

---

INCORPORATED  
SOCIETIES:  
HOW TO REGISTER

---

*PARRY FIELD LAWYERS*

ParryField  
Lawyers



To the heart of what matters.



*We see the client in a rounded way and want to help them with 'what really matters', for legal services and beyond, when appropriate.*



# INCORPORATED SOCIETIES: HOW TO REGISTER

---

## TABLE OF CONTENTS

---

|                                                     |    |
|-----------------------------------------------------|----|
| <b>Introduction</b>                                 | 1  |
| <b>Part 1 – The Incorporated Societies Act 2022</b> | 2  |
| Brief History                                       | 2  |
| Membership                                          | 2  |
| Member Details                                      | 2  |
| Governance                                          | 3  |
| Financial Reporting                                 | 4  |
| Meetings                                            | 4  |
| Amendment Procedures                                | 5  |
| Conflicts of Interest                               | 5  |
| Dispute Resolution                                  | 6  |
| Enforcement and Criminal Offences                   | 6  |
| Name, Purposes and Winding Up                       | 7  |
| The Regulations                                     | 7  |
| <b>Part 2 – How to Register</b>                     | 8  |
| Registration Process                                | 8  |
| <b>Part 3 – Governance: What You Need to Know</b>   | 9  |
| What does the Act provide?                          | 9  |
| What else is relevant?                              | 9  |
| Next steps for governance upskilling                | 10 |
| <b>Part 4 – Which Model is Right for You?</b>       | 11 |
| Incorporated Society                                | 11 |
| Charitable Trust                                    | 11 |
| <b>Part 5 – FAQ: Questions and Answers</b>          | 13 |
| <b>Resources: Website Articles</b>                  | 22 |
| <b>Parry Field Lawyers Impact Team</b>              | 23 |

**PARRY FIELD LAWYERS**

---

## INCORPORATED SOCIETIES: HOW TO REGISTER

---

Under the Incorporated Societies Act 2022 ("Act"), an organisation must have a constitution that complies with the Act in order to register as an incorporated society.

We are here to help. We have assisted hundreds of incorporated societies to ensure their constitutions are complaint and to successfully register.

As New Zealand's leading law firm for incorporated societies, whatever the size or complexity of your organisation, we have options available to suit your needs.

This guide outlines the key things you need to know. You can also find further information in our ***Information Hub*** on our website.

NGĀ MIHI NUI



STEVEN MOE

[StevenMoe@parryfield.com](mailto:StevenMoe@parryfield.com)



ANNEMARIE MORA

[AnnemarieMora@parryfield.com](mailto:AnnemarieMora@parryfield.com)

## PART 1 THE INCORPORATED SOCIETIES ACT 2022

### How can we help?

We have reviewed many rules and can give guidance on what is needed to comply. We offer free calls to answer any questions you may have. Contact us on [societies@parryfield.com](mailto:societies@parryfield.com) to arrange.

## Brief History

Incorporated societies are a membership-based legal structure. An incorporated society is a legal entity separate from its members.

An incorporated society is not allowed to exist for the financial gain of its members – it must exist for some other purpose.

The first New Zealand statute that provided for incorporated societies was the Unclassified Societies Registration Act 1895. This Act was only eighteen Sections long and allowed societies to become incorporated.

Parliament then introduced the Incorporated Societies Act 1908. Its 41 Sections were barely changed over the next 114 years.

The new law is called the Incorporated Societies Act 2022 ("Act").

## Membership

Membership is a key point of difference for incorporated societies compared to other legal forms.

Under **Section 74** of the Act, a society **must have at least 10 members** to register as a society. This is a decrease from the 15 members required under the old Act (the Incorporated Societies Act 1908).

The old Act had no requirement for a continuous minimum membership; the current Act requires a minimum of 10 at all times, not just at registration. Smaller societies need to keep an eye on their numbers.

A body corporate is treated as being three members for the purpose of determining the number of members, as per **Section 14** of the Act.

Under **Section 75**, if a society has fewer than 10 members, the Registrar may intervene and give the society six months to increase its membership. Failing which, the

Registrar may apply to the High Court to put the society into liquidation or remove it from the register.

The Act does not require a society to include the membership minimum in its constitution, but you may wish to do so because of the consequences of falling below 10 members.

## Member Details

The Act requires a society's constitution to set out how a person becomes and ceases to be a member.

Under **Section 76**, a constitution must contain a **requirement that a person consents** to being a member of the society. Where a member is a body corporate, consent may be given in writing by a person acting under the body corporate's express or implied authority.

Under **Section 79**, and Section 13 of the Incorporated Societies Regulations 2023 (the "Regulations"), a society must keep a **register of its members** which contains the following details for each member:

- name;
- last known name;
- last known contact details (which at least includes a phone number, along with a physical or email address);
- the date on which they became a member;
- the name of each person who has ceased to be a member of the society within the previous seven years; and
- the date on which each person ceased to be a member.

The register must be updated as soon as practicable after the society becomes aware of the need for an update.

The society's constitution must include its arrangements for keeping its register up to date.

## Governance

### Committee

Under the Act, a society must have a committee. The committee is responsible for managing the operation or affairs of the society and is defined in the Act as “the governing body of the society, however described (for example, a board)”.

The society’s constitution must state the number of members that must or may be on the committee, and **Section 45** of the Act sets a minimum of three. A majority must be members of the society, or representatives of body corporates that are members of the society.

