

What leaders of incorporated societies need to know about the new Bill

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The introduction of the [Incorporated Societies Bill](#) into Parliament was a landmark moment for not-for-profit governance in New Zealand. Reform in this area began over a decade ago and is well overdue. The Bill will replace the Incorporated Societies Act 1908 with a new modern framework.

We explain some of the key features of the Bill to help leaders of incorporated societies understand what is changing.

There are over 24,000 incorporated societies in New Zealand. They promote a broad range of community activities including sport, recreation, culture, education, health, social services, philanthropy, emergency relief, environmental protection, animal protection and religion. Many are charities and will have already updated some of their legal and governance arrangements when the Charities Act 2005 came into effect.

Board members and leaders will need to understand how their societies are affected by the Bill and what they need to do to transition to the new regime or what other alternative options are suitable (e.g. merging or ceasing activities).

Key features of the Bill

The Bill is three times the size of the 1908 Act and a key purpose of it is to help promote high-quality governance in societies. The substance of incorporated societies isn't changing but there are many new reforms including in relation to governance structures and arrangements.

The following principles underpin the new regime:

- societies are organisations with members who have the primary responsibility for holding the society to account
- societies should operate in a manner that promotes the trust and confidence of their members
- societies are private bodies that should be self-governing and free from inappropriate government interference
- societies should not distribute profits or financial benefits to their members.

Constitutions

- Societies will need to ensure their constitutions are compliant with the Bill. Constitutions must contain specific content (e.g. the composition, roles, powers, functions and procedures of the committee (governing body)), which is significantly more than what is currently required under the 1908 Act
- Constitutions can contain other matters that are not inconsistent with the Bill, including providing for how the society can make bylaws and for the society to express its culture or tikanga.
- Societies will have to nominate a not-for-profit entity or a class or description of not-for-profit entities to which any surplus assets of the society should be distributed on liquidation or removal from the register. This differs from the 1908 Act where assets can be distributed to members when a society is wound up.

- The Ministry of Business, Innovation and Employment has a “[constitution builder](#)” for drafting or revising society rules and it is expected that this will be updated in light of the Bill.

Committees (governing body)

- Societies must have a committee (which is the governing body) with at least three members (officers).
- The operation and affairs of the society must be managed by, or under the direction or supervision of, its committee.
- Committees have specific obligations under the Bill such as keeping an interests register and accounting records.

Officers

- The definition of “officer” includes members of the committee and people occupying a position in the society that allows them to exercise significant influence over the management or administration of the society (eg a treasurer or a CEO).
- Various people are disqualified from being officers, such as undischarged bankrupts and those convicted of dishonesty offences within the last seven years. The list of disqualifications is extensive and broadly similar to legislation governing other legal entities.

Officer duties

- Currently, officer duties are set out in case law and not in the 1908 Act. The Bill brings officer duties into one place and they are broadly the same as director duties under the Companies Act. The duties include:
 - to act in good faith and in the best interests of the society
 - to exercise powers for a proper purpose
 - to comply with the new Act and the society’s constitution
 - to exercise care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances
 - not to allow the society to carry on activities in a manner that is likely to create a substantial risk of serious loss to the society’s creditors
 - not to allow the society to incur obligations unless the officer reasonably believes they will be performed.
- Officers are able to rely on information and advice from management and advisors with some provisos (e.g. they act in good faith and make proper inquiry).
- Officers may be personally liable for the loss or damage suffered by the society because of a breach of duty. Officer duties are owed to the society and not members.
- The Bill covers insurance and indemnities for officers.

Conflict of interest disclosure procedure

- Officers have a further duty to disclose financial conflicts of interest and any matter a member may be interested in as specified in the constitution (i.e. non-financial matters). Guidance on when a person is “interested” and “not interested” is provided.
- The consequences of being interested in a matter are set out. These include the prohibition of “interested” persons voting on the relevant matter or signing any

document relating to the entry into a transaction or the initiation of the matter. However, they may take part in discussions relating to the matter and be present at the time of the decision of the committee (unless the committee decides otherwise).

- In addition to keeping and maintaining an interests register, committees must also notify members of an officer's failure to comply with the duty to disclose conflicts and/or the consequences of being interested (e.g. where a conflicted officer voted on a relevant matter).

Disputes resolution procedure

- Societies must have a dispute procedure to deal with both member grievances and complaints. The Bill sets out minimum procedural requirements, including natural justice requirements. Societies do not have to progress a grievance or a complaint in some circumstances (e.g. where the matter is trivial, it appears to be without foundation or the complainant has an insignificant interest in the matter).

Access to information for members

- Members can request information from the society. Societies can withhold information in some circumstances (e.g. where it is necessary to protect someone's privacy, the information is commercially sensitive or the request is frivolous or vexatious).

Reporting

- Societies must keep accounting records and also prepare and file financial statements in accordance with generally accepted accounting practice. "Small" societies have several options available to them, with the Bill setting out basic minimum requirements for them to meet. Societies are "small" if, for the previous two years, they have total operating payments under \$10,000 and total assets under \$30,000 and where they are not a "donee organisation" for tax purposes.
- Annual returns must also be filed.
- Incorporated societies that are registered charities can submit annual returns and financial statements solely to Charities Services (under the Charities Act 2005).
- Every society that is "large" (within the meaning of section 45 of the Financial Reporting Act 2013) must ensure that their financial statements are audited.

Offences

- Societies have specific duties including notifying the Registrar of various administrative matters. Infringement offences and fines can be imposed on societies that fail to comply with various provisions in the Bill (e.g. failing to maintain a register of members or not registering financial statements).
- The Bill includes several serious offences to supplement the dishonesty provisions in the Crimes Act 1961 (with substantial fines and periods of imprisonment).
- Courts may ban people from being officers and/or taking part in the management of a society.

Other matters

- Societies must have a minimum of 10 members.

- Societies must have at least one “contact person” (and up to three) whom the Registrar can contact about society matters. They must be at least 18 years of age and ordinarily resident in New Zealand. There are no extra duties or offence provisions that are specific to this position/office.
- The Bill provides for enforcement matters (such as processes to enforce a society’s constitution or bylaws).
- The Bill details how societies may be removed from the register, amalgamated, liquidated and other matters.

Timing of changes and feedback

There are other reforms in the Bill and some things may change as the Bill proceeds through the legislative process.

Changes will largely come into force no later than 18 months after the date on which the Bill receives Royal Assent.

The Bill also provides for a transitional period for existing societies to re-register under the new regime. The intent is to have a four year transitional period.

The IoD will submit on the Bill and we welcome member feedback to glc@iod.org.nz. See also our 2016 submission on the Exposure Draft of the Incorporated Societies Bill.