model constitution"?

A: Not yet, as Companies Office had a [constitution builder](#) under the Incorporated Societies Act 1908 (the "old Act") we suspect they will do the same with the new Act.

Q4: Do you think (as part of the updating process) that the first step should actually be to determine what the best structure is?

A: Yes! As we discussed in our talk now is a great time to determine whether the incorporated society model is the right legal vehicle for your entity. Steven Moe and Craig Fisher have written a great article on this point, which you can find [here](#).

Q5: If you are already registered, and are asserting compliance with the Incorporated Societies Act at today's date, would you say 1908 or 2022?

A: We are in an unusual limbo period, where the old Act is still in force but the new Act is coming into force in stages. So, as your society is already complying with the old Act, we recommend you also comply with the new Act.

Q6: Do they have to be paying members or could they be life members?

A: [Subpart 5 of Part 3](#) of the new Act sets out the law around members. It is up to the society whether their members are paying members, however under [section 26\(1\)\(d\)](#) a society's constitution must include "how a person ceases to be a member of the society". So a society can have life members, but there will still need to be a way for a person to stop being a member of that society.

Q7: Where do 'boards' fit? As different to a committee?

A: A "committee" is defined in [section 5](#) of the new Act as meaning "in relation to a society, means the governing body of the society, however described (for example, a board)". So as long as a board is the governing body of the society, it has the same meaning as a committee.

Q8: When drawing up the new rules/constitution by the committee, is it best to ask members to review this before finalising and registering the updated under the new Act i.e. do we need special meetings to pass this new constitution?

A: The answer to this will be in your society's constitution, which should set out the procedures for amending the constitution. If those procedures require a special meeting to pass the amended constitution, then one will need to be called.

Q9: I've heard that there are higher personal liabilities on officers of a society if e.g. a building we own burns down for example. Could you tell us a bit more about this?

A: The new Act has not radically changed liability - it depends on the situation and the insurance cover that the society has in place. The new Act explicitly mentions an officer is liable where they act in contravention of a banning order that disqualifies the person from being an officer (see [subpart 7 of part 4](#) of the new Act), and when a society is deregistered the liability of officers for any act or omission while the society was registered ([section 183](#) of the new Act). [Sections 54-61](#) of the new Act also sets out existing officers' duties - these were already enforced by the court but not written in legislation.

Q10: When can we start an amalgamation? Is this part in effect before the regulations are released?

A: As the amalgamation procedures are in the new Act, our understanding is that you will need to be registered under the new Act before an amalgamation can begin. The amalgamation procedures are set out in [subpart 2 of part 5](#) of the new Act.

Q11: Will part of the re-registration of an incorporated society allow for an organisational name change?

A: As long as the society's rules allow for a name change, and the new name complies with the requirements set out in [section 11](#) of the new Act, then a society will be able to change its name on re-registration.

Q12: Can an Incorporated Society submit new rules now that do not comply with the new Act with a view to submit compliant rules in the future when it intends to re-register?

A: Yes - up until [clause 4 of schedule 1](#) of the new Act comes into force (which we hope is by the end of this year) a society can submit rules under the old Act, meaning those rules do not need to comply with the new Act. However, for the sake of efficiency, we suggest societies looking to update their rules do so in light of the new Act.

Q13: In terms of the offences - I tend to do a lot of this sort of filing paperwork without discretion from the Board as it won't otherwise get done. In terms of the offences - should employees get specific instructions in writing from the Board when filing paperwork with the Registrar?

A: We suggest it is best practice to have the Board sign off on documents before they are filed with the Registrar.

Q14: Can a charitable company be formed following a formal conventional company for the purpose of community housing or cooperative housing?

A: To become a charitable company, the company will need to adopt a constitution including a charitable purpose. We have written a helpful article on charitable purposes (which you can find [here](#)) and would be happy to discuss your structure with you.

Q15: would be interested in more detail on section 94 of the new Act - cannot indemnify officers. What about D&O liability insurance?

A: [Section 94](#) of the new Act sets out that a society can only effect insurance for “an officer, a member, or an employee of the society for—

- (a) liability for any act or omission in their capacity as an officer, a member, or an employee of that society; or
- (b) costs incurred by the officer, member, or employee of that society in defending or settling any claim or proceeding relating to that liability.”

[Section 97](#) of the new Act sets out the types of insurance permitted for certain liability or costs.

[Section 98](#) of the new Act allows a society to effect insurance for an officer for liability for a failure to comply with their officers’ duties or any other duty imposed on the officer in their capacity as an officer. However, the society’s constitution must expressly authorise the insurance for officers. This means that a society can have D&O liability insurance, but only where it is expressly provided for in the society’s constitution.

Q16: The new Act is clear on what small societies need to do, and small societies are also clearly defined (less than \$50k in assets and expenses), but what about societies that don’t meet the definition of a small society?

A: To provide the answer, we contacted the XRB (where Steven is on the XRB Advisory Panel) and received this response - “I have jumped through the trail of definitions in legislation, provided below for your information:

End result, an incorporated society that is not small will be required to report using the following XRB NFP Standards from the first year-end (balance date) after which the Society re-registers under the new Act.