### Functions and Powers

The society’s constitution must also include the functions and powers of the committee. These are set out in **Section 46** of the Act, which explains that the committee’s function is to manage or directly supervise the operation and affairs of a society. The committee must therefore have all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of the society.

### Officers

Under the Act, a member of the committee of a society is an officer, but an officer may also be a natural person occupying a position that allows them to exercise significant influence over the management or administration of the society (such as a treasurer or chief executive). The society’s constitution must include the requirements for the election and appointment of officers. **Section 47** of the Act requires that the officer:

- is a natural person;
- has consented in writing to be an officer; and
- certifies they are not disqualified under Section 47(3) of the Act.

There is a long list of disqualifications under Section 47(3), but the list is largely similar to that in legislation regulating other legal entities. For example, it disqualifies those under 16 years of age or someone who is an undischarged bankrupt.

A society could include the qualifications of officers in its constitution alongside the procedure for their election or appointment, although the qualifications of officers could also be kept as a separate policy document.

### Removal of Officers

The Act requires the society’s constitution to include the grounds for an officer’s removal from office. **Section 50** says that an officer may cease to be an officer if they are removed in accordance with the society’s constitution, or if the officer:

- resigns;
- becomes disqualified from being an officer under Section 47(3);
- dies; or
- otherwise vacates office in accordance with the society’s constitution.

### Further Requirements

The Act requires the constitution to also include the following information:

- the term (duration) of office of the officers;
- how the chairperson (if any) will be elected or appointed and whether that person will have a casting vote if there is an equality of votes; and
- the quorum and procedure for committee meetings, including voting procedures.

The intention behind all of these new requirements is to improve governance for incorporated societies by setting out how they need to act.

### Officers’ Duties

The Act codifies some existing common law officers’ duties. These duties are owed to the society, not its members, and are set out in **Sections 54-61** of the Act.

In short, these include:

- duty to act in good faith and in the society’s best interests;
- duty to exercise powers for a proper purpose;
- duty to comply with the Act and the society’s constitution;
- duty of care;
- duty not to create substantial risk of serious loss to creditors; and
- duty not to agree to the society incurring obligations that it cannot perform.

These last two were subject to some criticism in the final reading of the Bill, with some MPs arguing that they are more appropriate for commercial contexts where directors are well compensated. However, they have now been adopted here.

As a result of these new officers' duties and the wide definition of officer in the Act, we suggest that incorporated societies have director and officer insurance.

### Contact Person

**Section 113** of the Act introduces a requirement for a society to have at least one (and up to three) contact persons at all times, available for the Registrar to contact if and when needed. Contact persons must be at least 18 years old and ordinarily resident in New Zealand (in accordance with **Section 114** of the Act).

The constitution must also state how the contact person or persons will be elected or appointed.

For more on governance, have a listen to **Board Matters**, the podcast on governance that Partner, Steven Moe, hosts for the Institute of Directors in New Zealand.

## Financial Reporting

**Part 3, Subpart 7** of the Act sets out new accounting standards. Societies will need to prepare their financial statements in accordance with the standard that suits their size. For example, a small society may prepare their financial statement according to generally accepted accounting practice, a non-GAAP standard that applies for the purposes of Section 102, or the requirements set out in Section 104.

Under Section 105 of the Act, larger societies will need to have their financial statements audited.

Within six months of the balance date (which is the date specified in the constitution adopted by the committee, or 31 March), the society must:

- complete the society's financial statements for that balance date;
- date and sign those financial statements by or on behalf of the society by two members of the committee; and
- give copies of those financial statements to the Registrar for registration.

## Meetings

The Act includes several requirements for general meetings in **Sections 84 to 93**. Meetings are important for an incorporated society.

### Timing of Annual General Meetings

The intervals between annual general meetings ("AGMs") must be set out in the society's constitution. Under **Section 84**, a society must call an AGM no later than six months after the society's balance date and no later than 15 months after the previous AGM. An exception may apply for the first AGM of a newly incorporated society.

### Procedure at AGMs

The Act requires the constitution to set out the information that must be presented at general meetings. **Section 86** requires:

- an annual report on the operations and affairs of the society during the most recently completed accounting period;
- the society's financial statements for that period;
- notice by officers of conflict of interest disclosures under **Section 63**; and
- under **Section 84** of the Act, minutes must be kept.

### Resolutions in Lieu

If a society wants the option of using resolutions in lieu of meetings, this must be stated in the constitution. If this option is included, the constitution must state how resolutions may be passed in lieu of a general meeting. If allowed under the constitution, **Sections 89 to 92** of the Act will apply.

### Notification and Quorum

A society's constitution must provide for the manner and timing of calling general meetings, including notices of motion. It must also state what is needed for a quorum and voting procedures, including rules for proxies, and whether the quorum takes into account members voting by proxy, postal, or electronic means (if allowed).

## Amendment Procedures

**Section 30** of the Act says a society may amend its constitution, in a manner provided by the constitution.

However, every amendment must be in writing, be approved at a general meeting by a resolution passed by the relevant majority (or by resolution passed in lieu of a meeting in accordance with Section 89), and otherwise made in accordance with the society's constitution.

A 'relevant majority' means either a simple majority of the valid votes cast, or a higher majority if that is required by the constitution.

