

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

Thank you Robert Clarke, Acting Principal Policy Advisor at MBIE, for your input on questions 2, 8, 12, 19 and 22 - we really appreciate it.

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](#). When the new Act comes into force, societies will no longer be able to incorporate under the Charitable Trusts Act 1957.

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: [Clause 9 of schedule 1](#) of the new Act explains the procedure for societies amending their constitution to allow them to reregister under the new Act. The amendments must be:

- (a) in writing; and
- (b) either—
 - (i) approved at a general meeting of the existing society by a majority vote of those members entitled to vote and voting on the question; or
 - (ii) approved in the manner prescribed by the regulations; and
- (c) signed by at least 2 members of the society.

You will therefore need to call a general meeting to pass this new constitution according to these procedures.

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 ([Companies Office Guidance](#) suggests this will be October 2023) 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.

Q19: 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. Societies can also use [schedule 2](#) of the new Act as a template for dispute resolution clauses.

Q20: 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. Another option would be to say "member at reregistration date" or something similar.

Q21: 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.

Q22: 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) if you also update the IRD. We have helped several societies with this so feel free to reach out if you have any more questions.

Q23: Is an incorporated society that has charitable status actually a charitable trust?

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

Q24: Do all registered charities need to also be an incorporated society?

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

Q25: 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.

Q26: 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/>

Q27: 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 in our Guide.

Q28: Do members have to be financial members?

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

Q29: When will the regulations come out?

A: Companies Office has indicated the regulations will come out late next year. You can find out more on their [law changes for incorporated societies page](#).

Q30: Is it a challenge to convert from an incorporated society to another entity e.g. a charitable trust?

A: It is a relatively straightforward process, with the key stages being the drafting of your new Trust Deed and moving everything from the Society to the Trust. We have done this many times and would be happy to support you at every step of this transition.

Q31: Is it \$50,000 profit or turnover to be a small society under the new Act?

A: [Section 103\(2\)\(b\)](#) of the new Act explains a society is, in respect of an accounting period, a small society if, -

- (i) in each of the 2 preceding accounting periods of the society, the total operating payments of the society are less than \$50,000; and
- (ii) as at the balance date of each of the 2 preceding accounting periods, the total current assets of the society are less than \$50,000; and
- (iii) at the balance date of the accounting period, the society is not an entity described in section LD 3(2) of the Income Tax Act 2007 (a donee organisation).

Q32: Do we need to ask existing members whether they agree to being a member?

A: [Section 76](#) of the new Act explains that a person must consent to become a member of a society, so we interpret this as meaning existing members do not need to consent. However, under [section 79](#) of the new Act you will need to record the date on which each person became a member, so when asking current members for this date you could always check in to make sure they agree to being a member of the society.

Q33: In regards to disputes resolution, does this refer to disputes within members/Committee members or within the wider delivery of the organisation (e.g. client complaints etc)?

A: [Section 38](#) of the new Act explains it refers to internal disputes, which could be disputes between members, officers and the society.

Q34: We've had the same seven members since inception - we are non-compliant with the 10 member minimum and so what do we do?

A: To register under the new Act you will need 10 members, so you could ask friends and family whether they are interested in becoming members. Now would also be a great opportunity to consider whether a society structure is right for your entity - please feel free to get in touch with us and we would be happy to talk this through with you.

Q35: Presumably new regulations could impact how we might write up our constitutional changes?

A: Yes, they could. However, it is still worth considering now what changes you will need to make under the new Act and then considering the changes under regulation when they come out.

Q36: Do members need to renew each year at AGM?

A: They don't need to under the new Act. However, your society's constitution may have specific requirements for membership renewal that you need to check.

Q37: Members have to be natural persons? So members cannot be other charities?

A: It is officers who need to be natural persons. Members can be natural persons or bodies corporate. So yes, another charity could be a member.

Q38: Can the members of the Governance board be personally and financially liable?

A: The short answer is yes they can, but shouldn't be if they keep to the straight and narrow. For example, the offences in [section 154](#), [section 155](#), [section 156](#) and [section 157](#) of the new Act apply directly to officers.

Q39: Our incorporated society is also a registered charity. Currently any changes to our constitution and rules needs to be approved by Charities Services. How will this be handled when our new constitution is put together?

A: Companies Office hold your rules, so you will have to fill in a form and upload them there as part of the reregistration process. If you are a registered charity (not all incorporated societies are), you will need to upload your rules there as well.

Q40: Is it appropriate for a person employed by the incorporated society to be part of the governance body? Would this be a conflict of interest under the new rules?

A: It would be possible for the person to be employed, but they shouldn't be the ones making a decision about their own employment. The key is that as long the person employed is declaring conflicts and are not the one making decisions, it will be fine. Your rules may say something about paying officers, too.

Q41: What if an organisation thinks being an incorporated society is not for them, so look into being a charitable trust - but do not meet the requirements of being a charitable trust?

