

Incorporated Societies bill - 2021

In 2016 MBIE released a draft revision of the Incorporated Societies Act of 1908. AuSAE on behalf of its members submitted changes based on member feedback. The Ministry has reviewed all submissions and in June 2019 released the cabinet papers (26 PAGES) regarding the draft Bill. A draft revision of the Incorporated Societies Act - with highlighted changes showing the cabinet papers that were released in June 2019. This document has been re-written/worded for the draft bill which was formally introduced March 2021.

With AuSAE's submission with had some good changes to the bill, which assists all of the sector.

Changes such as:

- **Contact officer:** Is now a nominated person and not one of the elected officials. See section 107 of the act.
- **Appeals decisions:** These were had to be heard at the High Court, now have been directed to the District Court, and appeals timely and have increased from 15 days to 28 days.
- **Financial gain:** We had some concerns in regard to payment of employed staff and services. This section has been completely rewritten.

Ones we didn't get:

- **Liability of officers:** this was mainly concerning an officer (elected official) would still be liable for an undetermined time, if/once the society had been removed from the register. Unfortunately, we didn't get a win here (see section 176)
- **Annual general meeting:** Information to be presented at annual meeting, this was a concern as the information that was to be disclosed was also disclosure of interest's section 58 which covers board meetings. (See section 80). Still work in progress.

Incorporated Societies bill 2021

Below in this document is corporate ascites bill that has been submitted into Parliament. The first 21 pages is a explanatory note, or general policy statement. With the bill starting on page 22. Highlighted are all the changes since last time however please see below as listed are the differentials

Many sections have been completely bill reworded/rewritten and some parts added. These are as follows:

Scroll through the bill which is below, all the highlighted yellow are the changes from last time we looked at the bill. However, the changes in the sections are here with the major ones being highlighted:

Section 10: registrar has discretion about nature and extent of consideration of application - new clause

Section 23 – 24: Financial gain this has been completely rewritten.

Section 26: what the Constitution must contain - small changes.

Section 30/ 31: Society may amend Constitution – small changes

Section 42: Qualifications of officers – small change

Section 61: Regulations may provide for how members are notified – small changes

Section 73: Register of members – small changes

Section 74: information for members – small change

Section 75/76: grounds for refusing request / members may withdraw request if there is a charge for information –rewritten

Section 77: court orders relating to information – small change

Section 79: Irregularities and calling meeting – new clause

Section 81: methods of holding meetings – small changes

Resolutions in lieu of meetings sections 83 – 86 – new clauses

Section 88: society may indemnify or affect insurance for person in the capacity as employee of third person – new clause

Section 92: balance date of charitable entities – new clause

Section 93 balance date of other societies – small changes

Financial reporting: section 95 - 101 – Rewritten

Contact person: section 105 – 109 – Rewritten

Name of society: section 110 – 115 – Rewritten

Enforcement: section 119 – 120 – Rewritten

Court orders – section 121 – 124 – Rewritten.

Section 125: court orders – small change

Section 127 – 129: court orders – Rewritten

Section 132: settlement compromise: Small change

Sections 137 – 141 – Rewritten

Sections 144: applications for former members – new clause

Sections 168 – 169: Grounds for removal from register – Rewritten

Section 171: objection to removal from register – Small changes

Section 178: Register may restore society to register – New clause

Section 183: other court orders – New clause

Amalgamation sections 185 – 190 – Rewritten

High Court may put society into liquidation section 203 – 205 – Completely rewritten

Section 220 : Approval for resolution – Rewritten

Section 224 – 225: contents of register – Rewritten.

Section 233 – power of register to delegate – New clause

Registrar powers of inspection – section 235-237 – New clause

Section 239: inspectors report admissible in liquidation proceedings – New clause.

Section 240: appeals against registers decisions- Small changes.

Section 234 – jurisdiction of District Court – New clause

Jurisdiction section 245 – 256 – rewritten/New clauses.

Schedule one – completely worth a read as it is important

Other notable points

Search of register – added NZ business number of the society

Incorporated Societies Bill

Government Bill

Explanatory note

General policy statement

Introduction

Incorporated societies make a major contribution to civil society in areas such as culture, sport, recreation, education, health, social services, philanthropy, emergency relief, environmental protection, animal protection, and religion. Rūnanga and taura here also operate as incorporated societies, along with civic and advocacy organisations such as trade unions, business and professional associations, political parties, and local interest groups.

There are about 24,000 such entities currently on the Incorporated Societies Register. Together, they make a significant contribution to New Zealanders' well-being.

It is important that the laws governing these entities are complete, accessible, and consistent with the principles of good governance.

Incorporated Societies Act 1908

For over 100 years the Incorporated Societies Act 1908 (the **1908 Act**) has enabled community-related organisations to become incorporated for a wide variety of purposes. However, this Act is now out of date and deficient in some respects.

The issues with the 1908 Act, which this Bill seeks to address, were first identified in a report released by the Law Commission titled “A New Act for Incorporated Societies”, published on 21 August 2013. The Commission identified a number of problems with the 1908 Act, which can be broadly categorised as follows:

- the law is incomplete, inaccessible, and unclear:
- the law is inconsistent with incorporated society and governance principles:
- the law is difficult to enforce:
- there are issues with other statutes under which societies operate.

The main problems identified by the Commission are as follows:

- committee members and others taking on responsibilities in incorporated societies have duties that are akin to directors' duties under the Companies Act 1993. These duties are in case law, not in the 1908 Act. As a result, many people who are elected into governance roles do not have a clear understanding of what they have to do to comply with the law:
- the 1908 Act is silent on a number of important governance issues such as dealing with conflicts of interest, personal liability, and the consequences for third parties who deal in good faith with societies that act outside their rules:
- the restructuring options are limited. Unlike the Companies Act 1993, the 1908 Act makes no provision for amalgamations.

Policy to be given effect by Bill

The purpose of this Bill is to put in place a modern framework of basic legal, governance, and accountability obligations for incorporated societies and those who run them.

The regime to be put in place by the Bill is guided by the following broad policy objectives:

- members of a society have the primary responsibility for holding the society to account; and
- a society should promote the trust and confidence of its members; and
- a society should be self-governing; and
- a society should not distribute profits to its members.

While the Bill is a new, stand-alone, statute it does not depart from the underlying principles of the current law on incorporated societies. However, some of this law was not previously contained in the 1908 Act, but has instead built up in case law over time. As a result of this, when the Bill and the 1908 Act are directly compared it can appear that new onerous obligations are being imposed on societies when this is not the case.

In particular, the Bill puts in place 6 broadly expressed duties on the officers of a society (modelled on directors' duties in the Companies Act 1993) as follows:

- officers should act in good faith and in best interests of the relevant society:
- officers must exercise their powers for a proper purpose:
- officers must not act, or agree to the society acting, in a manner that contravenes the Bill or the constitution of the society:
- officers must show the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances:
- officers must not let the activities of the society be carried on in a way likely to create a substantial risk of serious loss to the society's creditors:

- officers should not agree to a society incurring an obligation unless they believe that the society will be able to perform the obligation when it is required to do so

While there are no such duties in the 1908 Act, the inclusion of these duties in the Bill codifies existing case law that officers have fiduciary duties to their societies. This will make it clearer to the officers of a society what their duties are.

The Bill also closes certain gaps in the 1908 Act by—

- providing an express mechanism for societies to amalgamate with each other (based on a simplified version of what is included in the Companies Act); and
- including civil law enforcement provisions that clearly state who may apply to a court for orders in respect of a society and the type of orders that the court can make.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=15>

Regulatory impact statement and regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 5 February 2014 and a regulatory impact assessment on 2 May 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these documents can be found at—

- <https://www.mbie.govt.nz/assets/81cd4bdd55/ris-new-act-for-incorporated-societies.pdf>
- <https://www.mbie.govt.nz/assets/1e3473d167/reform-of-the-incorporated-societies-act-1908-annex-2-impact-assessment.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for most of the Bill to come into force by Order in Council. The reason for the deferred commencement is that regulations need to be made to give effect to some parts of the Bill. It also allows time for societies to prepare for the new law.