### Minor Amendments

**Section 31** of the Act sets out the procedure for minor amendments, such as amendments that have no more than a minor effect, correct errors, or make similar technical alterations.

The committee must ensure written notice of the proposed amendment is sent to every member in accordance with the society's constitution. It must include the text of the amendment and the member's right to object to it. If the committee does not receive an objection within 20 working days (or a longer period if specified in the constitution), the committee may make the amendment.

If an objection is received, then the committee may not make the amendment. This Section 31 procedure must be set out in the society's constitution.

### Amalgamation

The Act sets out a simplified version of the Companies Act 1993 amalgamation process in **Part 5, Subpart 2**. This should allow societies to join together, either into one of the societies or a new society.

## Conflicts of Interest

The Act requires an officer to disclose when they are interested in "a matter". A matter is defined in Section 62(4) of the Act as meaning a society's performance of its activities or exercise of its powers, or a transaction made or entered into, or proposed to be entered into, by the society.

Under **Section 62** of the Act, an officer is interested in a

matter if they or one of their relatives may obtain financial benefit from it, or has a financial interest in a person to whom the matter relates, or if they are interested in the matter because the society's constitution says so.

However, an officer is not interested in a matter:

- simply because they receive indemnity, insurance cover, remuneration, or other benefits authorised under the Act; or
- if the officer's interest is the same or substantially the same as the benefit or interest of all or most other members of the society due to their membership; or
- if the officer's interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the officer in carrying out their responsibilities under the Act or the society's constitution; or
- the officer's interest is of a kind that is specified in the society's constitution for the purposes of Section 62(2)(d).

The starting point then is to work out if there is a conflict using those criteria. Not everything is a conflict.

### Duty of Disclosure

Under **Section 63** of the Act, as soon as practicable after an officer becomes aware of their interest in a matter, the officer must disclose the details of the nature and extent of the interest (including monetary value if possible) to the committee, and record it on the interests register.

That register must contain all disclosures made under Section 63. It is kept and maintained by the committee, and may be inspected by an officer at any reasonable time as set out in **Section 73** of the Act.

### Consequences of an Officer's Interest

An officer with an interest in any matter cannot vote or take part in a decision of the committee relating to the matter, or sign any pertinent document, but if the committee allows it, the officer may take part in discussion relating to the matter and be present when it makes a decision. If half or more of the officers are interested in the matter and therefore cannot vote, the committee must call a special general meeting to determine the matter under **Section 64(3)**.

The Act covers a number of other procedures to be followed in case of a conflict of interest, including the committee's responsibility to inform members as soon as practicable if it becomes aware of a failure to comply with Sections 63 or 64.

The Act gives some flexibility, with some permissible amendments to the conflict of interest disclosure procedure. For example, under **Section 67**, a society's constitution may negate, limit or modify any provisions of Sections 63, 64, 65(1) and 73 as long as the changes still satisfy the conditions prescribed by regulations (noting the Regulations have not prescribed any).

Some parts of the Act cannot be altered by the society's constitution, including:

- **Section 65(2)-(3)**, which explains that any failure to comply with Section 63 or 64 does not affect the validity of the Act, but this does not limit a person's right to apply for judicial review.
- **Section 66**, which says that regulations may require every member of the society to be notified or for notification to be made to the members as a group. The Regulations do not include a requirement to this effect.
- **Section 68(2)-(4)**, which says that a transaction cannot be avoided under Section 68(1) where the society received fair value under it. Fair value is defined in **Section 69** and the onus of proving fair value is set out in **Section 70**. Additionally, a transaction can only be avoided on the ground of the officer's interest, and a constitution cannot allow a transaction to be avoided in any circumstances other than those set out in the Act.
- **Section 71**, which explains that if a third party has acquired property from a person other than the society for valuable consideration and without knowledge of the circumstances of the transaction under which the other person initially acquired the property from the society, the avoidance of a transaction will not affect the third party's title or interest to or in the property.
- **Section 72**, which reiterates that the conflict of interest procedure does not apply in relation to salary, wages or other payments paid to officers in accordance with Section 24(1)(h), or an indemnity given or insurance provided in accordance with Subpart 6.

## Dispute Resolution

The Act requires, under **Sections 38 to 44**, that the society's constitution includes dispute resolution procedures.

A society can develop its own dispute resolution procedures, so long as they are consistent with natural justice (**Section 39**).

**Clauses 2 to 8 of Schedule 2** set out the disputes resolution procedures a society may decide to include. Should a society include the Schedule 2 procedures, its dispute resolution procedures will be presumed to be consistent with natural justice according to **Section 41**.

If a society's constitution does not contain dispute resolution procedures, under Clause 6 of **Schedule 1** the constitution will be treated as including those procedures set out in the Act.

## Enforcement and Criminal Offences

**Part 4** of the Act sets out civil law enforcement provisions that explicitly state the orders a court may make, and who may apply for a court order. This could help, for example, a member of a society to apply to the court where they believe the society's constitution has been breached.

**Subpart 6 of Part 4** of the Act sets out criminal offences. Infringement offences are less serious and include matters such as failing to notify the Registrar of amendments to the constitution. A society that commits an infringement procedure may be liable to a fine not exceeding \$3,000.