- Incorporated Societies with over \$30 million annual expenditure – Tier 1 NFP XRB Standards
- Incorporated Societies with over \$2 million annual expenditure – Tier 2 NFP XRB Standards
- Incorporated Societies with annual operating payments over \$140,000 – Tier 3 NFP XRB Standards
- Incorporated Societies with annual operating payments less than \$140,000 – Tier 4 NFP XRB Standards

Legislation trail:

Reporting requirements per the new Act

102 Annual financial statements must be prepared and registered

- (1) Every society must ensure that, within 6 months after the balance date of the society, financial statements are—
 - (a) completed in relation to the society and that balance date; and
 - (b) dated and signed by or on behalf of the society by 2 members of the committee.
- (2) The financial statements must be prepared in accordance with,—
 - (a) in the case of a specified not-for-profit entity, generally accepted accounting practice; or
 - (b) in the case of a small society, any of the following:
 - (i) generally accepted accounting practice; or
 - (ii) a non-GAAP standard that applies for the purposes of this section; or
 - (iii) the requirements set out in section 104; or
 - (c) in any other case, either of the following:
 - (i) generally accepted accounting practice;
 - (ii) a non-GAAP standard that applies for the purposes of this section.

Generally accepted accounting practice (GAAP) is defined by the new Act as:

non-GAAP standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

Section 5(1) of the FRA 2013 defines GAAP as having the meaning as defined in section 8 of the FRA 2013 Act.

8 Meaning of generally accepted accounting practice

In this Act, financial statements, group financial statements, a report, or other information complies with **generally accepted accounting practice** only if the report, statements, or information comply with—

- (a) applicable financial reporting standards; and
- (b) in relation to matters for which no provision is made in applicable financial reporting standards, an authoritative notice.

Section 5(1) of the FRA 2013 defines financial reporting standards as:

financial reporting standard means a financial reporting standard issued by the Board under [section 12](#); and includes an amendment to a financial reporting standard that is issued by the Board

Section 5(1) of the FRA 2013 defines the Board as the XRB

A non-GAAP is defined by the XRB as a Tier 4 Standard. The Tier 4 Standard can be applied by an incorporated society that is not a “specified NFP entity”. A specified NFP entity is one that has operating payments less than \$140,000.

This assumes an incorporated society meets the XRB definition of a Public Benefit Entity (PBE).

PBE's are reporting entities whose primary objective is to provide goods or services for community or social benefit and where any equity has been provided with a view to supporting that primary objective rather than for a financial return to equity holders

It is assumed that the majority of incorporated societies will meet this definition. But if for any reason, a society cannot, they will be required to report in accordance with XRB's Tier 2 For-Profit Standards - NZ IFRS with reduced disclosures.

Q17: For financial statements does this mean that the charities services 4 tier system of reporting will still be used and then another set of financial statements per the new Act?

A: See the answer above.

Q18: Will there be a model/sample rules published to guide societies in creating new rules?

A: Most likely - as Companies Office had a [constitution builder](#) under the old Act we suspect they will do the same with the new Act.

Q: Do you have templates for dispute resolutions?

A: Not yet - we are working alongside our litigation team to develop a well-rounded template for dispute resolutions.

Q19: Date became a member - is this the historical date which may not be known?

A: Yes - [section 79](#) of the new Act says that the register must contain the date on which the person became a member. You could ask members what date they became a member, or ask them to approximate the date. The regulations have not come out yet, but they may include some more detail around this.

Q20: Is there any part of the Act about where the members need to reside (in NZ only)?

A: No - the Act does not specify where members need to reside. However, the new Act says a society must have its registered office in New Zealand ([section 110](#)) and the society's contact person must ordinarily reside in New Zealand ([section 114](#)). The regulations have not come out yet, but they may include some more detail around this.

Q21: What is the procedure to change to a charitable trust?

A: As we discussed in the talk you are setting up a new entity, which means you would need to set up a charitable trust deed and get trustees. The new charitable trust will also need to get a new IRD number, transfer contracts and employees over to the new entity. Charities Services will let you keep your charities registration number and you will keep your tax status (as long as your rules are charitable). We have helped several societies with this so feel free to reach out if you have any more questions.

Q22: Is an incorporated society that has charitable status actually a charitable trust?

A: No, it is an incorporated society with charitable status.

Q23: Do all registered charities need to also be an incorporated society?

A: No - an incorporated society can choose to register as a charity.

Q24: How do we define a member? We have an AGM every year and invite everyone on our email list. Different people turn up every year. Our constitution does not require members to be financial members by way of annual subs, donations are voluntary.

A: This depends on how your constitution defines a member. Under the new Act members will need to consent to becoming a member and the society will need to keep a register of members, which may make it clear who is an actual member of the society.

Q25: Is Community Networks Aotearoa a good source of resources?

A: Yes - Community Networks Aotearoa has some great governance resources, which you can find [here](#). The first module on governance is free! They also are linking to our resources, and we had the CE Ros Rice share on a recent Impact Call here: <https://www.parryfield.com/aotearoa-impact-sector-updates/>

Q26: Do you have any resources that discuss whether a charitable trust or an incorporated society is better?

A: Yes - we have an article on [Charitable Trusts vs Incorporated Societies: Which is best?](#) Additionally, Steven Moe and Craig Fisher (from RSM) wrote an article for the Auckland District Law Society on this topic which you can find [here](#).

Q27: Do members have to be financial members?

A: No - it is up to the society whether they are paying members.