Most of the Bill must come into force no later than 18 months after the date on which the Bill receives the Royal assent (the **Royal assent date**). The Incorporated Societies Act 1908 is repealed no later than 4 years after the Royal assent date. *See Schedule 1*, which provides for existing societies to reregister under this Bill before the 1908 Act is repealed.

The regulation-making powers in the Bill come into force on the day after the Royal assent date.

Part 1

Preliminary provisions

Clause 3 sets out the purposes of the Bill, which are to—

- provide for the incorporation of societies that are not carried on for the financial gain of their members; and
- promote high-quality governance of societies; and
- make the law of societies more accessible; and
- recognise the principles that—
 - members have the primary responsibility for holding a society to account; and
 - a society should promote the trust and confidence of its members; and
 - a society should be self-governing; and
 - a society should not distribute profits to its members.

Clause 4 sets out the overview of the Bill.

Clause 5 defines terms used in the Bill.

Clause 6 provides for transitional, savings, and related provisions in *Schedule 1*.

Clause 7 provides for the Bill to bind the Crown.

Part 2

Incorporation of societies

Eligibility

Clause 8 sets out the following key eligibility criteria for a society:

- it must have 10 or more members; and
- it must have a lawful purpose other than being carried on for the financial gain of its members.

Application for incorporation

Clause 9 provides for an application for incorporation of a society.

Clause 10 gives the Registrar of Incorporated Societies (the **Registrar**) a discretion about the nature and extent of the consideration that the Registrar gives to an application. The fact that the Registrar registers a society does not prevent the Registrar from reconsidering whether requirements are met (for example, the Registrar may consider at any time whether a society's constitution meets the requirements of the Bill).

Clause 11 sets out requirements for a society's name. In particular, the name cannot be the same as the name of another entity and it cannot be offensive.

Clauses 12 and 13 provide that incorporation must be refused if—

- a society's proposed purposes are unlawful or include a purpose of being carried on for the financial gain for its members; or
- a society's proposed constitution does not comply with the Bill.

Clause 14 provides that if a company or other body corporate is a member of a society, it counts as 3 members for the purposes of the rule that a society must have at least 10 members.

Incorporation

Clauses 15 to 17 provide for a society to be incorporated as a body corporate (that is, it has separate legal personality from its members). The society exists on and from the date on its certificate of incorporation until it is removed from the register of incorporated societies (the **register**).

Part 3

Administration of societies

Subpart 1—Capacity, powers, and validity of actions

Clause 18 provides a society with full legal capacity to carry out its activities together with full rights, powers, and privileges for that purpose. However, this is subject to the Bill and the general law and to any restrictions in its constitution.

Clause 19 provides that an action is not invalid merely because the society does not have the capacity, right, or power to do the act.

Clause 20 provides that a society may not assert certain matters against a third party who enters into a transaction or otherwise deals with the society. For example, that the society has not complied with the Bill or its constitution or that an officer does not have a power that an officer would ordinarily have authority to exercise. However, a matter may be asserted if the third party knew, or should have known, of the matter.

Clause 21 states that a person does not have knowledge of the constitution merely because it is registered on the register of incorporated societies.

Subpart 2—Financial gain

This subpart contains the basic rule that a society must not be carried on for the financial gain of any of its members.

Clause 22 provides that an officer of a society commits an offence if the society breaches this rule with the officer's authority, permission, or consent. The offence has a maximum fine of \$50,000.

In addition,—

- court action can be taken to recover a financial gain under *subpart 4 of Part 4*; and
- a breach of the rule may result in the society being put into liquidation.

Clauses 23 and 24 set out criteria for determining when the rule is breached.

Subpart 3—Constitution

This subpart requires every society to have a constitution (*clause 25*). The subpart sets out—

- the matters that a constitution must contain and the matters that it may contain (*clauses 26 to 28*); and
- the effect of the constitution. It is binding on the society and its members, but is of no effect if it is inconsistent with the Bill (*clause 29*); and
- how amendments are made (*clauses 30 to 37*). Amendments can be made in a number of ways, including by approval at a general meeting of the society (whether by a simple majority or a higher percentage specified in the constitution) or by a court order; and
- matters relating to dealing with complaints and grievances (*clauses 38 and 39*).

Subpart 4—Committee and officers

Committee

Clauses 40 to 44—

- require a society to have a committee manage the operation and affairs of the society. The committee comprises 3 or more members who are officers:
- set out the qualifications of officers. To be an officer, a person must be a member of the society and a natural person (that is, not a body corporate) and must not be disqualified under various grounds (for example, being an undischarged bankrupt):
- allow the Registrar to waive various factors that would otherwise disqualify a person from being a member.

Officer ceasing to hold office

Clause 45 provides for when an officer ceases to hold office (including by resignation, by being removed under the constitution, and by becoming disqualified).

Clause 46 provides for an officer to remain liable for past acts, omissions, or decisions when the officer vacates office.

Notice of appointment and of other changes

Clause 47 requires a society to notify the Registrar when an officer is appointed.

Validity of acts

Clause 48 provides for an officer's acts to be valid even though the officer's appointment was defective.

Officers' duties

Clauses 49 to 54 set out the officers' duties. These are similar to the duties of a director under the Companies Act 1993. These duties are owed to the society (rather than the members) under *clause 56*. The duties include—

- acting in good faith and in the best interests of the society:
- exercising powers for a proper purpose:
- not acting, nor agreeing to the society acting, in a manner that contravenes the Bill or the constitution:
- acting with reasonable care and diligence. The Companies Act 1993 sets a higher standard of also requiring reasonable skill:
- avoiding creating substantial risk of serious loss to creditors:
- not agreeing to the society incurring an obligation unless the officer believes on reasonable grounds that the society will be able to perform the obligation.

Clause 55 provides for an officer to use and rely on certain information.

Conflict of interest disclosure rules

Clauses 57 to 67 provide for—

- a duty for officers to disclose if they have a personal interest in a matter relating to the society (for example, if the officer or a close relative may obtain a financial benefit from a transaction entered into by the society):
- the consequences of being interested in a matter (in particular, the officer may not vote on the matter):
- the committee to notify the members if an officer has failed to disclose an interest or has voted on the matter despite being interested. The society may then avoid a transaction (unless the society receives fair value under the transaction):
- innocent third parties (without knowledge of a breach) to be protected if a transaction is avoided:
- a register of disclosures to be maintained.

Subpart 5—Members

Clause 68 requires a society to have at least 10 members.

Clause 69 allows the Registrar to require a society to increase its membership if it has fewer than 10 members. If the membership is not increased, the society may be removed from the register or put into liquidation.

Clause 70 requires a person to consent to being a member.

Clause 71 confirms that membership gives a person no legal rights to a society's property.

Clause 72 confirms that membership does not make a person liable for a society's debts.

Clause 73 requires a society to keep a register of its members.

Access to information for members

Clauses 74 to 77 give members a right to request information from the society. The society may refuse a request if, for example, withholding the information is necessary to protect a person's privacy, disclosure would prejudice the commercial position of the society or another person, or the request is frivolous or vexatious.

General meetings

Clauses 78 to 82—

- require every society to call an annual general meeting:
- require an annual report and financial statements to be presented at the annual general meeting:
- provide for how general meetings are held:
- require members' rights of access to financial statements and the minutes of general meetings.

Resolutions in lieu of meeting

Clauses 83 to 86 allow a society to pass a resolution in lieu of holding a general meeting. To be effective, the resolution must be signed by no less than 75% of the members who are entitled to vote.

Subpart 6—Indemnities or insurance for officers, members, or employees of society

This subpart allows a society to indemnify or effect insurance for an officer, a member, or an employee only in accordance with the subpart. An indemnity includes relieving, exempting, or excusing a person from liability. Generally speaking, a society cannot give an indemnity for criminal liability or where a person acts in bad faith. It cannot effect insurance for criminal liability.

Clause 88 clarifies that the subpart does not prevent a society from indemnifying or effecting insurance for an individual in their capacity as an employee of a third person.

