

INCORPORATED SOCIETIES ACT 2022

"The enactment of the new Incorporated Societies Act 2022 impacts all incorporated community sport organisations throughout New Zealand and is the most significant legislative change to affect amateur sport in this country in over a century".

This presentation has been prepared in good faith based on information obtained from sources believed to be reliable and accurate. The Association recommends that sport clubs currently incorporated under the Incorporated Societies Act 1908 seek independent legal and accounting advice concerning their legal obligations (including to their members) under the new Incorporated Societies Act 2022. Please contact office@asa.org.nz for further information or assistance concerning this presentation.



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TODAY'S AGENDA

1. Legislative History
2. Reform Timeline
3. Issues (1) : 1908 Act Compliance
4. Issues (2) : CSO Non-Representation
5. Issues (3) : Unintended Consequences
6. Lobbying & Amendments To Bill
7. New Act Requirements
8. Implementation Timeline
9. Where To Get Help



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LEGISLATIVE HISTORY

- 1895: Sir Patrick Alphonsus Buckley (following lobbying from the New Zealand Rugby Union) introduced the Unclassified Societies Registration Bill to the House of Representatives, “in the interests of the athletes of the colony”. The Bill was the outcome of a conference of the governing bodies of the athletic clubs of New Zealand, who considered that legislation would enable them to better manage their properties and funds and the general conduct of their business affairs.
- The Act (which was subsequently amended in 1906 and consolidated in 1907) provided that any "unclassified Society" of not less than fifteen persons, “associated for any lawful purpose, not being the pecuniary gain of members, and unable to register or become incorporated under any existing enactment, may by resolution of two-thirds of its numbers present at a meeting convened for the purpose, become registered under the Act with the Registrar, to whom a fee of £1 will be payable.”
- 1908: As the Unclassified Societies' Registration Act had been extensively made use of by societies of a much more complex and important character than those for which the Act was primarily designed, a new Bill was drafted in an attempt to make more adequate provision for the incorporation, management, control, and dissolution of the societies to which it related. All societies registered under Unclassified Societies' Registration Act were deemed to be registered and incorporated under the new Act, which remained in-force for over 113 years, until 5 April 2022.



Sir Patrick Buckley



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REFORM TIMELINE

- 2010 : the Law Commission commenced a review of the “uncomfortably old” Incorporated Societies Act 1908
- 2011 : the Law Commission released an issues paper, “Reforming the Incorporated Societies Act 1908” (IP24)
- 2013 : the Law Commission released a report, “A New Act for Incorporated Societies” (NZLC R129, 2013)
 - the report made various recommendations (subsequently included in the draft Bill) concerning:
 - statutory duties for office holders;
 - requirements for dealing with conflicts of interest;
 - a requirement to include dispute resolution procedures in every constitution;
 - a model constitution.
- 2014 : the Government response to the report was presented to the House of Representatives
- 2015 : the Incorporated Societies Bill was released for public review
- 2019 : the Government made changes to the draft Bill
- 2021 : the Bill was introduced to the House of Representatives and received its 1st and 2nd readings
 - the Economic Development, Science and Innovation Committee received 124 written submissions and a number of oral submissions
- 2022 : the Bill received its 3rd reading and was enacted (by Royal Assent) on 5 April.



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ISSUES (1) : 1908 ACT COMPLIANCE

- Nearly 1,000 incorporated community sport organisations (CSO) were dissolved by the Registrar of Incorporated Societies in the past five years, in many cases involuntarily, for failure to comply with the requirements of the existing (1908) Act.
- Association research reveals over a third of those dissolved continue to operate regardless, in many cases unaware of their dissolved status, the reasons for their dissolution (and the implications), and the potential remedy of revocation.
- Impacts of dissolution include:
 - a. liability and responsibility passing to all office holders personally, with the heightened risk of CSO Officers becoming subject to criminal and/or civil prosecution for “holding out to be an incorporated society” when in fact they are not, also resulting in liability insurance (if any) becoming void;
 - b. in the event of default, credit ratings of the individual unincorporated office holders may impact their own personal credit ratings and their ability to take on personal debt;
 - c. an unincorporated society will find it difficult to obtain community grants (a condition of receiving grant funding is that a CSO must be incorporated, and stay incorporated during the spending of that grant); and
 - d. other fundraising activities will also be impacted, e.g. a CSO will be unable to run normal raffles with prizes, (the Department of Internal Affairs will not grant a licence for supervised draws, etc.),



