



Mahony Horner Lawyers

# AuSAE Compliance Symposium

Te Papa

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# The New Incorporated Societies Act

# What is New?

The Incorporated Societies Act 2022:

- consigns the Incorporated Societies Act 1908 to history
- modernises the structure and governance of incorporated societies

# Transition Period for Existing Incorporated Societies

Existing incorporated societies have options:

- If they want to remain incorporated, they are likely to have a period from October 2023 until 1 December 2025 to reregister
- In order to register, they must register a compliant constitution that meets the requirements of the new Incorporated Societies Act

# Most Significant Changes in the 2022 Act

People must consent to becoming society members

For committee members:

- must consent to becoming a committee member
- the imposition of statutory duties of care and diligence
- conflicts of interest must be recorded and managed
- greater personal accountability

Obtain consents in writing!

# Incorporating a New Incorporated Society

Minimum number of society members now 10 instead of 15

No financial gain

Registrar must be provided with a copy of constitution, and:

- names of committee members, including their consents to serve and certification that they may lawfully serve
- name and contact details of a “contact person” must be advised to Registrar
- application fee (whatever that will be) and anything else prescribed in Regulations

# Content of Constitutions

Section 26 sets out the requirements

Name

Purposes

How members join a society and cease to be members

How a society's constitution can be altered

How society general meetings are called

Intervals between society annual general meetings

# Content of Constitutions (cont'd)

Information to be presented at society general meetings

When general meeting minutes are required to be kept

The manner of calling society general meetings; and

Whether and, if so, how written resolutions may be passed in lieu of a society general meeting



# Content of Constitutions (cont'd)

Distribution of surplus assets upon dissolution

The composition, roles, functions, powers, and procedures of the committee of the society

How the society enters into contracts

# Content of Constitutions (cont'd)

How the society will control and manage its finances

Procedures for resolving disputes, including providing for how a complaint may be made

## Content of Constitutions (cont'd)

Under s27, a society constitution must not purport to confer on any society member any right, title, or interest (legal or equitable) in society property

Section 77 reinforces section 27 – “Membership of a society does not confer on a member any right, title, or interest, either legal or equitable, in the property of the society”

# Content of Constitutions (cont'd)

A society constitution may provide for:

- the making of by-laws
- expression of its tikanga, kawa, culture, or practice
- reasonable penalties that may be imposed on a member in certain circumstances
- other matters relevant to the society's operations or affairs

# Effect of Society Constitutions

The constitution of a society is binding:

- as between the society and each member
- as between society members
- on each society officer

# Incorporated Society Governance

Minimum of 3 officers qualified under Act to hold office

Every officer must consent in writing to serve as an officer

Common grounds of disqualification are being under 16, being an undischarged bankrupt, being disqualified from being a company director or from being the officer of a charity, and being convicted and sentenced within the previous 7 years of various serious offences

Society Manager?

# Incorporated Society Governance (cont'd)

A society committee member or officer must:

- act in good faith and in what the officer believes to be the best interests of the society
- exercise any power as an officer for a proper purpose
- not act, or agree to the society acting, in a manner that contravenes the Act or the constitution of the society

# Incorporated Society Governance (cont'd)

Must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances

Must avoid society acting in a manner that may create a substantial risk of serious loss to the society's creditors

May rely on reports, statements, financial data, other information and professional or expert advice given by certain specified people



# Society Governance – Conflicts of Interest

Conflicts of interest:

- must be disclosed
- recorded in a formal conflicts of interest register
- however, s64 allows the conflicted person to be included in the quorum and to participate in discussion on the issue unless the committee decides otherwise

# Society Membership and Information Requests

Register of members:

- When a member became a member
- The member's contact details

Requests for information

Grounds for refusal

# Time To Get Moving!

- set a timeline
- obtain a copy of the 2022 Act and read it
- record decision to re-register at a General Meeting
- appoint a planning sub committee
- get it on (and keep it on) the agenda for each committee meeting from now on

**Talk to us!**



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