A: Come and have a chat to us - if you're a registered charity and a society then you will likely be able to meet the requirements under the charitable trust format. When it comes to structure, you want to adopt the tool that will have the maximum impact and cause the least amount of stress. You can also build membership into the charitable trust structure.

Q42: Is there a distinction between a member of an incorporated society and a volunteer for an incorporated society?

A: They are different because a member is someone who consents to being a member. You may want to clarify with volunteers what they are allowed to say if there is an issue with some of them representing the society - for example, in an agreement for volunteers.

Q43: Can membership of incorporated societies be free, if the person consents to being a member?

A: Yes - it is up to each society whether membership is free or paid.

Q44: If you are a charitable trust then do you need to update your rules?

A: You do not need to update your rules under the new Act. However, it may be wise to review your trust deed because of changes to the law brought in by the Trusts Act 2019.

Q45: Do you need a common seal under the new Act?

A: No - under [section 123](#) of the new Act a common seal is optional.

Q46: The register of members that has to be kept, do you have to have a specific/exact start date or can you just say a year?

A: Our view is that putting an approximate year will be fine, particularly for people who have been members for a very long time. The regulations have not come out yet, but they may include some more detail around this. Another option would be to say "member at re-registration date" or something similar.

Q47: If we adopt new rules, will this affect our charity registration status?

A: No it will not, because the new rules will mirror/be similar to your previous rules. The only way it would affect your registration is if you adopted new rules that did not advance charitable purposes.

Q48: Do you include life members on the membership register? What about honorary members?

A: The new Act doesn't differentiate between different types of members, but only talks about members of the society. For example, the new Act defines a "member" in [section 5](#) as meaning a member of the society. If, for example, your honorary members act more as patrons of the society or your life members hold more of a life membership award, then it may be worth removing the term "member" from the role to avoid confusion.

Q49: Is the offences section just codifying what exists in current practice or is it adding new liability?

A: Offences under the old Act were the generic offences set out in the Crimes Act 1961. Rather than introducing brand new liability, the new Act has six serious offences that supplement the dishonesty provisions in the Crimes Act. These offences are set out in [subpart 6](#) of the new Act and are more targeted towards societies than those in the Crimes Act.

Q50: Can an incorporated society own a company?

A: Yes, as long as the society's rules allow for it.

Q51: Can you explain the essential differences between an incorporated society and charitable trust?

A: One of the key differences is an incorporated society is more of a democracy - it is a member based organisation. By contrast, in a charitable trust the trustees are not elected. However, you can build members into your charitable trust model. We have an article comparing incorporated societies and charitable trusts which you can find [here](#), and are working on a table that illustrates the differences. Charities services also has an article on incorporated societies and charitable trusts, which you can find [here](#).

Q52: What, if any, is the requirement to have an audit or a review? The cost for some entities can be heavy in relation to their income or assets.

A: We are not accountants, but the requirements for auditing or review depend on whether the society is a small society under [section 103\(2\)\(b\)](#) of the new Act or which [Charities Services Reporting Standard](#) the society falls under.

Q53: Are organisations required to include a clause on the act of borrowing in their constitution or is it optional?

A: [Section 46](#) of the new Act sets out the committee has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of the society. The act of borrowing is caught by these powers and therefore doesn't need to be specified in a society's constitution.

Q54: For church groups - are they automatically classified as a charitable trust?

A: Stepping back, it's important to remember there are two registrations for charities: the first is with Companies Office, the second is with Charities Services.

Incorporated societies are one legal vehicle that can be used and registered with Companies Office. The others include charitable trusts and companies.

Churches are not automatically registered with Charities Services, you have to apply. There are two key reasons to apply: firstly for the reputation and standing in the community that charities have, secondly for the tax benefits.

Q55: Does the new Act have any effect on unincorporated societies?

A: No, the new Act only effects incorporated societies. We encourage unincorporated societies to incorporate, as it protects the individuals involved. This is because members are potentially liable in unincorporated societies.

Q56: Can members that "count" be non-financial members?

A: The new Act doesn't differentiate between different types of members, but only talks about members of the society. For example, the new Act defines a "member" in [section 5](#) as meaning a member of the society. So a member can be a non-financial member or a financial member - it is up to you!

Q57: What options are available under the new Act for a society that has branches of varying

sizes and financial means?

A: There are several options available that really depend on the individual situation of each society - we have given a general answer below but please get in touch if you want to talk about your situation further.

A: Some societies may have incorporated branches under the Incorporated Societies Amendment Act 1920, in which case [clause 17 of schedule 1](#) of the new Act applies.

Option 1: A society with branches may decide for each local branch to be an incorporated society, with all local branches being overseen by the national branch (which is also an incorporated society). The national branch could roll out a standardised template constitution for the new Act that the local branches then tweak, adopt and reregister with. This would ensure each branch has the same processes and procedures in place and they all comply with the new Act. The template constitution could refer back to their affiliation with the national branch and procedures that help concrete the relationship between the entities. An option for smaller branches would be to have the national branch as a member, which for the purpose of counting members would be the equivalent of 3 members.

