

Introducing Bill Munro

Bill is a Partner advising primarily in business, property, finance, structures and contract negotiations, including rural business.

Prior to studying law, Bill worked in managerial roles in a variety of sectors, before focussing on consultancy and business development across fashion, arts, film and media and hospitality businesses. Bill's primary emphasis was on team performance and business efficiency, and he attained national recognition for business performance.

Growing up in Alexandra in the 80s and 90s Bill describes as a bit of a 'Huckleberry Finn' meets 'Dukes of Hazard' existence, with a free range upbringing providing opportunities to explore and create lasting bonds with a wide range of people. Bill kept occupied playing the drums anywhere that would let him, cooking pizza at the infamous Cow Pizza restaurant by night, and riding dirt bikes as a guide for Off-road Adventures by day. This unlikely combination led to connections with the film industry, and the opportunity for professional driving in film productions as a stunt/precision driver, and stint as a driver with the United States Secret Service.

Bill's eldest son was born in Melbourne and prompted a return home to New Zealand. Part time study peppered with management roles and a growing family resulted in a BCom in Management and LLB, while also helping his wife build her successful fashion label Company of Strangers, and importantly, being a Dad to 4 great kids.

Bill's legal career started at Webb Farry under the tutelage of David Ehlers. Bill describes David's solid approach, excellent teaching abilities and dependable nature as a guiding light, and these traits have become the touchstones of his own career. Bill's innate problem solving abilities and focus on team performance, business efficiency and service have led to a reputation as someone that gets the job done, provides the right advice and fosters a great team culture around him.

Bill says "Webb Farry is a team of talented individuals, at all levels, and I am very proud to be a part of that team. It's not about any single one of us, it's about all of us, it's about our clients, it's about providing a high quality service and continuing to grow and develop the team and the service we provide".

Bill continues to play drums for a Melbourne based band on tours, builds/restores/rides vintage road and race motorcycles and tries to convince his kids that he actually was cool 'back in the day'.



Trustees Duties

By Bill Munro & Jordan Wilson

The Trusts Act 2019 imposes two types of duties on trustees – **mandatory** duties which *cannot* be modified or excluded; and **default** duties which *can* be modified or excluded. It is important that all trustees (no matter how big or small the trust) know these duties and what is required from them in managing the trust.

The **mandatory duties** require Trustees to:

- Know the terms of the trust;
- Act in accordance with the terms of the trust;
- Act honestly and in good faith;
- Act for the benefit of the beneficiaries; and
- Exercise the trustee's powers for a proper purpose.

It is because these duties form the very foundation of the trust relationship that they cannot be excluded or modified.

The **default duties** require Trustees to:

- Exercise the care and skill that is reasonable in the circumstances taking into account any special knowledge or experience of the trustee;
- When investing trust property, exercise the care and skill of a prudent person of business managing the affairs of others;
- Not exercise a power of a trustee for the trustee's own benefit;
- Consider actively and regularly whether the trustee should be exercising one or more of the trustee's powers;

- Not bind or commit trustees to a future exercise of a discretion;
- Avoid a conflict between the interests of the trustee and the interests of the beneficiaries;
- Act impartially in relation to the beneficiaries;
- Not make a profit from the trusteeship;
- Not take any reward for acting as a trustee; and
- Act unanimously with other trustees.

At times, the default duties will conflict with the original intention of the settlors in settling the trust. For example, where a family trust holds the family home, it will often be the settlors' intention that mum and dad are permitted to live in the property, as beneficiaries, or benefit from regular distributions derived from the trust's income-earning assets, if any. Where mum and dad are also trustees, this will conflict with one or more default duties, including the duty to not exercise a power of a trustee for the trustee's own benefit. In that case, the default duties will need to be excluded to permit this.

As the default duties automatically apply to every trust in New Zealand, unless excluded or modified in the trust deed, it is essential that trustees seek advice, review their trust deed and consider if it still reflects the initial intentions and also meet regularly to actively manage the ongoing investment and management strategies of their trust.