Subpart 7—Accounting records, financial reporting, and annual returns

This subpart requires—

- accounting records to be kept. The records must correctly record transactions and allow the society to prepare financial statements:
- financial statements to be prepared for each accounting period:
- an annual return to be registered. This does not apply to a charitable entity, which instead must prepare an annual return under the Charities Act 2005.

If a society is required to prepare financial statements under the Charities Act 2005 or the Financial Markets Conduct Act 2013, it must comply with that other Act rather than this Bill.

Subpart 8—Other administration matters

Registered office

Clauses 103 and 104 require every society to have a registered office in New Zealand and to notify the Registrar of any change.

Contact person

Clauses 105 to 109 require a society to have at least 1 person whom the Registrar may contact about matters relating to the society.

Name of society

Clause 110 allows a society to change its name (subject to the name complying with *clause 11*).

Clause 112 allows the Registrar to require a society to change its name if the Registrar considers that the name does not comply with *clause 11*.

Clause 113 provides that a change in name does not effect a society's rights or duties.

Clause 114 requires a society to ensure that its name is clearly stated in written communications and in contracts and other documents that create legal obligations.

Clause 115 allows a society to use an abbreviation in its name.

Authority to bind society

Clause 116 provide for how a society may enter into contracts and other binding obligations.

Clause 117 provides for how a society may appoint an attorney to act on its behalf. The acts of the attorney bind the society if the attorney acts in accordance with the document that appointed the attorney.

Service of documents on society

Clause 118 provides for how documents may be served on a society.

Part 4

Enforcement

This Part—

- allows a court to make certain orders to support the purposes of this Bill:
- allows for a society to recover a financial gain obtained in contravention of the Bill:
- provides for offences.

Subpart 1—Court orders enforcing society’s constitution or bylaws

This subpart allows a court to make various orders to enforce a society’s constitution or bylaws (for example, directing a person to comply with the constitution or stopping a society from acting contrary to the constitution). The subpart also allows the court to intervene in relation to complaints and grievances that are being dealt with under the constitution (for example, where there has been a breach of natural justice).

An application for an order may be made by the society, a member, a former member, or the Registrar.

Subpart 2—Court orders enforcing officers’ duties

This subpart allows a court to make various orders to enforce the officer’s duties. *See clauses 49 to 56.* The orders include restraining an officer from acting in a manner contrary to their duties or an order to compensate the society.

An application may be made by the society or the Registrar. The subpart also allows the court to grant leave to allow a member or an officer to apply or intervene in a proceeding on behalf of the society.

Subpart 3—Prejudiced members

This subpart allows the court to make various orders where a society has been carried on in a manner that is oppressive, unfairly discriminatory, or unfairly prejudicial to a member or former member. The orders include an order to compensate the member or former member or an order to regulate the future conduct of the society.

Subpart 4—Financial gain

This subpart allows a society to recover a financial gain that has been obtained by a member or former member in breach of *subpart 2 of Part 3*.

The subpart allows a member or an officer to apply or intervene in a proceeding on behalf of the society.

Subpart 5—Miscellaneous provisions relating to applications

This subpart provides for the Registrar to apply only if the Registrar considers that it is in the public interest to do so. In considering this, the Registrar must have regard to certain matters, including—

- the principles that members have the primary responsibility for holding societies to account and societies are private bodies that should be self-governing; and
- whether making the application is an efficient and effective use of the Registrar’s resources; and
- the extent to which the matter involves matters of general significance or importance in terms of promoting high-quality governance of societies; and
- whether the society receives public funding or there is otherwise a significant public interest in the governance of the society.

The subpart also gives the court the power to refuse to consider applications for orders (for example, where the application is frivolous or vexatious or otherwise not in the public interest).

Subpart 6—Offences

This subpart provides for various offences relating to, for example,—

- an officer dishonestly using that position for personal gain:
- false statements:
- fraudulently using or destroying a society’s property:
- falsifying a register, records, or documents:
- knowingly being a party to a society operating with intent to defraud the creditors of the society or any other person or for a fraudulent purpose:
- improperly using the words “Incorporated”, “Inc”, or “Manatōpu”:
- breaching a banning order.

The subpart also provides for infringement offences for more minor matters. The infringement fee for these offences is an amount not exceeding \$1,000 or a fine not exceeding \$3,000.

Subpart 7—Banning order

This subpart allows a court to ban a person from being an officer or from being involved in the management of a society. An order can be made if, for example, the person has—

- been convicted of a serious offence; or
- persistently failed to comply with the Bill; or
- been guilty of fraud in relation to the society or of a breach of duty to the society; or
- acted in a reckless or an incompetent manner.

Part 5

Removal from register, amalgamation, liquidation, and other processes

Subpart 1—Removal from register

This subpart provides for a society to be removed from the register. A society ceases to exist once it is removed.

Clause 168 sets out the grounds for removal. These include the following:

- the society requests removal under *clause 169*;
- the society is no longer operating and there is no proper reason for it to continue to exist;
- the society's constitution does not comply with the Bill in a material way;
- the society or its officers have failed in a persistent or serious way to comply with duties under the Bill;
- the society has been liquidated.

Procedural requirements before removal

Clauses 170 to 175 provide for procedural matters relating to a removal. These include—

- the Registrar giving notice of a removal;
- the Registrar giving the public an opportunity to object to a removal and providing for how the Registrar must deal with objections;
- allowing a court to order that a society must not be removed.

Clause 176 provides that an officer's or a member's liability continues after the removal.

Restoration to register

Clauses 177 to 183 provide for a society to be restored to the register. In summary,—

- the Registrar may restore the society if certain grounds exist. These include that the grounds for the removal did not exist or the society was operating at the time of its removal and there is a proper reason for it to continue to exist;
- the Registrar must give notice of an intention to restore a society and give an opportunity to object;
- the court may also restore a society to the register. The court's powers to restore include where, for any reason, it is just and equitable that the society be restored to the register;
- the court may give directions or make orders to help place the society in as nearly as possible in the same position as if it had not been removed from the register.

Subpart 2—Amalgamations

This subpart allows 2 or more societies to amalgamate and continue as 1 society.

Clauses 185 and 186 provide for an amalgamation proposal to be sent to members and creditors and for the proposal to be publicly notified.

Clauses 187 to 189 provide for the committee of each amalgamating society to approve the proposal. The proposal may be approved only if it is in the best interests of each society and the amalgamated society will be solvent.

Clauses 190 to 195 provide for the Registrar to register the amalgamation. The Registrar can refuse to proceed on various grounds, for example, where the purposes or the constitution of the amalgamated society will not comply with the Bill.

Clause 196 provides for the effect of amalgamation. In particular, the amalgamated society succeeds to all the property, liabilities, rights, and powers of the amalgamating societies.

Clauses 197 and 198 provide for changes to registers relating to the amalgamation.

Clause 199 allows a court to make certain orders to stop or modify an amalgamation if a creditor or other person may be unfairly prejudiced by a proposed amalgamation.

Subpart 3—Compromises with creditors

Clause 200 allows a society to enter into a compromise with its creditors in accordance with Part 14 of the Companies Act 1993. A compromise approved by creditors under that Part is binding on the society and on the creditors to whom notice of the proposed compromise is given.

Subpart 4—Liquidation

Members may resolve to put society into liquidation

Clause 201 provides for the members to put a society into liquidation by passing a resolution under *subpart 6*. Under *clause 202*, Part 16 of the Companies Act 1993 applies to the liquidation.

High Court may put society into liquidation

Clauses 203 to 206 provide for the High Court to put a society into liquidation. These provisions—

- set out the grounds for putting a society into liquidation. These include, for example, where the society suspends its operations for 1 year or more, the society is unable to pay its debts, or it is otherwise just and equitable that the society should be put into liquidation:
- allow the society itself, a member, a creditor, or the Registrar to apply to the High Court to appoint a liquidator:
- apply Part 16 of the Companies Act 1993 to the liquidation.

Subpart 5—Other matters relating to removal or liquidation of society

This subpart applies when a society is removed from the register or is in liquidation. The subpart is designed to help facilitate the removal or liquidation. In particular, it provides for the distribution of a society's surplus assets after all costs, debts, and liabilities are paid.