Option 2: The organisation could be a single incorporated society that operates all of the branches under the same society. This would mean there would be one entity that does all of the accounts, one AGM, one committee etc. The committee would be able to delegate out some of its powers so it is only directing or supervising the management of certain aspects of the society. This would streamline the affairs of the society, but creates more work and liability for the single society.

Option 3: a hybrid approach, where the option 1 approach is taken but there are fewer local branches, so that some of the branches (which are their own legal entity) end up including several of the local branches as they are today (operating like option 2).

Q58: What are the risks to current societies moving into one of the new structure options? i.e. are there new risks to property ownership under a society?

A: There are several risks/considerations to take into account if a society is moving to a new structure.

It is important to take everyone on the journey with you. That way people understand why the entity structure is changing, feel a part of the process, and makes voting on the issue easier.

You need to do your due diligence and transfer all assets/contracts across to the new entity. This could include property, employment agreements insurance and so forth.

Q59: The reporting standards are yet to be defined, right?

A: We aren't accountants, but understand that under the new Act societies will use the XRB accounting standards in their financial statements, unless they qualify as a "small society". Companies Office has provided some useful guidance on these standards, including links to other resources, which you can find [here](#).

Q60: Are there ways for the charitable trust model to involve membership in a meaningful way but without the implications of incorporated societies?

A: Yes, because charitable trusts are very flexible. We're working with incorporated societies who want to maintain aspects of their incorporated society membership model but within a charitable trust structure. We do this by setting out the definition of members and powers of members in the charitable trust deed. We often see membership included in a charitable trust

in a religious context. The question to ask yourself is: how much power do you want to give to members?

Q61: Please clarify that/if the “old” protections of members and officers from financial liabilities is still in place and unchanged by the new Act and new provisions?

A: Yes, the same protections are in place for members and officers under the new Act. The new Act does include officers’ duties which exposes them to some liability if they fail to comply with these duties. We discuss officer liability in some detail in **Q9**.

It is important to remember there is a difference between incorporated societies and unincorporated societies. Incorporated societies are a separate legal entity, whereas unincorporated societies are not. This means officers and members of unincorporated societies are exposed to personal liability for the activities of that society.

Q62: Any update on the audit requirements or are these in the regulations yet to come?

A: Companies Office guidance, which you can find [here](#), explains that the auditing requirements for societies not registered as charities will be set by the regulations (likely coming out in September 2023).

Q63: Have the rules for unincorporated societies changed?

A: No - they are not covered by the incorporated societies act. They remain unincorporated - BUT it raises a bigger question - is that legal entity type the best because of the personal liability that sits with members of such groups? We think a lot of people would be very surprised to learn that they are potentially personally liable by being part of such a group so we would encourage some questions to be asked e.g. should we set up some charitable trusts to better house what it is we do? Incorporating provides legal protection. Feel free to get in touch if you would like to have a chat about this further.

Q64: The new act is talking about 3 officers. Does this mean a committee/board member who has a particular job/position as chairperson, treasurer etc?

A: Not necessarily - under [section 5](#) of the new Act an officer is someone who is a member of the committee, whether or not they occupy a particular job/position.

Section 5 also offers another definition of an officer (someone who occupies a position that allows them to exercise significant influence over the management or administration of the society), and we will seek clarity around how this impacts the minimum number of officers in a committee when we make submissions on the regulations.

Q65: For the moment, at the AGM, committee/board members are elected by the collective and only the treasurer/secretary job/position is also officially elected at the AGM. Other jobs/positions like the chairperson are elected within the board. Under the new act, do all (new) 3 officers have to be elected by the collective at the AGM?

A: [Section 26](#) of the new Act says a society’s constitution must contain the procedures for the election or appointment of officers, the chairperson (if any) and the contact person, but does not prescribe how this is to take place. So it really depends on your constitution. Generally we see societies taking a similar approach to the one you described above. The regulations may offer more guidance on this point.

Q66: If so, when an officer resigns during the year, do we have to call an SGM to elect another officer in replacement, do it during a normal collective meeting (same people as in a SGM) or can the board/committee do it internally?

A: In light of our answer to your Q65, we think this will depend on your constitution and the regulations may provide more guidance on this point. It may even be that if you still have three officers on your committee the one who resigned does not need to be replaced.

As you can see from our answers the Act gives societies flexibility when it comes to certain matters.

Q67: Can children and young people be members of an Incorporated Society? And what impact would that have on the binding nature of the constitution on members?

A: Both the Act and the Law Commission’s report are silent on the issue, only talking about the age of officers.

So we turned to commentary on the old act and found that a minor can be a member of a society, but under the Contract and Commercial Law Act 2017 a contract is unenforceable against the minor (unless the Court says otherwise) but otherwise has effect as if the minor were of full age.

