



The Incorporated Societies Bill – what you need to know

February 2022

Outline

- Background
- What incorporated societies need to know:
 - to transition
 - before transitioning
 - after transitioning

Background

- Incorporated Societies Act 1908
- “New Zealand success story”
- 30,000+ incorporated societies
- Advantages:
 - separate legal personality
 - limited liability

Problems with the 1908 Act

“This review has its origins in concerns that the 1908 Act does not provide incorporated societies in New Zealand with all that a modern statute ought. The Act does not set out the **obligations** of those who are involved in the running of incorporated societies. It fails to give sufficient **guidance** to the many New Zealanders who volunteer to run societies. Moreover, the statute says little about how **disputes**, which inevitably occur, should be dealt with. Much of what is legally necessary for the running of incorporated societies is also not expressly set out in the statute”.

- NZLC R129 at [1.2]

Reform process

- Law Commission review commenced **2010**
- Issues paper (NZLC IP24, **2011**)
 - 200 submissions
- Law Commission report (NZLC R129, **2013**)
 - 102 recommendations, including a new Act
- Government response **2014**
 - agreed to 101 of 102 recommendations in full or in principle
 - further consultation
- Exposure Draft Bill November **2015**
 - 116 submissions received
- Report back, May **2019**
 - 18 changes proposed
- Bill introduced 17 March **2021**
- Select Committee report 3 November 2021

Purposes and principles

3 Purposes

The purposes of this Act are to —

- (a) provide for the **incorporation** of societies that are carried on for **lawful purposes** other than for the **financial gain of any of their members**; and
- (b) provide a **legislative framework that promotes high quality governance of societies**; and
- (c) make the law of societies more **accessible**; and
- (d) recognise the **principles** that –
 - (i) societies are organisations with **members** who have the primary responsibility for holding the society to account; and
 - (ii) societies should operate in a manner that promotes the **trust and confidence** of their members; and
 - (iii) societies are **private** bodies that should be self-governing in accordance with their constitutions, any bylaws, and their own tikanga, kawa, culture, and practice, and should be **free from inappropriate government interference**; and
 - (iv) societies should not distribute profits or financial benefits to their members.

Transition

- Bill enacted 2022?
- regulations within 18 months
- then, non-staggered transition period (2 ½ years or 1 December 2025 if later)
- must actively re-register once ready
 - otherwise cease to exist on the transition date
 - but can apply to be “restored” to the new register
 - if not restored, surplus assets distributed
- 2 registers during transition period

Transition (cont'd)

- Charitable Trusts Act 1957:
 - existing charitable societies may (but not required to) transition
 - if choose *not* to transition, continue to be subject to CTA indefinitely
 - but once the legislation in force, no new charitable societies

What do societies need to do to transition?

- Constitution – 25 minimum requirements, including dispute resolution procedures (clause 26)
- A committee of 3 officers - must be qualified (clause 42)
- Contact person (1-3)

Ongoing obligations

- Annual return (clause 102):
 - confirmation of AGM, date held and number of members who participated
 - number of members at the end of the last financial year
 - name and contact details of contact person(s)
 - names of all officers
 - registered office

Financial reporting

- Accounting records (clause 94)
- Financial statements (clause 95)
 - prepared in accordance with GAAP (or a specified non-GAAP standard)
 - filed within 6 months of balance date
 - dated and signed by 2 members of the committee
- Micro-entity exception (clause 96)
 - total operating payments less than \$50,000
 - total current assets less than \$50,000
 - not a donee organisation
- Audit requirement – regulations (clause 98)

Register of members

- Clause 73:
 - Name of each member and last known contact details
 - Date on which each person became a member
 - Other information prescribed by regulations
- Minimum of 10 members
- Must consent to be a member
- Constitution must provide arrangements for keeping the register up to date (clause 26(1)(e))
- Members' access to information (clauses 74-77)

Duties of officers

- Duty of loyalty:

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

- (1) An officer, when exercising powers or performing duties as an officer, must act in good faith and in what the officer believes to be the best interests of the society.

- Duty of obedience:

- 51 Officers must comply with Act and constitution**

- An officer must not act, or agree to the society acting, in a manner that contravenes this Act or the constitution of the society.

- 50 Powers must be exercised for proper purpose**

- An officer must exercise a power as an officer for a proper purpose.

Duty of care

- Duty of care:

- **52 Officer's duty of care**

- An officer, when exercising powers or performing duties as an officer, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances, taking into account, but without limitation,—

- (a) the nature of the society; and

- (b) the nature of the decision; and

- (c) the position of the officer and the nature of the responsibilities under- taken by them.

Duty of care (cont'd)

- Duty of care:

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

An officer must not—

- (a) agree to the activities of the society being carried on in a manner likely to create a substantial risk of serious loss to the society's creditors; or
- (b) cause or allow the activities of the society to be carried on in a manner likely to create a substantial risk of serious loss to the society's creditors.