Clause 208 sets out who can act under this subpart. This includes a liquidator or, in the case of a removal, a person authorised by the Registrar. The society itself may act if the society is distributing its surplus assets to enable the society to request to be removed from the register.

Clause 209 sets out the rules for distributing the surplus assets of the society after the payment of all of its costs, debts, and liabilities. The surplus assets may only be distributed to not-for-profit entities. The rules provide for distribution—

- to 1 or more not-for-profit entities identified in the society's constitution; or
- in the manner specified in a resolution approved by members under *subpart 6*; or
- as the Registrar directs.

Clause 210 allows a resolution to be passed to provide for the distribution of surplus assets even though the society has ceased to exist (because it has been removed from the register).

Clause 211 sets out when a distribution must not be made under the constitution.

Clause 212 provides that a person acting under the subpart is only required to make reasonable inquiries for the purpose of identifying not-for-profit entities to which a distribution may be made.

Clause 213 gives a person who is authorised by the Registrar to act an immunity for good faith actions.

Clause 214 gives the Registrar broad powers to give directions to facilitate the removal or liquidation.

Clause 215 provides for how distributions are made if further assets are discovered sometime after the surplus assets are distributed.

Clause 216 provides for directions relating to land.

Clause 217 provides that a decision of the Registrar under this subpart may not be appealed.

Subpart 6—Procedure for resolutions

This subpart provides for how a society may pass any of the following:

- a resolution authorising a member to request that the society be removed from the register:
- a resolution providing for the distribution of a society's surplus assets (on its removal or liquidation):

- a resolution to appoint a liquidator of a society.

Part 6

Register, regulations, amendments, and other miscellaneous provisions

Subpart 1—Register of incorporated societies

Register established

Clause 222 establishes the register of incorporated societies (the **register**). The register provides information to the public about societies and assists the Registrar and other people to perform functions under the Bill and other Acts (*see clause 223*). Amendments to the register may be made under *clause 226*.

Clause 224 sets out the contents of this register. They include the constitution for each society, the names of its offices, its registered office, and its financial statements.

Clause 225 allows the Registrar to remove information from the register or to restrict public access. This is similar to a provision in the Charities Act 2005.

Clause 227 allows the Registrar to set requirements for how information must be registered. The Registrar may refuse to register information if these requirements are not complied with.

Searches of register

Clauses 228 to 230 provide for searches of the register.

Registrar of Incorporated Societies

Clauses 231 to 234 provide for the Registrar of Incorporated Societies to be appointed, for the functions of the Registrar, and a power to delegate functions, powers, and duties.

Registrar's powers of inspection

Clause 235 gives the Registrar (or an authorised person) certain inspection powers. The Registrar may exercise the powers for the purpose of ascertaining whether officers and societies are complying with the Bill, ascertaining whether to exercise a power, or ascertaining whether there has been a contravention of the Bill. The powers include requiring any person to produce for inspection documents that contain information about a society (*see clause 236*). A person commits an offence if they fail to comply or if they obstruct or hinder the Registrar (*see clauses 236 and 237*). These offences have a maximum fine of \$10,000.

Clause 238 provides that an authorised person may disclose information only in accordance with certain rules.

Clause 239 provides for an authorised person's report to be admissible as evidence in court proceedings.

Appeals against Registrar's decisions

Clause 240 allows most acts or decisions of the Registrar under the Bill to be appealed to a District Court. This appeal right does not apply to decisions to take certain enforcement actions under *Part 4* or to decisions about the distribution of a society's surplus assets when it is removed from the register or is liquidated.

An appeal relating to the Registrar's inspection powers does not prevent the Registrar from continuing to exercise those powers (*see clause 241*).

Sharing of information relating to charitable entities

Clause 242 provides for the Registrar and the chief executive under the Charities Act 2005 to share information relating to charities (to assist with the performance of their respective functions).

Subpart 2—Jurisdiction

Clause 243 provides for the power of the District Court to deal with matters under the Bill. In addition to hearing appeals against the Registrar's decisions, the District Court can deal with applications for orders if, for example, the amount claimed or the value of the property in dispute does not exceed \$350,000 (or no amount is claimed and there is no property in dispute).

Clause 244 gives the High Court power to deal with any applications for orders under the Bill and to hear appeals that arise from proceedings in the District Court.

Subpart 3—Regulations

This subpart allows regulations to be made for various purposes. These include, for example,—

- prescribing the manner in which applications for incorporation must be made; and
- prescribing procedures, requirements, and other matters for the register of incorporated societies; and
- prescribing fees and other amounts payable to the Registrar; and
- specifying matters for the purposes of *subpart 4*; and
- prescribing transitional and savings provisions to facilitate an orderly transition to this Act (*see also Schedule 1*).

Subpart 4—Conversion of entities into incorporated societies

This subpart provides for a body corporate or other association that is formed or incorporated by or under another Act to apply to be reregistered as an incorporated society under this Bill.

This power applies only if the other Act is specified in regulations made under *clause 245(1)(o)*. Regulations may also—

- specify preconditions that must be met for an entity to reregister; and

- specify terms and conditions that must be complied with after an entity has reregistered.

The power to specify terms and conditions will help to ensure that any ongoing duties or requirements imposed by the other Act can be preserved. *Clause 249* provides for the court to enforce those terms and conditions. The Registrar may also remove a society from the register if it fails to comply with those terms and conditions.

Schedule 3 sets out matters relating to the process for reregistration.

Subpart 5—Amendments to Charitable Trusts Act 1957

This subpart amends the Charitable Trusts Act 1957 (the **1957 Act**). The main effect of the changes is described as follows:

- after *clause 252* comes into force, a society may longer apply to be incorporated as a board under the 1957 Act. Instead, an application for the incorporation of a society may be made under this Bill (trustees of a trust may continue to apply for incorporation as a board under the 1957 Act);
- an existing society that is incorporated as a board under the 1957 Act may continue to be subject to the 1957 Act indefinitely if it so chooses. Alternatively, the existing society may choose to reregister as a society under the Bill.

Subpart 6—Repeal, revocation, and consequential amendments

This subpart provides for—

- the repeal of the Incorporated Societies Act 1908 (the **1908 Act**); and
- the revocation of the Incorporated Societies Regulations 1979; and
- amendments to other Acts.

Schedule 1 provides for transitional provisions. In particular, the schedule sets out how existing societies under the 1908 Act or the 1957 Act become societies under the Bill.

The transitional process for incorporated societies is summarised as follows:

- the society continues to be subject to the 1908 Act until it reregisters under the Bill or until the transition date, which is the later of—
 - 1 December 2025; and
 - the date that is 2 years and 6 months after the commencement of certain transitional provisions;
- during the period before the transition date, the society can amend its rules and make other arrangements to facilitate a transition to becoming a society under the Bill;
- the society may apply to be reregistered under the Bill before the transition date. The society will be reregistered if it meets the requirements for incorporation under the Bill;

- the 1908 Act is intended to be finally repealed on the transition date. If a society is not reregistered under this Bill, the society will cease to exist. It may be restored to the register in accordance with the Bill. But if the society is not restored, its surplus assets must be distributed under the Bill.

The transitional process for the 1957 Act is summarised as follows:

- no new societies may be registered under that Act;
- existing societies may choose to register under this Bill or may continue to be subject to the 1957 Act indefinitely.

Schedule 2 sets out disputes procedures that are presumed to be consistent with the rules of natural justice. A society is not required to include these procedures in its constitution. However, if it does include consistent procedures, those procedures are presumed to be consistent with the rules of natural justice.

Schedule 3 sets out the procedure for allowing an entity that is formed or incorporated by or under another Act to convert into an incorporated society.

Schedule 4 sets out amendments to other Acts.

Hon Dr David Clark

Incorporated Societies Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Incorporated Societies Act **2021**.