We think this answer is unsatisfactory - what if the child is 4? And if the contract is unenforceable (being the contract between the member and the society, the terms of which are set out in the constitution), then how can the member enforce the constitution against the society or vice versa - whether that be dispute resolution, fees, enforcement in the courts and so forth?

We don’t think the Act clearly covers this point, as members are defined as “members of the society” and then the Act proceeds to set out rules in relation to members, more than were covered in the old Act. But on the flipside the Act is codifying a lot of case law, so the answer may still be the same. In balance we’re not sure whether the above guidance will still apply under the new Act or whether they will look to clarify this point.

We will be able to make submissions so plan to do so.

Q68: [Section 3\(d\)\(iv\)](#) of the new Act recognises the principle that “societies should not distribute profits or similar financial benefits to their members”. What about a society whose members are charities?

A: [Section 22](#) of the new Act says that “a society must not be carried on for the financial gain of any of its members”. We then went to [section 23](#) which explains what “financial gain” is within the context of the Act. Section 23 adopts a wider definition of financial gain than that in section 3(d)(iv), but includes distributing profits or similar financial benefits to its members. In other words, the wording in section 3(d)(iv) fits within the Act’s concept of financial gain set out in section 23.

Section 23 is subject to [section 24](#), which sets out when a society does not have a financial gain purpose. This includes where: the society distributes funds to a member to further the purposes of the society, is a not-for-profit entity, is affiliated to the society and has the same or substantially the same purposes as those of the society.

A not-for-profit entity is defined in [section 5\(3\)](#) of the new Act and includes a charitable entity.

As section 3 is setting the overarching concepts of what the Act is trying to achieve, it leaves out the finer details that are set out in section 22-24. Therefore a society who has charities as its members can therefore distribute funds to them according to section 24 of the new Act.

Q69: Our deed has purposes - is this the rules?

A: Taking a step back, generally we refer to a “Trust Deed” for charitable trusts and a “Constitution” or “Rules” for a society.

The purposes in your constitution make up a part of your rules, but it is the constitution in its entirety that are the society’s rules.

Q70: What is classified as a member - is it related to fee payments or people who utilise or use your services?

A: The new Act doesn’t differentiate between different types of members, but only talks about members of the society. For example, the new Act defines a “member” in [section 5](#) as meaning a member of the society.

A member isn’t someone who uses your services, rather someone becomes a member through the procedure set out in your constitution.

Q71: Do conflicts of interest need to be disclosed at every board meeting?

A: [Section 63](#) of the new Act explains that a conflict of interest needs to be disclosed to the committee and in an interest register kept by the committee as soon as practicable after the officer becomes aware that they are interested in the matter.

So a conflict of interest may need to be disclosed at every board meeting - it just depends on when and how frequently conflicts of interest arise.

Q72: I understand that a person with a conflict of interest can’t vote on the issue, can they participate in the discussion about the issue?

A: Under [section 64\(1\)\(c\)](#) of the new Act a person with a conflict of interest may take part in any discussion of the committee relating to the matter unless the committee decides otherwise.

We think it depends on the conflict as to whether the person should take part in the discussion. For example, if the committee was deciding whether to use an officer’s catering company for an upcoming event, that officer should leave the room while the discussion takes place and the decision is made. This is because the decision cannot be called into question later, as the conflicted person was not even in the room.

Q73: What provisions are there in the new Act to deal with a hypothetical situation where an officer does not declare a conflict of interest (and the other officers are aware of the conflict of interest)?

A: Where an officer has failed to disclose an interest, the committee must notify the members of the society of their failure to do so and of any transactions affected as soon as practicable after becoming aware of the failure according to [section 65](#) of the new Act. This would open the door to members bringing complaints under the dispute resolution procedures against the officer for breaching a duty under the constitution or the new Act.

By not disclosing their conflict, an officer could also be in breach of their duty to comply with the Act and constitution ([section 56](#)), duty to exercise their power as an officer for a proper purpose ([section 55](#)) and/or duty of care ([section 57](#)). The officer would also be in breach of their duty to disclose the interest ([section 63](#)). Depending on the situation, some of the offences set out in subpart 6 of part 4 of the new Act.

We would hope that in this situation the other officers feel comfortable to discuss the conflict

of interest with that officer rather than having it escalate, as good governance can involve having difficult conversations like this.

Q74: How do we decide if we need to be an incorporated society? Can we just be a charity?

A: There's a difference between the legal entity type and charities registration. An incorporated society can be a registered charity. An unincorporated society, charitable trust and company can also be a registered charity.

Q75: What is a contact person - is this a position or an actual person?

A: Under [section 114](#) of the new Act a contact person is an actual person who is at least 18 years of age and ordinarily resident in New Zealand. The contact person could also be the secretary or the chairperson of the society, but a society's constitution must address how this contact person is elected or appointed per [section 26\(1\)\(g\)](#) of the new Act.