The Act also sets out several serious offences, such as: making false statements; fraudulent use or destruction of property; falsification of register, records, or documents; operating fraudulently or dishonestly incurring debt; improperly using "Incorporated", "Inc", or "Manatōpū". These provisions supplement the dishonesty provisions in the Crimes Act 1961 and some of the offences could result in a fine of up to \$200,000 and/or a term of imprisonment of up to five years.

## Name, Purposes and Winding Up

### Name

The Act requires the society's constitution to include its name. The Registrar must refuse to incorporate a society under a particular name if it doesn't meet requirements set out in **Section 11**. These include:

- the name must not contravene legislation;
- the name cannot be identical or almost identical to the name of another society, company, or body corporate;
- the last word or words of the name must be one or more of "Incorporated", "Inc", or "Manatōpū".

### Purposes

The Act requires the society's constitution to include its purposes.

The Registrar must refuse to incorporate a society if its purposes include an unlawful purpose or the financial gain of any of its members.

### Winding up

The Act sets out particular requirements for the distribution of the society's property on liquidation.

The society's constitution must nominate a not-for-profit entity, or a class of not-for-profit entities, to which the society's net surplus assets should be distributed on liquidation or removal from the register. **Section 216** describes the procedure in more detail, such as where more than one entity has been nominated as the beneficiary.

## The Regulations

In September 2023, the Regulations were released. So, what do you need to know?

**Alternative method of filing documents may be allowed** by the Registrar where it is not practicable for the society to use the internet site (but internet preferred).

**Infringement fees** listed in the draft regulations have been kept the same (table below). There is no cap for the amount of fees a society can receive if multiple offences occur at the same time. The infringement process has also been released.

| NATURE OF INFRINGEMENT OFFENCE                                                                      | FEE   |
|-----------------------------------------------------------------------------------------------------|-------|
| Failure to notify the Registrar of amendments to the constitution                                   | \$100 |
| Failure to notify the Registrar of elections or appointments and other changes relating to officers | \$100 |
| Failure to maintain a register of members                                                           | \$100 |
| Failure to call annual general meeting                                                              | \$500 |
| Failure to properly hold, and keep minutes of, annual general meetings                              | \$500 |
| Failure to send copy of passed resolution in lieu of meeting to certain members                     | \$200 |
| Failure to register financial statements                                                            | \$500 |
| Failure to register an annual return                                                                | \$100 |
| Failure to have a registered office                                                                 | \$100 |
| Failure to give the Registrar notice of change of contact person                                    | \$200 |

**Transitional period** until 5 October 2028 allows for a) societies to continue to restrict AGM attendance, if their constitution allowed it prior to 5 October 2023; and b) have more than 50% independent officers on their committee, if their constitution allows.

**Members' register** must include past members, but only those who ceased to be a member within the last seven years.

**Application for re-registration** will include the prescribed information set out in the Regulations, which will be explained later in this Guide.

## PART 2 HOW TO REGISTER

### Registration Process

The Companies Office wants to make the registration process as simple as possible with no fees. There is an online form to complete with a few key pieces of information for your society:

- New Zealand Business Number and registration number;
- the physical address of your proposed registered office;
- your balance date;
- who your contact person is;
- the name of the proposed officers and for each officer:
  - i. their physical address (note this won't be publicly available);
  - ii. their written consent to being an officer; and
  - iii. a certificate confirming they are not disqualified from holding office as an officer – Companies Office have made a template for this available online;
- confirmation your society has 10 members; and
- confirmation that an officer considers the proposed constitution complies with the Act.

Your society will also need to upload a constitution that complies with the Act. Parry Field Lawyers has helped many societies of all sizes and complexities to update their rules and we would be pleased to help you.

***We have created legally-compliant templates for both complex and simple incorporated societies.***

There may be grounds for the Registrar to refuse to incorporate a society, including non-compliance of its name, purposes, or constitution.

## PART 3

# GOVERNANCE: WHAT YOU NEED TO KNOW

The Act codifies the common law that already applied to officers in the past by setting out their duties. In other words, it makes clear what the requirements are for officers. This section covers what those duties are, when they apply, and what other considerations are relevant, such as where an incorporated society is also a registered charity.

## What does the Incorporated Societies Act provide?

The Act provides that one of its “purposes” is actually to address the point of governance by providing: *“a legislative framework that promotes high-quality governance of societies”*.

The governance duties are set out in Sections 54 to 61 of the Act. For those familiar with the Companies Act duties (Sections 131-137 of that Act), there will be a consistency of wording that is apparent – this is deliberate with a harmonisation of governance being aimed for across different entity types.

The duties are not new, as a Court would have held that officers need to comply with these points, but they had not been set out like this before. They are as follows (the full duty is not included in this article but the hyperlink will take you to the Section directly):

***54 Duty of officers to act in good faith and in best interests of society***

***55 Powers must be exercised for proper purpose***

***56 Officers must comply with Act and constitution***

***57 Officer's duty of care***

***58 Duty relating to activities that create substantial risk of serious loss to creditors***

***59 Duty in relation to obligations***

***60 Use of information and advice***

***61 Duties owed to society***

If officers focus on the first and last of these duties then all the others will take care of themselves – provided there is no fraud or negligence at play. This is because acting in the best interests of the society and always considering to who you owe your duties should mean that you are acting with integrity in decision making, avoiding conflicts, being clear on your purpose, and working together as a group of officers for the higher call of advancing what the entity is there to do.