2 Commencement

- (1) **Subpart 3 of Part 6** comes into force on the day after the date of Royal assent. 5
- (2) The rest of this Act comes into force on a date or dates to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions and for different purposes. 10
- (3) However,—
 - (a) **sections 259 to 261** and any item, or any part of an item, in **Schedule 4** that has not earlier been brought into force comes into force on the fourth anniversary of the date of Royal assent; and
 - (b) any other provision to which **subsection (2)** applies that has not earlier been brought into force comes into force on the expiry of the 18-month period that starts on the date of Royal assent. 15
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1

20

Preliminary provisions

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 25

- (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 5
 - (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 and free from inappropriate Government interference; and 10
 - (iv) societies should not distribute profits or financial benefits to their members.
- 4 Overview**
- (1) In this Act,—
- (a) this Part provides for preliminary matters, including the purposes of this Act and interpretation: 15
 - (b) **Part 2** provides for the incorporation of a society, including eligibility to be incorporated and the process for incorporation:
 - (c) **Part 3** provides for the administration of a society, including its capacity and powers, a prohibition against carrying on the society for the financial gain of any of its members, its constitution, its governing body (the committee), its officers, its members, and matters relating to financial reporting and meetings: 20
 - (d) **Part 4** provides for enforcement, including offences and court proceedings to enforce a society’s constitution or to enforce officers’ duties: 25
 - (e) **Part 5** provides for various processes, including removal from the register, amalgamations, and liquidations:
 - (f) **Part 6** provides for miscellaneous matters, including the register of incorporated societies, the jurisdiction of the courts, and regulations.
- (2) This section is a guide only to the general scheme and effect of this Act. 30
- 5 Interpretation**
- (1) In this Act, unless the context otherwise requires,—
- accounting period** has the same meaning as in section 5(1) of the Financial Reporting Act 2013
- balance date** means a society’s balance date under **section 92 or 93** 35
- charitable entity** has the same meaning as in section 4(1) of the Charities Act 2005

committee, in relation to a society, means the governing body of the society, however described

contact details has the meaning set out in **subsection (2)**

contact person means a person holding the position of contact person of the society for the purposes of **sections 105 to 109**

5

court means, in relation to any matter, the court by or before which the matter falls to be determined (*see subpart 2 of Part 6*, which relates to the jurisdiction of the High Court and the District Court)

document has the same meaning as in section 4(1) of the Evidence Act 2006

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

10

infringement fee, in relation to an infringement offence, means the amount prescribed by the regulations as the infringement fee for the offence

infringement notice means a notice issued under **section 155**

infringement offence means an offence under **section 153**

15

interested has the meaning set out in **section 57**

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

20

member means a member of a society

not-for-profit entity has the meaning set out in **subsection (3)**

officer—

(a) means, in relation to a society,—

25

(i) a natural person who is a member of the committee; and

(ii) a person occupying a position in the society that allows the person to exercise significant influence over the management or administration of the society (for example, a treasurer or a chief executive); and

30

(b) includes any class or classes of persons that are declared by regulations to be officers for the purposes of this Act; but

(c) excludes any class or classes of persons that are declared by regulations not to be officers for the purposes of this Act

register means the register of incorporated societies established under **section 222**

35

registered office means the registered office required under **section 103**

- Registrar** means the Registrar of Incorporated Societies appointed in accordance with **section 231**
- regulations** means regulations made under this Act
- secured creditor**, in relation to a society, means a person entitled to a charge on or over property owned by that society 5
- society** means a society incorporated under this Act
- union** means a trade union registered under Part 4 of the Employment Relations Act 2000.
- (2) A requirement under this Act to provide the **contact details** of a person is a requirement to provide at least— 10
- (a) a physical or an electronic address used by the person; and
- (b) a telephone number that is used by the person.
- (3) In this Act, an entity (**A**) is a **not-for-profit entity** if—
- (a) A is one of the following: 15
- (i) a society incorporated under this Act:
- (ii) a charitable entity:
- (iii) any other society, institution, association, organisation, or trust that is not carried on for the private benefit of an individual, and whose funds are applied entirely or mainly for benevolent, philanthropic, cultural, or public purposes in New Zealand; and 20
- (b) in the case of **paragraph (a)(iii)**, A's rules, A's constitution, or the instruments constituting, or defining the constitution of, A provide that, on A's winding up, any surplus assets that remain after the settlement of A's debts and liabilities must be given or transferred to 1 or more other entities that are not-for-profit entities within the meaning of this subsection. 25
- (4) For the purposes of this Act when considering whether a society is **unable to pay its debts**, sections 287 to 291 of the Companies Act 1993 (which relate to the meaning of inability to pay debts) apply to a society with all necessary modifications as if it were a company. 30
- (5) The modifications under **subsection (4)** include treating the reference in section 288(3) of the Companies Act 1993 to section 178 of that Act as a reference to **sections 74 to 77** of this Act.
- 6 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 35
- 7 Act binds the Crown**
- This Act binds the Crown.

Part 2
Incorporation of societies

Eligibility

8 Eligibility to be incorporated society

- (1) Any 10 or more persons may apply to incorporate a society under this Act for any lawful purpose other than a purpose of being carried on for the financial gain of any of its members. 5
- (2) See **subpart 2 of Part 3** (financial gain).

Application for incorporation

9 Application for incorporation

10

An application for incorporation must—

- (a) contain, or be accompanied by, the information prescribed by the regulations; and
- (b) include the proposed name of the society; and
- (c) contain the name and contact details of at least 1 contact person; and 15
- (d) contain, or be accompanied by, a copy of the society’s proposed constitution; and
- (e) contain, or be accompanied by, information about every person named as an officer, including the person’s consent to be an officer and a certificate that the person is not disqualified from being appointed or holding office as an officer of the society; and 20
- (f) be accompanied by the fee prescribed by the regulations; and
- (g) otherwise be made in the manner prescribed by the regulations.

Compare: 1908 No 212 ss 4, 7

10 Registrar has discretion about nature and extent of consideration of application

25

- (1) The nature and extent of the consideration that the Registrar gives to an application for incorporation are at the Registrar’s discretion.
- (2) Nothing in this Act limits the Registrar’s power to consider or reconsider at any time whether— 30
 - (a) any of **paragraphs (a), (b), and (d) to (f)** of **section 11(1)** apply to a society’s name; or
 - (b) the purposes of a society comply with this Act; or
 - (c) the constitution of a society complies with this Act.

11 Registrar must refuse incorporation if name of society does not comply with requirements

- (1) The Registrar must refuse to incorporate a society under a name if, in the Registrar's opinion,—
- (a) the use of the name would contravene an enactment; or 5
 - (b) the name is identical or almost identical to the name of any other society, company carrying on business in New Zealand (whether incorporated in New Zealand or not), or other body corporate established or registered in New Zealand; or
 - (c) the name is identical or almost identical to a name that has already been reserved under the Companies Act 1993 and that is still available for registration under that Act; or 10
 - (d) the name is likely to mislead the society's members or the public about the society's nature or identity; or
 - (e) the name is offensive; or 15
 - (f) the name does not include the word "Incorporated", "Inc", or "Manatōpū" (or 2 or more of those words) as the last word or words of the name.
- (2) If the Registrar refuses to incorporate a society under **subsection (1)**, the society may be incorporated under a name that has been amended to address (to the Registrar's satisfaction) the matter referred to in that subsection. 20
- Compare: 1908 No 212 s 11; 1993 No 105 s 22

12 Registrar must refuse incorporation if Registrar considers that purposes do not comply with Act

- (1) This section applies if the Registrar considers that the proposed purposes of a society include— 25
- (a) an unlawful purpose; or
 - (b) a purpose of carrying on the society for the financial gain of any of its members (*see subpart 2 of Part 3*).
- (2) The Registrar must refuse to incorporate the society until the purposes are amended to address (to the Registrar's satisfaction) the matter. 30

13 Registrar must refuse incorporation if Registrar considers that constitution does not comply with Act

- (1) This section applies if the Registrar considers that the proposed constitution of a society does not comply with this Act (*see subpart 3 of Part 3*). 35
- (2) The Registrar must refuse to incorporate the society until the constitution is amended to address (to the Registrar's satisfaction) the matter.

14 Body corporate treated as equivalent to 3 members in some cases

A body corporate that is a proposed member or a member of a society must be treated as being 3 members for the purpose of determining the number of members under **sections 8(1) and 68**.