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ISSUES (2) : CSO NON-REPRESENTATION

- A survey of incorporated CSOs undertaken by the Association when the Bill was introduced to the House of Representatives in April 2021, revealed that 98% of respondents were not aware of the Bill and had not been contacted by their national governing body concerning their obligations, should it pass into law.
- When this reform was first mooted by the Law Commission in 2013, it received 208 submissions, (a 0.9% representative sample of all incorporated societies). Approximately 45% of the over 23,000 incorporated societies are cultural, sporting, and recreational bodies. Around one-third of these are CSOs.
- Of the submissions received by the Law Commission in 2013, only 12 were from sport entities. Despite comprising around one-third of the community cultural, sporting, and recreational bodies affected by the proposed reforms, only 0.05% (a half of a tenth of one per cent) of incorporated CSOs provided input to the consultation process.
- The Select Committee responsible for the consideration of the new Bill (the “Economic Development, Science and Innovation Committee”) focuses on: business development; tourism; Crown minerals; commerce; consumer protection and trading standards; research; science; innovation; intellectual property; broadcasting; communications; and information technology”, rather than “social development; children, young people and seniors; Pacific peoples and ethnic communities; arts, culture and heritage; sport and recreation; and the voluntary sector”, (the focus of the "Social Services & Community" Select Committee”).



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ISSUE (3) : UNINTENDED CONSEQUENCES

The Association made seven recommendations to the Select Committee relating to the following sections of the Bill.

- Part 3, Clause 38 : Procedures In Constitution For Disputes
 - Many CSOs will not have the required governance knowledge, skills and competence needed to formulate procedures applicable to the nature of the sport and its participants.
- Subpart 4, Clauses 49 to 56 : Officers' Duties
 - The introduction of Officers' duties that parallel Directors' duties under the Companies Act 1993, is likely to be confronting for Officers of many CSOs, particularly those governed and operated solely by volunteers.
- Subpart 4, Clauses 57 to 67 : Conflict Of Interest Disclosure Rules
 - Many volunteer Officers of CSOs may not understand what a conflict-of-interest is, let alone the concept of "materiality" (or how to apply it), or have the capability to maintain a register.
- Subpart 7, Clause 83 and 84 : Financial Reporting
 - the definition of "small society" in the Bill was too restrictive and would have artificially excluded many small CSOs, with the more comprehensive/complex set of financial reporting measures further inhibiting smaller CSOs to achieve compliance in this area.

acceleration of dissolutions + impairment of volunteer recruitment = fewer local clubs + lower national participation



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SOME THRUSTS PARRIED, BUT RISKS REMAIN

- As a result of the Association submitting that the definition of “small society” be reconsidered, the Economic Development, Science and Innovation Select Committee amended clause 96 (2) (b) of the Bill “to increase both the operating payments and assets thresholds to \$50,000 each”, also agreeing “that the assets threshold in clause 96 (2) (b), which defines a “small society”, would require a society to have “total current assets” of less than \$50,000, rather than “total assets”, (as in the Bill when introduced), acknowledging that many CSOs own fixed assets above the proposed threshold.
- This change was a major improvement on the draft legislation simplifying financial reporting to the direct benefit of around 60% of all registered incorporated societies, a considerable proportion of which are sport clubs.
- The new law is not perfect. In particular, there are ongoing concerns that clauses 53 and 54 of the Act (regarding "Officers Duties") may have a “disproportionally burdensome effect”, which may deter volunteers becoming Officers for their organisation, with the obligations created in these clauses described by one national law firm as “egregious and unreasonable”.
- Overall, there remains a material risk that the effects of: a. cost of change, (in time and money for “reconstituting” most entities); b. new compliance obligations, (which will be beyond the knowledge, skills, competence or interest of fewer volunteers to undertake); and c. unintended consequential impacts, (such as potential ineligibility for an “amateur sports promoters income tax exemption”, if an incorporated organisation’s status lapses); are still to be seen.