## What else is relevant?

In addition to these duties in the Act, it is also important to remember that there are 'other' rules to always comply with, for example, the Privacy Act, Employment Relations Act, Tax Act, and so forth.

The other major piece of legislation that affects many is the Charities Act 2005 – this has had a refresh in 2023, however they were mainly 'tweaks', rather than a wholesale review. That legislation is mainly concerned with the operating of charities which are registered but does impose some duties, such as the need to be reporting on how the charity is performing. The main legislation for duties of officers is the Act.

This ***article*** outlines key provisions relating to committees/ boards and how they operate.

## What might your next steps be for governance upskilling?

The people who govern incorporated societies can be called Boards or Committees. The people who govern should always seek to be learning and upskilling. It may be that some training on governance and requirements will be of help. A few starting points might be:

- **Board Matters**, a podcast series on governance and leadership for the Institute of Directors hosted by Partner, Steven Moe.
- The **Charities Healthcheck** series are free downloads and one of them focuses on governance. Many Boards are using that as a way to check their operations and how they operate as a Board.
- Charities Services provide a good **overview on governance**.
- Visit our Information Hub for everything you need to know about **Incorporated Societies**.

At Parry Field Lawyers, our team commonly attends Board meetings to speak about governance, answering questions that anyone has. Reach out if you would like further information. We have many clients across the country who are dealing with the same issues you likely are and our team is happy to provide support in any way that we can.

## PART 4

# WHICH MODEL IS RIGHT FOR YOU?

For those who are interested in pursuing a purpose or cause that benefits the community, the vehicle you use may be critical in ensuring your efforts are effective and that any assets you hold are protected.

For some groups, an incorporated society might be most appropriate, while for other groups, a charitable trust may be a more appropriate vehicle. Here we explain the key characteristics of both structure types.

### Incorporated Society

- Governed by the Incorporated Societies Act 2022.
- Members can come and go without affecting the vehicle's identity.
- Minimum number of 15 members, or 10 under the Act (body corporate members count as three individuals).
- Usually used by sports clubs, cultural groups, etc. that see benefit in wider involvement.
- **ACCOUNTABILITY:** officers are accountable to the members.
- **ADMINISTRATION COSTS:** annual financial statements must be filed and annual general meetings held.
- **CONTROL:** democratic control of the vehicle and its activities by its members. Inefficiency may result if majority of the members hinder the society's purposes. There are some stories of members ousting officers, but in our experience this would be very rare.

### Charitable Trust

- Governed by the Charitable Trusts Act 1957 / Trusts Act 2019.
- We recommend at least three trustees (or an odd number) to prevent conflict.
- **ACCOUNTABILITY:** individuals (a.k.a trustees) need to operate in accordance with the trust's deed or be held personally liable for breaching their duties as trustees.
- **ADMINISTRATION COSTS:** proper records required for activities undertaken, etc. Trustees must meet regularly to make decisions as required by the trust deed.
- **CONTROL:** decisions are made by a select few which may mean greater stability and efficiency.

Conflict between the trustees however could adversely affect the performance of the trust. As trustees appoint new trustees, the ability to change hands of controlling power may be difficult.

Various factors must be considered before committing to a vehicle. We generally find that a charitable trust is the most flexible of these two options. However, it is important that you consider what your operations are likely to look like. Imagine the future. Will your vehicle advance or hinder your ability to effect your purpose?



Par  
Lav

## PART 5 FREQUENTLY ASKED QUESTIONS

*Here is a sample of the questions we have received and answered on incorporated societies.*

**Q01:** I'm particularly interested to understand your thoughts/concerns about the operation of the Act in relation to Residents Societies arranging insurance for their properties.

**A01:** In short, the Act is silent on insurance generally – it just talks about indemnity insurance and so forth for officers.

**Q02:** Does the Act also affect charitable trusts?

**A02:** No, only incorporated societies. Before the Act came into force, charitable societies could incorporate under the Charitable Trusts Act 1957. This is no longer the case.

**Q03:** Is there a template “model constitution”?

**A03:** There is a *constitution builder* on the MBIE website and we offer template options for clients.

**Q04:** Do members have to be paying members or could they be life members?

**A04:** Subpart 5 of Part 3 of the Act sets out the law around members. It is up to the society whether 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”. 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.

**Q05:** What is the difference between a board and a committee?

**A05:** A “committee” is defined in Section 5 of the Act as meaning “in relation to a society, means the governing body of the society, however described (for example, a board)”. Sometimes committees are called boards. As long as a board is the governing body of the society, it has the same meaning as a committee.

**Q06:** When drafting the rules/constitution, is it best to ask members to review them before finalising and registering? Do we need special meetings to pass a new constitution?

**A06:** Because you will be creating a new entity with rules, we recommend getting feedback from prospective members throughout the drafting process. Taking prospective members on the journey tends to create higher engagement and minimize disagreements down the track.

**Q07:** I've heard that there are higher personal liabilities on officers of a society if, for example, a building we own burns down. Could you tell us a bit more about this?

**A07:** The Act has not radically changed liability – it depends on the society's circumstances and the insurance cover that the society has in place. The 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 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 Act). Sections 54-61 of the Act also sets out existing officers' duties – these were already enforced by the court and they are now written in legislation.

**Q08:** When can we start an amalgamation?

**A08:** Our understanding is that you will need to be registered under the Act before an amalgamation can begin. The amalgamation procedures are set out in Subpart 2 of Part 5 of the Act.