Q76: Do you know of any tool/resource that can guide groups in identifying the best legal vehicle for their purpose?

A: Feel free to get in touch with us - we are currently having free 20 minute phone calls with societies to discuss their structure and would be happy to assist.

Q77: What are the types of legal structure that can "apply" to become a registered charity?

A: There are four key legal structures that can apply for charities registration: an incorporated society, unincorporated society, charitable trust and company.

Q78: What is the cost to change from an incorporated society to a charitable trust?

A: This depends on the situation - feel free to get in touch with us and we would be happy to provide a fee estimate.

Q79: Do we need to be an incorporated society to be a registered trust?

A: Incorporated societies and charitable trusts are two different legal vehicles that can both register with charities services.

Q80: Does changing to a charitable trust affect how you are able to apply for funding to run your organisation?

A: We don't think it does, as both incorporated societies and charitable trusts are for purpose organisations. It will come down to what each funder is looking for. Becoming a registered charity may help you get funding, and as discussed above both incorporated societies and charitable trusts can be registered charities.

Q81: Is it possible for an officer of a committee to be an employee of the same organisation?

A: The new Act does not appear to speak to this point, but the regulations may provide more detail.

[Section 18](#) of the new Act explains that an incorporated society can employ people, unless the societies constitution says otherwise. We think that an officer can also be an employee, but the committee will need to be conscious of the potential conflicts of interest that could arise as a result.

Q82: Is there a public register where we can find the sorts of entities that are registered. This

may help us decide which entity we should be - like for like?

A: You could try the [Charities Services Register](#) - this contains all of the charities in New Zealand, although not every charity will explain which legal entity they are.

Q83: If you have groups that are part of your membership they will count as 3 members? Does that group need to be legally incorporated?

A: [Section 14](#) of the new Act explains that a body corporate that is a member of a society is treated as 3 members for the purpose of determining the number of members. This means the group needs to be legally incorporated.

Q84: For the date of membership of old members - is that the date they re-register, or their original membership date?

A: Please see our answers to Q20 and Q46.

Q85: Is it a conflict of interest if a member of the committee is also a member of one of those subgroups of your membership?

A: This will depend on the situation. [Section 62](#) of the new Act sets out the situations where an officer has an interest. In short, this includes situations where the officer or their relatives may obtain a financial benefit from the matter, or where an officer is interested in the matter because the society's constitution so provides. Feel free to get in touch with us as we are happy to discuss this point further with you in relation to your unique situation.

Q86: Does the full dispute resolution procedure go into the constitution or is it just a reference to following the procedure?

A: [Section 26](#) of the new Act sets out what a constitution must contain, which includes the disputes resolution procedures. So yes, the full disputes resolution procedures need to go into the constitution.

Q87: Do officers/committee members have any new liabilities under the new Act?

A: The new Act has not radically changed liability for officers. Instead, it has set the liabilities of officers out clearly in one place. For more information take a look at Q9.

Q88: What are the reporting ramifications of becoming a charitable trust against being an incorporated society?

A: If you are registered with Charities Services, your reporting requirements will be the same. We suggest you get accounting input on this point.

Q89: What have you seen work well in incorporated societies to build on the positive aspect of a democratic structure?

A: Incorporated societies are very democratic legal vehicles. Having good rules and involved members enhances this.

Q91: Do incorporated societies have to charge an annual membership fee to their members or can they choose to have none?

A: Incorporated societies do not need to charge a membership fee - it is entirely up to each society.

Q92: If you have a smaller Board and use committees who is actually subject to liability under section 154-159?

A: It depends on the offence. Each offence specifies whether it applies to an officer, member or employee of the society, or a person. For the offences that apply to officers these cover people who are a member of the committee or who occupy a position in the society that allows them to exercise significant influence over the management or administration of the society (per [section 5](#) of the new Act).

Q93: We've been asked how much will it cost to re-register? Is there any update in the regulations?

A: The draft regulations up for consultation sought input on whether there should be a fee to reregister. The suggested fee was around \$50, but whether there is a fee and if so what it is will be clear once the regulations come out.

Q94: Is there any update on the thresholds for needing a full audit?

A: In the draft regulations, MBIE suggested an audit threshold of \$3 million for those incorporated societies that are not registered charities. This will be clear once the regulations come out.

Q95: My understanding is that the new Act still has "draft" regulations but these are now not offered for public consultation? Is this correct?

A: That is correct - consultation on the regulations closed in November last year. We made a submission that included some questions/comments that had been raised during our webinars, so thank you for all of your input!

Q96: If an incorporated society is also a charity how does rewriting rules impact on charitable status - once approved by Companies Office does that automatically follow that charitable status will also continue?