Incorporated Societies Act updated after 114 years

By Tom Clout

The Incorporated Societies Act 2022 ("Act") will come into effect in October 2023. The Act replaces the Incorporated Societies Act 1908 ("1908 Act"), combining useful elements of the 1908 Act and additional legal principles found in case law.

An incorporated society is a group or organisation that is registered under the Act, which gives the group its own legal identity. Common examples include sports and social clubs, cultural and religious groups, and special interest organisations.

Any new society that applies for incorporation after 5 October 2023 will be subject to the requirements of the new Act. Societies already incorporated will remain subject to the 1908 Act until they re-register, which they are required to do between 5 October 2023 and 5 April 2026.

If an existing society is not re-registered by the April 2026 deadline, it may be removed by the Registrar of Incorporated Societies ("Registrar") and will cease to exist. In such a case the assets of the society must be distributed to one or more not-for-profit entities in accordance with the society's Constitution, in the manner approved by a resolution of members, or as directed by the Registrar.

Some of the key changes include:

- **Minimum number of members:** A society must have at least 10 members to be eligible to incorporate (previously 15 members under the 1908 Act).
- **Governance:** A society must have a committee, comprised of at least three "officers", who will be responsible for managing the society's operations. There are also a number of basic requirements to be eligible for appointment to the committee.
- **Officers:** An officer is any individual who sits on the committee, and any person that can exercise significant influence over the management or administration of the society. The new Act specifies duties that will apply to officers, including the duty to comply with the Act and the society's Constitution.
- **Conflict of Interest:** The new Act outlines when an officer will have a conflict of interest, what the officer should do if they have a conflict of interest, the consequences of having such an interest and of failing to disclose it.

- **Financial Reporting:** Societies will be required to prepare annual financial statements and to provide them to the Registrar of Incorporated Societies within six months of the balance date of the society. Societies must also ensure that annual returns are filed to the Registrar. There are different reporting standards for 'small societies' where total operating payments are less than \$50,000.00 per annum and the total assets are less than \$50,000.00.
- **Constitution:** Every society must have a Constitution, which must include certain information on the powers and procedures of the committee, arrangements for keeping the society's members fully informed of any changes to the Constitution, requirements for general meetings, and procedures for resolving disputes, amongst other things.
- **Dispute Resolution:** The new Act encourages societies and their members to resolve disputes without resorting to the court. A Constitution must include dispute resolution procedures, which can be tailored by individual societies, provided minimum standards are met.
- **Penalties:** Criminal sanctions may be imposed on officers, members or employees of a society for breaches of the Act, including for making false statements, falsification of documents, and operating fraudulently or dishonestly. The penalties for conviction include fines between \$10,000.00 to \$200,000.00 and/or imprisonment for up to five years. Other infringements (such as a failure to call an annual general meeting or maintain a register of members) can result in a fine to the society of up to \$3,000.

If you are involved with the governance of an existing incorporated society, you will need to re-register and review the society's existing processes in light of the new Act, and likely update the society's Constitution.

This is a good opportunity for societies to consider their goals and how they operate. We are able to assist with a review and the preparation of any documentation to reflect the wishes and needs of the society so please contact us if you would like to discuss the steps that your society will need to take.

Services Profile: Property Law

Webb Farry offers comprehensive advice across all aspects of property, construction and real estate development law including:

- residential and commercial conveyancing
- hands on support for first home buyers
- commercial leasing
- unit title developments
- infrastructure projects
- subdivisions
- joint venture projects and other ownership structures
- financing
- preparation of agreements, leases, easements and covenants

We recommend early advice in the purchase or development process as this can save significant cost and ensure any borrowing is structured effectively. We advise property investors, developers, landlords, tenants and persons looking to upgrade or purchase their first home. For first home buyers the experience can be overwhelming. Our Property team will explain the process, suggest things you may want to consider and assist you throughout, so buying your first home is the positive and exciting experience it should be.

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