54 Duty in relation to obligations

An officer must not agree to the society incurring an obligation unless the officer believes at that time on reasonable grounds that the society will be able to perform the obligation when it is required to do so.

Duty of care (cont'd)

- Duty of care:

- **55 Use of information and advice**

(1) An officer, when exercising powers or performing duties as an officer, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) an employee of the society whom the officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within the person's professional or expert competence;
- (c) any other officer or subcommittee of officers upon which the officer did not serve in relation to matters within the officer's or subcommittee's designated authority.

(2) However, subsection (1) applies to an officer only if the officer—

- (a) acts in good faith; and
- (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that the reliance is unwarranted.

First poll:

To whom does an officer of a society owe the primary duty of care?

- (a) The incorporated society
- (b) The members
- (c) Both a and b
- (d) Both a and b plus creditors

Source: Kevin McCaffrey, *Governance Challenges*, March/April 2015

Conflicts of interest

- Interests register (clause 67)
- Duty of officer to disclose interests (clause 58)
- Must not vote or sign (clause 59)
- May take part in discussion and be counted in quorum
- Consequences of failing to disclose (clauses 60-66)
- Potential to opt out (clause 61A)

Annual general meeting

- Duty to call and hold AGM (clause 78)
- At AGM, must present:
 - annual report
 - financial statements
 - disclosures of interest (clause 58)
- Duty to keep minutes of AGM (clause 78(3)(b))
- Can use technology (subject to constitution)

Use of society name

- **Clause 114:**

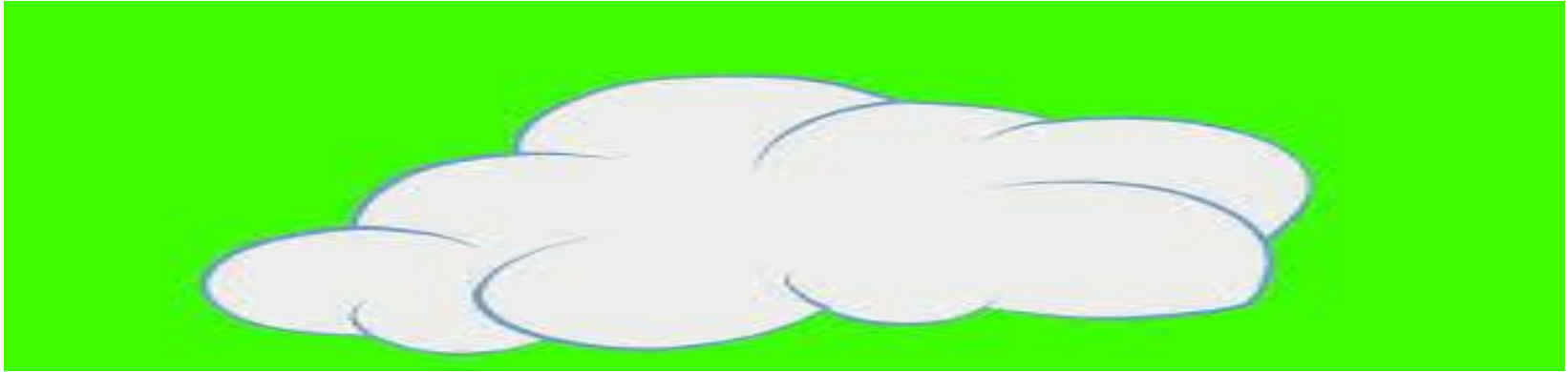
A society must ensure that its name is clearly stated in every document issued or signed by, or on behalf of, the society that evidences or creates a legal obligation of the society

- **Offence**

Notification obligations:

- Amendments to constitution (clause 33)
 - plus certificate and information prescribed by regulations
 - 25 working days
- Changes in officers (clause 47)
 - including information prescribed by regulations
 - 20 working days
- Change in registered office (clause 104)
 - manner prescribed by regulations
- Change in contact person (clause 109)
 - 20 working days

Registered charitable status



- Legal status – Companies Office:
- Incorporated Societies Act 1908
 - Charitable Trusts Act 1957
 - Companies Act 1993 etc

Other issues:

- Powers (clause 18)
- Amalgamations (clauses 185-199)
- Appeals:
 - Incorporated Societies Act
 - Charities Act 2005
 - Trusts Act 2019
 - Charitable Trusts Act 1957

Last word:

- **New Zealand Law Foundation 2019 International Research Fellowship Te Karahipi Rangahau ā Taiao:** www.charitieslawreform.nz
- **LinkedIn group:** NZ Charity Law
- **Facebook page:** Charities Act Review 2020:
<https://www.facebook.com/groups/1932023316889903/>

Questions?

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