A: There are about 24,000 incorporated societies, and around 9,000 of these incorporated societies are also registered charities. For those incorporated societies who are also a registered charity it should just be a matter of updating Charities Services with your new rules once they have been approved by Companies Office for reregistration.

Q97: Can officers count as members?

A: Yes! Generally officers will also be members of the society.

Q98: Will the committee be subject to health and safety legislation?

A: Health and safety legislation is a whole other topic - that we could hold an entire webinar on! It really depends on the makeup of your society. Here are some links to information provided by Worksafe that may be helpful. If you have any further questions please feel free to get in touch.

<https://www.worksafe.govt.nz/managing-health-and-safety/getting-started/introduction-hswa-special-guide/>

<https://www.worksafe.govt.nz/managing-health-and-safety/getting-started/understanding-the-law/volunteers/information-for-officers-who-are-volunteers/>

Q99: If a society doesn't reregister before the reregistration date, what happens to its assets

(e.g. property and bank accounts)?

A: Under [clause 12](#) of schedule one of the new Act, a society that does not reregister before the reregistration date will cease to exist. If you're interested in what "ceasing to exist" means practically let us know - that is an interesting but entirely separate question!

You'll see that this clause talks about how if the society ceases to exist under subclause 12(2)(b), then subpart 5 of part 5 applies to the society. This subpart sets out what takes place when a society is removed from the register or in liquidation.

[Section 216](#) of the new Act sets out the rules for disposal of surplus assets. In short, the assets are to be distributed to the not-for-profit entity/s nominated in the society's constitution, according to the procedure set out in sections 216-217 of the new Act. If this can't happen, then the assets will be distributed as the Registrar directs.

Q100: Can an officer of a society also be an employee?

A: The Incorporated Societies Act 2022 is silent on this issue. It talks about how a society can employ people and sets out some rules in relation to employees (such as the indemnities or insurance the society may take out for employees), but doesn't say whether or not an officer can be employed by the society.

So it would be possible for the person to be employed, but they shouldn't be the ones making a decision about their own employment as that would be a conflict of interest. The society's rules may also say something about whether an officer can be an employee (and even whether an officer can be paid for being an officer). The key is that as long as the person employed is declaring conflicts and are not the ones making decisions, it will be fine.

Q101: Could the requirement for an officer to consent in writing be met by accepting a nomination and vote being carried and recorded in the minutes?

A: As the officer will also need to certify that they are not disqualified from being elected or appointed or otherwise holding office as an officer, then they could consent in writing to being an officer at the same time. So yes, we think there would still need to be some written consent beyond what you've suggested above, but this could be done at the same time they certify they are not disqualified under the Act.

Q102: Could you explain more about the "cease to exist" if you don't re-register?

A: Under [clause 12 of schedule 2](#) of the new Act, a society that has not reregistered under the Act before the reregistration period ends will cease to exist from that point. The Act will then apply as if the society has been removed from the register.

The Registrar may restore a society to the register up until 6 years after the end of the reregistration period under the grounds explained in [clause 12 of schedule 2](#). This clause also explains what happens in a situation where the Registrar has received an application for reregistration but hasn't made a decision on that application by the end of the reregistration period.

Q103: What regulations are we waiting for?

A: The regulations will decide some of the detail of the Act. For example, the regulation will set out the information that needs to be included when you reregister.

Q104: Do committee members need to sign something to say they are not disqualified from becoming a committee member?

A: The Act doesn't specify, but committee members do need to consent in writing to becoming a committee member. So we suggest they certify they are not disqualified from becoming a committee member at the same time.

Q105: If you are an incorporated society and a registered charity, do you have to keep up entries both on the charities register and as an incorporated society with Companies Office?

A: From what we understand, if you are a registered charity then your Charities Services financial reporting requirements are prioritised. If you are not a registered charity, then you will need to meet the financial reporting requirements on Companies Office.

Q106: Would it be better to consider amalgamations now and do it before reregistering?

A: Now is a great time to consider the structure of your organisation. However you will only be able to amalgamate under the provisions of the new Act once you have reregistered under it. We would be happy to discuss potential structure options with your organisation, just reach out.

Q107: Can you register as a new incorporated society and make it a charitable trust at the same time?

A: Incorporated societies and charitable trusts are two different types of legal vehicles. Both can register with Charities Services and obtain charitable status. There is a third legal vehicle, a charitable society, but this will no longer be an option for groups once [section 261](#) of the new Act comes into force.

Q108: Does the register of members need to include a member's physical address, or can it be an email address? And are those details made public?

A: Under the [section 5](#) of the new Act contact details of a person means at least:

- a) a physical or an electronic address; and
- b) a telephone number.

So an email address or a physical address is sufficient (along with the member's phone number).

There is no requirement in the Act that the register of members is made public - that is up to the society. As you are collecting details from people now is a great time to make sure you have a privacy policy that explains how you use and hold onto people's information. Feel free to get in touch with us if this is something you would like to discuss.