Compare: 1908 No 212 s 31

5

*Incorporation***15 Incorporation**

(1) The Registrar must, as soon as practicable after the Registrar receives a properly completed application for incorporation,—

- (a) enter the society's name in the register (together with any other information relating to the society that the Registrar thinks appropriate); and 10
- (b) issue a certificate of incorporation; and
- (c) register the society's constitution.

(2) This section is subject to **sections 8 and 11 to 13**.

Compare: 1908 No 212 s 8

15

16 Society is body corporate

(1) A society is, on and from the date of incorporation set out in the certificate of incorporation, a body corporate—

- (a) having perpetual succession; and
- (b) having the capacity, rights, powers, and privileges provided for in **sub-part 1 of Part 3**. 20

(2) A society continues in existence until it is removed from the register.

Compare: 1908 No 212 s 10; 1993 No 105 s 15

17 Certificate of incorporation

(1) A certificate of incorporation of a society issued under **section 15** is conclusive evidence that— 25

- (a) all the requirements of this Act about applying for incorporation have been complied with; and
- (b) on and from the date of incorporation stated in the certificate, the society is registered and incorporated under this Act. 30

(2) *See section 10(2)*, which confirms that the Registrar may consider or reconsider at any time whether requirements of this Act are complied with.

Compare: 1908 No 212 s 9; 1993 No 105 s 14

Part 3 Administration of societies

Subpart 1—Capacity, powers, and validity of actions

18 Capacity and powers

- (1) A society has, both within and outside New Zealand,— 5
- (a) full capacity to carry on or undertake any activity, do any act, or enter into any transaction; and
- (b) for the purposes of **paragraph (a)**, full rights, powers, and privileges.
- (2) **Subsection (1)** is subject to this Act, any other enactment, and the general law. 10
- (3) The society’s constitution may contain a provision relating to the capacity, rights, powers, or privileges of the society only if the provision restricts the capacity of the society or those rights, powers, and privileges.

Examples

A society’s powers include (subject to any restrictions in its constitution under **subsection (3)**) powers to— 15

- buy, sell, exchange, develop, and mortgage property:
- borrow money and give security for it:
- enter into contracts and leases:
- employ people: 20
- receive and make gifts:
- issue negotiable instruments:
- belong to other societies or associations.

See, however, **subpart 2**, which contains restrictions relating to the financial gain of any of the society’s members. 25

Compare: 1993 No 105 s 16

19 Validity of actions

- (1) An act of a society or the transfer of property to or by a society is not invalid merely because the society did not have the capacity, right, or power to do the act or to transfer or take a transfer of the property. 30
- (2) **Subsection (1)** does not limit **Part 4** (which relates to enforcement).
- (3) The fact that an act is not, or would not be, in the best interests of a society does not affect the capacity of the society to do the act.

Compare: 1993 No 105 s 17

20 Dealings between society and other persons

- (1) A society or its guarantor may not assert against a person dealing with the society that—
- (a) this Act or the society’s constitution has not been complied with:
 - (b) a person named as an officer of the society in the register— 5
 - (i) is not an officer of the society; or
 - (ii) has not been properly appointed; or
 - (iii) does not have authority to exercise a power that, given the nature of the society, an officer ordinarily has authority to exercise:
 - (c) a person held out by the society as an officer, employee, or agent of the society— 10
 - (i) has not been properly appointed; or
 - (ii) does not have authority to exercise a power that, given the nature of the society, a person appointed to that capacity ordinarily has authority to exercise: 15
 - (d) a person held out by the society as an officer, employee, or agent of the society does not have the authority to exercise a power that the society holds them out as having:
 - (e) a document issued on behalf of the society by an officer, employee, or agent of the society with actual or usual authority to issue the document is not valid or is not genuine. 20
- (2) However, a society or its guarantor may assert any of the matters referred to **subsection (1)(a) to (e)** against a person dealing with the society if that person had, or ought to have had, because of the person’s position with or relationship to the society, knowledge of those matters. 25
- (3) **Subsection (1)** applies even if a person of the kind referred to in **subsection (1)(b) to (e)** acts fraudulently or forges a document that appears to have been signed on behalf of the society, unless the person dealing with the society has actual knowledge of the fraud or forgery.
- (4) In this section,— 30
- guarantor** means a guarantor of an obligation of a society
- person dealing**—
- (a) includes, in the case of a transaction with a society, the other party to the transaction; and
 - (b) includes a person who has acquired property, rights, or interests from a society. 35

Compare: 1993 No 105 s 18

21 No notice or knowledge of constitution merely because it is registered or available for inspection

A person is not affected by, nor deemed to have notice or knowledge of the contents of, the constitution of a society or any other document relating to a society merely because the constitution or document is—

5

- (a) registered on the register; or
- (b) available for inspection at an office of the society.

Compare: 1993 No 105 s 19

Subpart 2—Financial gain

22 Society must not be carried on for financial gain of its members 10

- (1) A society must not be carried on for the financial gain of any of its members.
- (2) An officer of a society commits an offence and is liable on conviction to a fine not exceeding \$50,000 if—
 - (a) the society fails to comply with **subsection (1)**; and
 - (b) the failure took place with the officer’s authority, permission, or consent. 15
- (3) *See* **subpart 4 of Part 4** (which allows a society to recover a financial gain from a member) and **section 203** (which allows the High Court to put a society into liquidation if it is carried on for the financial gain of a member).

Compare: 1908 No 212 s 20(1), (2)

23 Financial gain 20

- (1) A society (or proposed society) must be treated as having a purpose of being carried on for the financial gain of any of its members if—
 - (a) it distributes, or may distribute, any gain, profit, dividend, or other financial benefit to any of its members (whether in money or in kind); or
 - (b) it has, or may have, capital that is divided into shares or stock held by its members; or 25
 - (c) it holds, or may hold, property in which its members have a disposable interest (whether directly, or in the form of shares or stock in the capital of the society or otherwise).
- (2) A society must be treated as being carried on for the financial gain of any of its members if it acts as referred to in any of **paragraphs (a) to (c)** of **subsection (1)**. 30

24 When society does not have financial gain purpose

- (1) A society (or proposed society) does not have a purpose of being carried on, and is not being carried on, for the financial gain of any of its members merely because it will or may—
 - (a) engage in trade: 35

- (b) pay a member for matters that are incidental to the purposes of the society, and the member is—
 - (i) a body corporate that is not carried on for the private pecuniary profit of any individual; or
 - (ii) a charitable entity: 5
 - (c) reimburse a member for reasonable expenses legitimately incurred on behalf of the society or while pursuing the society’s purposes:
 - (d) provide benefits to members of the public, or of a class of the public, including members of the society or their families:
 - (e) pay a member a salary, wages, or other payments for services, or enter into any other transaction with a member, on arm’s-length terms (*see subsection (3)*): 10
 - (f) provide a member with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the society: 15
 - (g) have its surplus assets distributed under **subpart 5 of Part 5** to a member that is a not-for-profit entity:
 - (h) amalgamate with or into another society under **subpart 2 of Part 5** (with the result that the amalgamated society succeeds to any gain, profit, dividend, or other financial benefit of the amalgamating society): 20
 - (i) in the case of a union, negotiate or arrange, in the ordinary course of promoting its members’ collective employment interests, the salaries, wages, or other terms or conditions of employment of its members.
- (2) In addition, a society (or proposed society) does not have a purpose of being carried on, and is not being carried on, for the financial gain of any of its members merely because it is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested, if the society itself does not engage or take part in the trade, business, industry, or calling, or any part or branch of it. 25
- (3) In **subsection (1)(e)**, salary, wages, or other payments for services, or other transactions, are on **arm’s-length terms** if— 30
- (a) the terms—
 - (i) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or 35
 - (ii) are less favourable to the member than the terms referred to in **subparagraph (i)**; and
 - (b) the salary, wages, or other payment for services, or other transaction, does not include any profit share, percentage of revenue, or other reward in connection with the activities of the society. 40

- (4) This section applies despite **section 23**.