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NEW ACT REQUIREMENTS

1. Constitutions

- Incorporated Societies will need to ensure their Constitutions are compliant with the Act. 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 was required under the 1908 Act. The cost of change will be both in financial and non-financial terms.

2. Clearer Governance Arrangements

- Committees are now required and there are duties for “Officers” on those Committees that are similar to the Companies Act 1993.

3. Qualification Of Officers

- Every Officer must be a natural person and provisions similar to other legislation prevent undischarged bankrupts and those convicted of prescribed dishonesty offences or other disqualifications from being appointed as Officers.

4. Conflicts Of Interest

- Officers have to disclose conflicts of interest with a clear process for managing these.

5. Disputes Resolution

- Incorporated societies must have a dispute resolution procedure to deal with both member grievances and complaints; the new legislation sets out minimum procedural requirements, including natural justice requirements.

6. Transparency & Accountability

- Information about an incorporated society can be sought by members; there are also financial reporting and annual return filing requirements, (which have been moderated as a result of the Association’s lobbying on behalf of CSOs).



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IMPLEMENTATION TIMELINE

1. New Societies

- unincorporated sport clubs seeking incorporation
- until Q3 2023 (specific date to be confirmed), must register under the Incorporated Societies Act 1908
- after that date, must register under the Incorporated Societies Act 2022

2. Existing Societies

- societies currently registered under the 1908 Act
- until Q3 2023, remain subject to the requirements of the Incorporated Societies Act 1908
 - this means that all current requirements to maintain registration must be undertaken in 2022 (and 2023)
- in the period Q4 2023 to Q1 2026, must re-register with the Companies Office (i.e. refile their Constitution)
- failure to re-register in this period will result in involuntary dissolution
- as soon as re-registration has occurred, they become subject to the requirements of the Incorporated Societies Act 2022



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WHERE TO GET HELP OR MORE INFORMATION

- The following information sources provide helpful information and/or assistance:
 1. New Zealand Legislation
 - <https://www.legislation.govt.nz/act/public/2022/0012/latest/whole.html>
 2. Registrar of Incorporated Societies, (Companies Office)
 - www.societies.govt.nz
 3. Ministry Of Business Innovation & Employment
 - <https://www.mbie.govt.nz/business-and-employment/business/regulating-entities/incorporated-societies-act-review/>
 4. Institute Of Directors New Zealand
 - www.iod.org.nz
 5. New Zealand Parliament
 - https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/bill_109429/incorporated-societies-bill

Note: the new requirements can extend to trusts incorporated as Boards under the Charitable Trusts Act 1957 and a range of entities incorporated under other statutes



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BECOME A MEMBER

- By becoming a Member of the Association, you become part of a movement in support of amateur sport in our local communities, where members are linked by their “love of the game, for the game’s sake”, whatever their chosen sport.
- Members are defined in one of six categories:
 1. Individual (or Family);
 2. Community Club;
 3. Regional Sporting Body;
 4. National Sporting Organisation;
 5. Local Authority, or
 6. Associate.
- To apply, please complete the on-line Application Form, using this URL.
 - <https://www.asa.org.nz/membership/application>
- You can also subscribe to the Association’s free-of-charge e-zine (“For The Love Of The Game”), using this URL.
 - <https://www.asa.org.nz/ezine/>



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