Q109: Do we need to include officers' duties in our constitution?

A: That's up to you. They are a legal requirement set out in the Act so officers have to comply with them anyway, but you could include them in your constitution or a separate policy document so that officers are more easily alerted to their duties.

Q110: Under removal of officers, our current constitution covers how a member of the society shall cease to be a member (although does not list death) - do we need to have a separate section regarding removal of officers, or will the membership one cover this, as officers are members also?

A: You should have a separate section in your constitution about the removal of officers. This is because some of these grounds will be different to those for members, and there may be a situation where a person retires from being an officer but still wants to be a member. [Section](#)

[50](#) of the new Act sets out some of the grounds you need to include for removal of officers.

Q111: Are there differences between societies registered with charities services or companies office?

A: All incorporated societies should be registered with companies office, but only some will choose to register with charities services. Those registered with charities services are registered charities - not all incorporated societies choose to do this.

Q112: In terms of whether incorporated society registration remains fitting, our group disagrees about interpretation of section 24 of the new Act. The header “When society does not have financial gain purpose” suggests that the list in section 24(1) are all circumstances that rule out a breach of the financial gains prohibition, but the subsequent words “A society...is not being carried on...for the financial gain of any of its members merely because it will or may...” appears to convey that disallowed financial benefits may still exist. Is legal counsel not vital if a Society interprets 24(1) as though “merely because” can be replaced with the word “if”?

A: Financial gain purpose is something we have been looking into, with resources to come. If we take a look at section 24(1) with an example, it might be easier to understand. Let’s take a local swimming club as an example. They exist to bring people together to train and compete. As part of this, they might run tournaments which include trophies or cash prizes for the winners.

On the face of section 22 of the Act this could be interpreted as the society being “carried on for the financial gain of any of its members”, as the society would be giving trophies or cash prizes to members who win the tournaments.

That’s where section 24 comes in - it explains that a situation where the society “will or may” “provide a member with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the society” means that the society “does not have a purpose of being carried on, and is not being carried on, for the financial gain of any of its members”.

So if we think of it as a scale from not financial gain to financial gain, section 24 is giving us examples of one end of the scale (not financial gain) and section 23 gives us examples at the other end (financial gain). We agree that the interpretation of these sections is really important under the new Act, as there will be situations in between section 23 and 24 that will need to be determined whether they are in fact financial gain.

Q113: What policies does a society have to have. I can see that we need a disputes policy and wonder what other ones are required under the new act and do they need to be policies or guidelines?

A: You’re right that under the new Act a society needs to have a disputes resolution procedure. This procedure needs to be in the society’s constitution.

We would also suggest that societies adopt a conflict of interest policy explaining the default procedures under the new Act. This wouldn’t need to be in the society’s constitution, unless you were amending any of the default procedures.

Beyond the new Act, a privacy policy would be another important policy for an incorporated society to have, as a society holds members’ personal information. This wouldn’t need to be in the society’s constitution.

Q115: Is there a number limit for the committee within the new Act?

A: There isn't a number limit, only a minimum of three set out in section 45(2) of the new Act.

Q116: I'm interested in the information disclosure requirements - how can a Board deal with confidential information without being forced to disclose?

A: That's a great question and something we are seeking further input from Companies Office on. Sections [80-83](#) of the new Act deal with access to information for members, with section [81](#) setting out the grounds for a society refusing a request to access information.

The Act hasn't made it clear whether the register of members (including the confidential information of members generally) must be provided to members generally - there was some mention of it in the Law Commission report (paragraphs 7.115-118) and the draft bill, but not in the final version. The access to information for members sections explain that a society may refuse to provide information if withholding the information is necessary to protect the privacy of natural persons ([section 81](#)), which we think would be sufficient grounds for affected societies to refuse to allow member access to the register.

Q117: Is there a requirement under legislation that we must record all correspondence (inwards and outwards) and that this must be made available to stakeholders/members of associations etc? if there is, what are the parameters for this record keeping?

A: The Act explains that accounting records ([section 101](#)) and minutes of annual general meetings ([section 84](#)) must be kept, but doesn't specify whether records of correspondence must be kept by a society. When it comes to correspondence we think it is helpful to keep correspondence that relates to key decisions (such as resolutions in lieu of a meeting or transactional decisions) and correspondence with members (such as a member's consent to becoming a member).

In terms of what must be made available to members, this is set out in the access to information provisions discussed at Q116. It could be that the access to information needs to be refused because it would affect the commercial position of the society or the privacy of an individual.

Q118: Can a sport club change to a charitable trust?

A: Yes, a sports club can transition to a charitable trust, but it depends on what purposes the sports club exists to advance. Feel free to get in touch with us so we can discuss your specific situation.

Q119: Do members have to pay a fee or subscription?

A: It is up to a society whether members have to pay a fee or subscription - there are no requirements to that effect in the Act.

Q120: Can the officers also be members and if so are they included in the 10 members?