Subpart 3—Constitution

25 Society must have constitution

Every society must have a constitution that complies with the requirements of this Act. 5

Contents of constitution

26 What constitution must contain

- (1) The constitution must contain the following matters:
- (a) the name of the society (*see* **section 11**); and
 - (b) the purposes of the society (*see* **section 12**); and 10
 - (c) how a person becomes a member of the society, including a requirement that a person must consent to be a member (*see* **section 70**); and
 - (d) how a person ceases to be a member of the society; and
 - (e) arrangements for keeping the society’s register of members up to date (*see* **section 73**); and 15
 - (f) the composition, roles, functions, powers, and procedures of the committee of the society, including—
 - (i) the number of members that must or may be on the committee (*see* **section 40**); and
 - (ii) the election or appointment of officers; and 20
 - (iii) the terms of office of the officers; and
 - (iv) the functions and powers of the committee (*see* **section 41**); and
 - (v) grounds for removal from office of officers (*see* **section 45(1)(b)**); and
 - (vi) how the chairperson (if any) will be elected or appointed and whether that person will have a casting vote if there is an equality of votes; and 25
 - (vii) the quorum and procedure for committee meetings, including voting procedures; and
 - (g) how the contact person or persons will be elected or appointed (*see* **section 106**); and 30
 - (h) how the society will control and manage its finances; and
 - (i) the method by which the constitution may be amended (*see* **sections 30 and 31**); and
 - (j) procedures for resolving disputes between members (in their capacity as members) and between members and the society (*see* **section 38**), 35

- including procedures for investigating and dealing with complaints and grievances; and
- (k) arrangements and requirements for general meetings (*see sections 78 to 86*), including—
 - (i) the intervals between general meetings; and 5
 - (ii) the information that must be presented at general meetings; and
 - (iii) when minutes are required to be kept; and
 - (iv) the manner of calling general meetings; and
 - (v) whether and, if so, how written resolutions may be passed in lieu of a general meeting for the purposes of **section 83**; and 10
 - (vi) the time within which, and manner in which, notices of general meetings and notices of motion must be notified; and
 - (vii) the quorum and procedure for general meetings, including voting procedures and procedures for proxies (if any); and
 - (viii) the arrangements and requirements for special general meetings under **section 59(3)**; and 15
 - (l) the nomination of 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 a liquidation of the society or the removal of the society from the register (*see section 5(3) and subpart 5 of Part 5*). 20
- (2) **Subsection (1)(j)** does not limit a power to apply for an order, or take any other enforcement action, under **Part 4**.
- (3) **Subsection (1)(l)** does not apply to a racing club within the meaning of section 5(1) of the Racing Industry Act 2020. 25
- Compare: 1908 No 212 s 6
- 27 Constitution must not give members rights or interests in society’s property**
- The constitution must not purport to confer on any member any right, title, or interest (legal or equitable) in the property of the society.
- 28 Bylaws, tikanga or culture, and other matters** 30
- (1) The constitution may contain any other matters that are not inconsistent with this Act or any other Act, including providing for—
 - (a) whether and, if so, how the society can make bylaws:
 - (b) the society to express its tikanga or culture:
 - (c) reasonable penalties to be imposed on any member (and for the consequences of the non-payment of any subscription or penalty): 35
 - (d) any other matter relevant to the society’s activities.

- (2) A bylaw purportedly made by a society has no effect to the extent that it contravenes, or is inconsistent with, this Act, any other enactment, or the society's constitution.
- (3) The making, amendment, or replacement of a bylaw is not an amendment of the society's constitution. 5
- Compare: 1922 No 27 s 3; 1953 No 80 s 4

Effect of constitution

29 Effect of constitution

- (1) The constitution of a society has no effect to the extent that it contravenes, or is inconsistent with, this Act or any other Act. 10
- (2) The constitution of a society is binding, in accordance with its terms, as between—
- (a) the society and each member; and
 - (b) each member.
- (3) **Subsection (2)** is subject to the rest of this Act. 15
- Compare: 1993 No 105 s 31

Amendments to constitution

30 Society may amend constitution

- (1) A society may amend its constitution in the manner provided by the constitution. 20
- (2) Every amendment to a society's constitution must be—
- (a) in writing; and
 - (b) approved at a general meeting of the society by a resolution passed by the relevant majority; and
 - (c) signed by at least 2 members of the society; and 25
 - (d) otherwise made in the accordance with its constitution.
- (3) **A relevant majority** is—
- (a) a simple majority of the votes of those members entitled to vote and voting on the question; or
 - (b) if a higher majority is required by the constitution, that higher majority of the votes of those members entitled to vote and voting on the question. 30
- (4) This section is subject to **section 31**.
Compare: 1908 No 212 s 21(1), (2)

31 Minor or technical amendments 35

- (1) A society may amend its constitution under this section if the amendment—

- (a) has no more than a minor effect; or
 - (b) corrects errors or makes similar technical alterations.
 - (2) The committee of the society must, in accordance with its constitution, ensure that written notice of the amendment is sent to every member of the society.
 - (3) The notice must state— 5
 - (a) the text of the amendment; and
 - (b) the right of the member to object to the amendment.
 - (4) If no objection is received within 20 working days after the date on which the notice is served (or any longer period specified in the society’s constitution), the committee of the society may make the amendment. 10
- 32 Amended constitution must continue to comply**
- A society’s constitution, as amended under **section 30 or 31**, must continue to comply with the requirements of this Act.
- 33 Society must give Registrar copy of amendment and amended constitution**
- (1) A society must ensure that a copy of an amendment to its constitution and a copy of the constitution as amended are given to the Registrar within 20 working days after the amendment— 15
 - (a) is approved at a general meeting under **section 30**; or
 - (b) is made under **section 31**.
 - (2) The copy of the amendment and the copy of the constitution as amended must be accompanied by the information prescribed by the regulations (if any), and a certificate from an officer certifying that— 20
 - (a) the officer is authorised by the society to give the certificate; and
 - (b) the amendment was made in accordance with **section 30 or 31**; and
 - (c) the society’s constitution, as amended, will continue to comply with the requirements of this Act. 25
 - (3) The certificate must include a brief description of the nature of the amendment.
 - (4) If the copy of the amendment and the copy of the constitution as amended that are given to the Registrar are in conflict, the copy of the amendment prevails.
- 34 Registration of amendment** 30
- (1) The Registrar must register an amendment given under **section 33** if the Registrar is satisfied that—
 - (a) the amendment was made in accordance with **section 30 or 31**; and
 - (b) the society’s constitution, as amended, will continue to comply with the requirements of this Act. 35
 - (2) The amendment takes effect from the date of registration.

- (3) Registration of the amendment is conclusive evidence that all requirements relating to the making, or registration, of the amendment were complied with.
- (4) **Subsection (3)** is subject to **section 35**.
Compare: 1908 No 212 s 21(3)
- 35 Court may amend constitution** 5
- (1) A court may, on the application of a society or a member of a society, make an order amending the constitution of the society if it is satisfied of 1 or more of the following:
- (a) the constitution does not comply with the requirements of this Act:
 - (b) an amendment to the constitution was not made in accordance with **section 30 or 31**: 10
 - (c) it is not reasonably practicable for the society to amend the constitution itself using the procedure set out in its constitution:
 - (d) the constitution is operating, or is likely to operate, in an oppressive, unfairly discriminatory, or unfairly prejudicial manner: 15
 - (e) for any other reason, it is just and equitable to amend the constitution.
- (2) The Registrar must amend the constitution on the register after receiving a sealed copy of the order or on a date specified in the order.
- (3) The amendment takes effect from the date on which the constitution on the register is amended. 20
Compare: 1908 No 212 s 21(3A)
- 36 Amendment where constitution is oppressive, unfairly discriminatory, or unfairly prejudicial**
- (1) If a court makes an order under **section 35** on the ground specified in **section 35(1)(d)**, the constitution must not, to the extent that it has been amended by the court, again be amended without the leave of the court. 25
- (2) **Subsection (1)** does not apply if the court orders otherwise.
- (3) This section applies despite anything else in this Act.
- 37 Change of name cannot be made by amending constitution**
- The name of a society in its constitution may be amended only in accordance with **sections 110 to 113**. 30
- Disputes between members and between members and society*
- 38 Procedures in constitution for disputes**
- (1) The procedures referred to in **section 26(1)(j)** must be consistent with the rules of natural justice. 35