**Q09:** Should employees get specific instructions in writing from the Board when filing paperwork with the Registrar?

**A09:** We suggest it is best practice to have the Board sign off on documents before they are filed with the Registrar.

**Q10: Can a charitable company be formed following a formal conventional company for the purpose of community housing or cooperative housing?**

**A10:** 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.

**Q11: What indemnity can a society provide?**

**A11:** Section 94 of the 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 Act sets out the types of insurance permitted for certain liability or costs.

Section 98 of the 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.

**Q12: The 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?**

**A12:** XRB advises that 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 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.

REPORTING REQUIREMENTS PER THE ACT:

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

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

Section 5(1) of the Financial Reporting Act 2013 defines financial reporting standards as:

Section 5(1) of the Financial Reporting Act 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.”

MBIE have more detail on the new financial reporting requirements which you can find [here](#).

**Q13: 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 Act?**

**A13:** See the answer above.

**Q14: Do you have templates for dispute resolutions?**

**A14:** Yes, we offer our clients a well-rounded template for dispute resolutions developed with our litigation team. Societies can also use Schedule 2 of the Act as a template for dispute resolution Clauses.

**Q15: The Act refers to the ‘date someone became a member’ – is this the historical date which may not be known?**

**A15:** Yes – Section 79 of the 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. Another option would be to say “member at re-registration date”, or something similar.

**Q16: Does the Act require members to reside in NZ only?**

**A16:** No – the Act does not specify where members need to reside. However, the 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).

**Q17: Is an incorporated society that has charitable status actually a charitable trust?**

**A17:** No, it is an incorporated society with charitable status.

**Q18: Do all registered charities need to also be an incorporated society?**

**A18:** No – an incorporated society can choose to register as a charity. Charitable trusts and charitable companies can also be registered charities.

**Q19: Is Community Networks Aotearoa a good source of resources?**

**A19:** Yes – Community Networks Aotearoa has some great governance resources, which you can find [here](#). The first module on governance is free!

**Q20: Do you have any resources that discuss whether a charitable trust or an incorporated society is better?**

**A20:** Yes – we have an article on [Charitable Trusts vs Incorporated Societies: Which is best?](#)

**Q21: When will the regulations come out?**

**A21:** The regulations came out in September 2023.

**Q22: 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)?**

**A22:** Section 38 of the Act explains it refers to internal disputes, which could be disputes between members, officers, and the society.

**Q23: Do the regulations impact how we write our constitution?**

**A23:** We suggest looking through the regulations when you are drafting the constitution.

**Q24: Do members need to renew each year at AGM?**

**A24:** They don’t need to under the Act. However, your society’s constitution may have specific requirements for membership renewal that you need to check.

**Q25: Do members need to be natural persons? Can members be other charities?**

**A25:** 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.

**Q26: Can the members of the Governance board be personally and financially liable?**

**A26:** 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 Act apply directly to officers.

**Q27: 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?**

**A27:** 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 as 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.

**Q28: What if an organisation wants to be a charitable trust but does not meet the requirements of being a charitable trust?**

**A28:** Come and have a chat to us. 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 a charitable trust structure.

**Q29: Is there a distinction between a member of an incorporated society and a volunteer for an incorporated society?**

**A29:** 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.

**Q30: Do you need a common seal under the Act?**

**A30:** No – under Section 123 of the Act, a common seal is optional.

**Q31: Do you include life members on the membership register? What about honorary members?**

**A31:** The Act doesn't differentiate between different types of members, but only talks about members of the society. For example, the 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.

**Q32: Is the offences section just codifying what exists in current practice or is it adding new liability?**

**A32:** Rather than introducing brand new liability, the Act has six serious offences that supplement the dishonesty provisions in the Crimes Act. These offences are set out in Subpart 6 of the Act and are more targeted towards societies than those in the Crimes Act.

**Q33: Can an incorporated society own a company?**

**A33:** Yes, as long as the society's rules allow for it.

**Q34: 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.**

**A34:** The requirements for auditing or review depend on whether the society is a small society under *Section 103(2)(b)* of the Act or which *Charities Services Reporting Standard* the society falls under.

**Q35: Are organisations required to include a Clause on the act of borrowing in their constitution or is it optional?**

**A35:** *Section 46* of the 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.

**Q36: What options are available under Act for a society to have branches of varying sizes and financial means?**

**A36:** 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.

Some societies may have incorporated branches under the Incorporated Societies Amendment Act

1920, in which case *Clause 17 of Schedule 1* of the 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 that the local branches then tweak, adopt, and register with. This would ensure each branch has the same processes and procedures in place and they all comply with the 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 three 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).

**Q37: What are the reporting standards?**

**A37:** We understand that under the Act societies will use the XRB accounting standards in their financial statements, unless they qualify as a "small society". The Companies Office has provided some useful guidance on these standards, including links to other resources, which you can find [here](#). MBIE have more detail on the new financial reporting requirements which you can find [here](#).