A: Officers can be members of the society and would therefore be included in the minimum of 10 members. In fact, more than half of the committee must be members of the incorporated society in order to meet the requirements under the new Act.

Q121: Is there a process for vetting new members of a society?

A: This is something that is up to the society. Under the new Act a society's constitution must set out the process for becoming a member, but what that process looks like is up to each

society. For example, we see some societies adopt a process where the committee of the society can accept or decline an application for membership and use that as an opportunity to vet members.

Q122: Can paid employees be members?

A: The Act is silent on this issue. It talks about how a society can employ people and sets out some rules in relation to employees (such as the indemnities or insurance the society may take out for employees), but doesn't say whether or not a member can be employed by the society.

We don't see why an employee couldn't be a member of the society, so long as they are not making decisions about their own employment.

Q123: To get the rules changed do you need to abide by your current quorum rules - hard to get that many in the room when the subject is not a drawcard.

A: It can be difficult to get that many people in the room, but you do need to adhere to the quorum rules in your constitution. We have seen some societies get creative, running an event or providing catering in order to get members along. It could also lead to a bigger question - if your members aren't engaged, then is an incorporated societies model right for your organisation?

Q124: Do the duties apply now?

A: The duties of officers outlined by the courts currently apply to officers. These largely reflect the duties outlined in the new Act. Once you reregister under the new Act, then the duties under the new Act will apply.

Q125: Can you co-opt officers after an AGM if they are not able to attend the AGM. Or if they do the form and agree to be an officer but can't attend the AGM can you still vote them onto the committee?

A: We think that the co-opting point will depend on what it says in your constitution, but as long as the officer is in agreement we don't see why they couldn't be voted into the committee at that point.

Q126: What are your thoughts about term limits for committee members? The advantage would be to ensure that any one person does not have undue influence over the organisation's governance. The disadvantage would be that we might use an enthusiastic person for a term. We thought that they could always come back in the next round but requiring term limits would also help with scepticism.

A: Yes, it is possible to have term limits - in fact, under the new Act your constitution must specify the terms of committee members. It is up to you whether you put a cap on the number of terms that a person can serve, allow committee members to continue to be re-elected or even have a stand down period after a certain number of terms.

Q127: With volunteers as board members, there is a regular tendency to interfere in operations (management) as opposed to governance. Can we put something in the rules?

A: Yes you can. The best place might be in a policy because policies are much easier to modify and keep up to date (as policies don't necessarily require a member vote). If you put role requirements into the constitution, it makes them harder to update as there is a special process to be followed for updating constitutions.

Q128: Do you suggest that we get members to sign a consent again, or can you take the fact

they paid their annual membership fees as agreeing to be a member?

A: We think that you don't necessarily need to go back and get the consent of existing members (especially if they're paying their annual membership fee), rather the new Act is looking for societies to get consent from new members.

Q129: Are all committee members officers? Or can you have a committee that is made up of some officers and some ordinary members?

A: Officers are defined in section 5 of the new Act as persons who are members of the committee or who are occupying a position that allows them to exercise significant control over the management or administration of the society. So all committee members are officers. However, the committee can be made up of members that have specific roles (e.g. president, vice-president, treasurer) and general committee members.

Q130: Do policies cover the need for a constitution?

A: No because the Act requires you to have a very specific set of information set out in the rules/constitution, and the constitution needs membership approval. Policies are often a great idea to have, but they are less formal than a constitution and do not need the approval of members in the same way that constitutions do.

Q131: Does the new act allow an Inc Soc to include a rule that allows the current committee to vet applications for the new committee?

A: Best practice would suggest that members should elect committee members without interference from the committee, as this goes to the heart of the democratic nature of incorporated societies. Given that societies are quite democratic, allowing the current committee to vet applications might be seen as too controlling. Under the new Act a society's constitution must set out its process for election or appointment of officers, but the details of that process are up to you - we just wonder whether members would be on board with the current committee being able to vet the applications for the new committee.

Q132: Could a chair of a rules SGM insist that all proposed rule changes be voted on "all or nothing" as opposed to one by one, and specifically where the change mentioned in Q131 is requested?

A: Best practice would suggest that each motion is voted on separately, so that members have the opportunity to engage with and vote on each change. We don't see why a chair couldn't insist that all proposed rule changes be voted on in the same motion, noting that if that motion fails then none of the updates to the constitution would pass (even the uncontentious ones).

Q133: If a society is both a charity and an incorporated society, do we have to register the new constitution with Companies Office and Charities Services?

A: Yes you would need to upload the constitution to both the Companies Office and to Charities Services. Generally you upload your constitution to Companies Office first, then once it has been accepted by Companies Office upload it to Charities Services.

Q134: Is it a good idea to add a glossary to the constitution e.g. clarifying what a member and officer are?

A: Using a glossary can be very helpful and there can be confusion about these terms, so this is a good idea.