**Q38: Are there ways for the charitable trust model to involve membership in a meaningful way but without the implications of incorporated societies?**

**A38:** Yes, 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?

**Q39: What protections are available for members and officers from financial liabilities under the Act?**

**A39:** The 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 Q7.

**Q40: Have the rules for unincorporated societies changed?**

**A40:** 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.

**Q41: What does the Act mean when it refers to an Officer? Does this mean a committee/board member who has a particular job/position as chairperson, treasurer etc?**

**A41:** Not necessarily – under **Section 5** of the 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).

**Q42: Under the Act, do all officers have to be elected by the collective at the AGM?**

**A42:** Section 26 of the 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.

**Q43: When an officer resigns during the year, do we have to call a SGM to elect another officer, or can the board/committee do it internally?**

**A43:** This will depend on what your constitution says. It may even be that if you still have three officers on your committee, the one who resigned does not need to be replaced, however, you may wish to replace the person. Your constitution should make clear how this is permitted between general meetings.

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

**Q44: 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?**

**A44:** Both the Act and the Law Commission's report are silent on the issue, only talking about the age of officers.

We turned to commentary on the previous 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 four? 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.

**Q45: Section 3(d)(iv) of the 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?**

**A45:** **Section 22** of the Act says that "a society must not be carried on for the financial gain of any of its members". Section 23 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 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 distribute funds to them according to Section 24 of the Act.

**Q46: Our deed has purposes – is this the rules?**

**A46:** Taking a step back, generally we refer to a “Trust Deed” for charitable trusts and a “Constitution” or “Rules” for an incorporated society.

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

**Q47: What is classified as a member – is it related to fee payments or people who use your services?**

**A47:** The Act doesn't differentiate between different types of members, but only talks about members of the society. For example, the 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.

**Q48: Do conflicts of interest need to be disclosed at every board meeting?**

**A48:** [Section 63](#) of the Act explains that a conflict of interest needs to be disclosed to the committee and recorded 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.

**Q49: 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?**

**A49:** Under [Section 64\(1\)\(c\)](#) of the 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.

**Q50: What provisions are there in the 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)?**

**A50:** 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 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 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 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.

**Q51: How do we decide if we need to be an incorporated society? Can we just be a charity?**

**A51:** 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. Only entities that have charitable purposes will be accepted as registered charities.

**Q52: What is a contact person – is this a position or an actual person?**

**A52:** Under *Section 114* of the 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 Act.

**Q53: Do you know of any tool/resource that can guide groups in identifying the best legal vehicle for their purpose?**

**A53:** We have written articles that talk about this. Please see the resources at the end of this guide or visit our [website](#).

**Q54: What are the types of legal structure that can “apply” to become a registered charity?**

**A54:** There are four key legal structures that can apply for charities registration: an incorporated society, unincorporated society, charitable trust, and company.

**Q55: What is the cost to change from an incorporated society to a charitable trust?**

**A55:** This depends on the situation - feel free to get in touch with us and we would be happy to provide a fee estimate.

**Q56: Do we need to be an incorporated society to be a registered trust?**

**A56:** Incorporated societies and charitable trusts are two different legal vehicles. It is not possible to be an incorporated society and a charitable trust. Both entities types can apply to register with Charities Services.

**Q57: Does changing to a charitable trust affect how you are able to apply for funding to run your organisation?**

**A57:** 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.

**Q58: Is there a public register that shows the types of entities that are registered? This may help us decide which entity we should be.**

**A58:** 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.

**Q59: If you have groups that are part of your membership they will count as three members? Does that group need to be legally incorporated?**

**A59:** *Section 14* of the Act explains that a body corporate that is a member of a society is treated as three members for the purpose of determining the number of members. This means the group needs to be legally incorporated.

**Q60: Is it a conflict of interest if a member of the committee is also a member of one of those subgroups of your membership?**

**A60:** This will depend on the situation. *Section 62* of the 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.

**Q61: Do officers/committee members have any new liabilities under the Act?**

**A61:** The Act has not radically changed liability for officers. Instead, it has set the liabilities of officers out clearly in one place.

**Q62: What are the reporting ramifications of becoming a charitable trust against being an incorporated society?**

**A62:** If you are registered with Charities Services, your reporting requirements will be the same. We suggest you get accounting input on this point.

**Q63: What have you seen work well in incorporated societies to build on the positive aspect of a democratic structure?**

**A63:** Incorporated societies are very democratic legal vehicles. Having good rules and involved members enhances this.

**Q64:** If you have a smaller Board and use committees, who is actually subject to liability under Section 154-159?

**A64:** 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 Act).

**Q65:** 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?

**A65:** Many these incorporated societies are also registered charities. For these societies, it should just be a matter of updating Charities Services with your new rules after they have been approved by the Companies Office.

**Q66:** Can officers count as members?

**A66:** Yes! Generally officers will also be members of the society.

**Q67:** Will the committee be subject to health and safety legislation?

**A67:** It 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.

[worksafe.govt.nz/managing-health-and-safety/getting-started/introduction-hswa-special-guide](https://www.worksafe.govt.nz/managing-health-and-safety/getting-started/introduction-hswa-special-guide)

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

**Q68:** Can an officer of a society also be an employee?

**A68:** 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 does not say whether or not an officer can be employed by the society.

So, it would be possible for an employee to also be an officer. If so, that person would have a conflict of interest when it came to decisions about their

remuneration or other aspects of their employment, so should not be included in the decision-making around that. 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.

**Q69:** 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?

**A69:** 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.

**Q70:** Do committee members need to sign something to say they are not disqualified from becoming a committee member?

**A70:** The Act doesn't specify, but committee members do need to consent in writing to becoming a committee member. We suggest they certify they are not disqualified from becoming a committee member at the same time.

**Q71:** 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?

**A71:** 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.

**Q72:** Can you register as a new incorporated society and make it a charitable trust at the same time?

**A72:** Incorporated societies and charitable trusts are two separate 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 Act comes into force.

**Q73:** 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?

**A73:** Under the *Section 5* of the 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.

**Q74:** Do we need to include officers' duties in our constitution?

**A74:** 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.

**Q75:** 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?

**A75:** 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 Act sets out some of the grounds you need to include for removal of officers.

**Q76:** In terms of whether incorporated society registration remains fitting, our group disagrees about interpretation of Section 24 of the 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"?

**A76:** Let's consider Section 24(1) with the example of a local swimming club. The club exists to bring people together to train and compete. As part of this, it 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' with not financial gain at one end and financial gain at the other end. 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 important under the 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.

**Q77:** 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 Act and do they need to be policies or guidelines?

**A77:** Under the 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 Act. This wouldn't need to be in the society's constitution, unless you were amending any of the default procedures.

Beyond the 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.

**Q78:** Is there a number limit for the committee within the Act?

**A78:** There isn't a number limit, only a minimum of three set out in Section 45(2) of the Act.

**Q79:** Information disclosure requirements – how can a Board deal with confidential information without being forced to disclose?

**A79:** *Sections 80-83* of the 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.

**Q80:** 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?

**A80:** 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 Q108. 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.

**Q81:** Can a sport club change to a charitable trust?

**A81:** 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.

## RESOURCES WEBSITE ARTICLES

Several articles are available on our website covering topics relevant to Incorporated Societies and requirements under the Act. These can be accessed below.

- [\*Paying Committee Members of an Incorporated Society: Key Considerations Under the Act\*](#)
- [\*Unincorporated societies: What rules apply?\*](#)
- [\*Incorporated Societies vs Charitable Trusts\*](#)
- [\*The New Incorporated Societies Act 2022 and Conflicts of Interest: What needs to be disclosed?\*](#)
- [\*The new Incorporated Societies Act 2022: When will the Act affect my Society?\*](#)
- [\*The New Incorporated Societies Act 2022 and Your Constitution: Name, purposes and winding up\*](#)
- [\*The new Incorporated Societies Act 2022 and your constitution: Dispute resolution procedures\*](#)
- [\*The new Incorporated Societies Act 2022 and your constitution: Requirements for general meetings\*](#)
- [\*The new Incorporated Societies Act 2022 and your constitution: What has changed for governance?\*](#)
- [\*The new Incorporated Societies Act 2022 and your constitution: What has changed for membership?\*](#)
- [\*The new Incorporated Societies Act 2022: Reregistering your society\*](#)
- [\*Paying Committee Members of an Incorporated Society: Key Considerations Under the Act\*](#)
- [\*Changing the Name of an Incorporated Society – What You Need to Know\*](#)
- [\*What Happens to Bequests When an Incorporated Society Transitions into a Charitable Trust?\*](#)
- [\*Changing an Incorporated Society's Name – How do you do it?\*](#)
- [\*Incorporated societies – the April 2026 deadline to reregister is looming\*](#)

*This document was revised and updated April 2026.*

## PARRY FIELD LAWYERS IMPACT TEAM



**Steven Moe**

*StevenMoe@parryfield.com*  
021 761 292



**Kris Morrison**

*KrisMorrison@parryfield.com*  
021 735 407



**Yang Su**

*YangSu@parryfield.com*



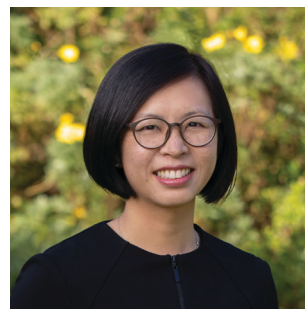
**Anna Rosevear**

*AnnaRosevear@parryfield.com*



**Rebecca Carruthers**

*RebeccaCarruthers@parryfield.com*



**Ai Li Kueh**

*AiLiKueh@parryfield.com*



**Sophie Greenhalgh**

*SophieGreenhalgh@parryfield.com*



**Annemarie Mora**

*Annemariemora@parryfield.com*



**Shimpei Sato**

*ShimpeiSato@parryfield.com*



**Vicky Reid**

*VickyReid@parryfield.com*



**Dinuki Karunasekera**

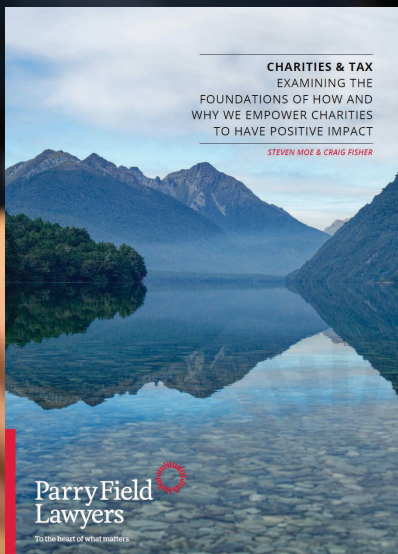
*DinukiKarunsekera@parryfield.com*



**Jade McCormick**

*JadeMcCormick@parryfield.com*

## Other free guides at [parryfield.com/publications](https://parryfield.com/publications) include:



ParryField   
Lawyers