- (2) If the procedures referred to in **section 26(1)(j)** are consistent with the procedures set out in **Schedule 2**, the procedures are presumed to be consistent with the rules of natural justice.
- (3) *See* **subpart 1 of Part 4** (which provides for a court to make orders enforcing a society’s constitution, including the procedures in the constitution for disputes). 5

39 Constitution may provide for arbitration

- (1) A society’s constitution may provide that all or certain kinds of disputes referred to in **section 26(1)(j)** must or may be submitted to arbitration under the Arbitration Act 1996. 10
- (2) If a society’s constitution provides that a dispute must or may be submitted to arbitration under the Arbitration Act 1996, the relevant provisions of the constitution must be treated as an arbitration agreement that is binding on the society and the affected member.
- (3) A society’s constitution may prescribe procedural matters (not inconsistent with the Arbitration Act 1996) that govern an arbitration under this section. 15
- (4) This section does not apply to the extent that another enactment requires a dispute to be dealt with in a different way (and the provisions of a constitution relating to disputes have no effect to the extent that those provisions contravene, or are inconsistent with, that enactment). 20

Example

An incorporated society (**T**) is a trade union. Under section 161 of the Employment Relations Act 2000, the Employment Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including matters about whether a person is entitled to be a member of the union and matters related to a failure by the union to comply with its rules. 25

T’s constitution must not provide for employment relationship problems to be dealt with by arbitration because this would be inconsistent with section 161.

Subpart 4—Committee and officers

Committee 30

40 Committee

- (1) Every society must have a committee.
- (2) The committee must comprise 3 or more officers who are—
 - (a) members of the society; and
 - (b) qualified to be appointed under **section 42**. 35

41 Management of society

- (1) The operation and affairs of a society must be managed by, or under the direction or supervision of, its committee.
- (2) The committee has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of the society. 5
- (3) This section is subject to any modifications, exceptions, or limitations contained in this Act or in the society's constitution.

Compare: 1993 No 105 s 128

42 Qualifications of officers

- (1) A natural person who is not disqualified by **subsection (2)** may be appointed as an officer of the society, so long as that person— 10
 - (a) has consented in writing to be an officer; and
 - (b) certifies that they are not disqualified from being appointed or holding office as an officer of the society.
- (2) The following persons are disqualified from being appointed or holding office as an officer of a society: 15
 - (a) a person who is under 16 years of age:
 - (b) a person who is an undischarged bankrupt:
 - (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993: 20
 - (d) a person who is disqualified from being an officer of a charitable entity under section 31(4)(b) of the Charities Act 2005:
 - (e) a person who has been convicted of any of the following, and has been sentenced for the offence, within the last 7 years: 25
 - (i) an offence under **subpart 6 of Part 4**:
 - (ii) a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961):
 - (iii) an offence under section 143B of the Tax Administration Act 1994: 30
 - (iv) an offence under **section 22(2)**:
 - (v) an offence, in a country other than New Zealand, that is substantially similar to an offence specified in **subparagraphs (i) to (iv)**: 35
 - (vi) a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere:
 - (f) a person who is subject to any of the following orders:

| | |
|---|---------------------|
| <ul style="list-style-type: none"> (i) a banning order under subpart 7 of Part 4: (ii) an order under section 108 of the Credit Contracts and Consumer Finance Act 2003: (iii) a forfeiture order under the Criminal Proceeds (Recovery) Act 2009: (iv) a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act: <p>(g) in relation to any particular society, a person who does not comply with any qualifications for officers contained in the society’s constitution.</p> <p>(3) A person who is disqualified from being an officer but who acts as an officer is an officer for the purposes of a provision of this Act that imposes a duty or an obligation on an officer.</p> <p>Compare: 1993 No 105 s 151</p> | <p>5</p> <p>10</p> |
| <hr/> | |
| 43 Registrar may waive disqualifying factors | 15 |
| <ul style="list-style-type: none"> (1) The Registrar may, on an application made in the manner prescribed by the regulations (if any), waive the application of any of the disqualifying factors set out in section 42(2)(b) to (f) in relation to a particular person and a society. (2) If the Registrar waives the application of a disqualifying factor, the person to whom the waiver relates must not be treated as being disqualified from being an officer of the society because of that factor. | <p>20</p> |
| <hr/> | |
| Example | |
| <p>The purposes of an incorporated society (A) include providing services to facilitate or promote the rehabilitation and reintegration of offenders who have been released from prison.</p> <p>The Registrar considers that it may be useful for A’s committee to include a person who has been convicted of an offence specified in section 42(2)(e). The Registrar, accordingly, waives the disqualifying factor in that paragraph in relation to a particular person and A.</p> | <p>25</p> <p>30</p> |
| <hr/> | |
| Compare: 2005 No 39 s 16(4), (5) | |
| 44 Other provisions relating to waivers | |
| <ul style="list-style-type: none"> (1) A waiver of a disqualifying factor may be granted on the terms or conditions that the Registrar thinks fit. (2) The Registrar may— <li style="padding-left: 20px;">(a) vary a waiver in the same way as a waiver may be granted: <li style="padding-left: 20px;">(b) revoke a waiver that has been granted. | <p>35</p> |
| <hr/> | |
| Compare: 2005 No 39 s 16(6)–(8) | |

*Officer ceasing to hold office***45 Officer ceasing to hold office**

- (1) A person ceases to be an officer of a society if the person—
- (a) resigns in accordance with **subsection (2)**; or
 - (b) is removed from office in accordance with the society's constitution; or 5
 - (c) becomes disqualified from being an officer under **section 42(2)**; or
 - (d) dies; or
 - (e) otherwise vacates office in accordance with the society's constitution.
- (2) An officer of a society may resign office—
- (a) in the manner provided in the constitution; or 10
 - (b) if the constitution does not provide for a manner, by signing a written notice of resignation and giving it to the society.
- (3) The notice of resignation is effective when it is received by the society or at a later time specified in the notice. 15
- Compare: 1993 No 105 s 157(1), (2)

46 Former officer remains liable for past acts, omissions, and decisions

Despite vacating office as an officer, a person who has held office as an officer remains liable under the provisions of this Act that impose liabilities on officers for acts and omissions and decisions made while that person was an officer. 20

Compare: 1993 No 105 s 157(3)

*Notice of appointment and of other changes***47 Notice of appointments and of other changes relating to officers**

- (1) The society must ensure that notice of the following is given to the Registrar:
- (a) an appointment of an officer: 25
 - (b) a person ceasing to hold office as an officer:
 - (c) a change in information relating to an officer that is prescribed by the regulations.
- (2) The notice must be given to the Registrar in the manner prescribed by the regulations (if any) within 20 working days after the society first becomes aware of the matter. 30

*Validity of acts***48 Validity of officer's acts**

The acts of a person as an officer are valid even though—

- (a) the person's appointment was defective; or 35

(b) the person is not qualified for appointment.

Compare: 1993 No 105 s 158

Officers' duties

| | | |
|-----------|---|----|
| 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. | 5 |
| (2) | This section does not limit the power of an officer to make provision for the benefit of employees of the society in connection with the society ceasing to carry on the whole or part of its activities. | 10 |
| (3) | In subsection (2) , employees includes former employees and the dependants of employees or former employees, but does not include an employee or a former employee who is or was an officer of the society. | |
| | Compare: 1993 No 105 ss 131, 132 | |
| 50 | Powers must be exercised for proper purpose | 15 |
| | An officer must exercise a power as an officer for a proper purpose. | |
| | Compare: 1993 No 105 s 133 | |
| 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. | 20 |
| | Compare: 1993 No 105 s 134 | |
| 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,— | 25 |
| | (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 undertaken by them. | 30 |
| | Compare: 1993 No 105 s 137 | |
| 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 | 35 |

- (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.

Compare: 1993 No 105 s 135

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. 5

Compare: 1993 No 105 s 136

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: 10

(a) an employee of the society whom the officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned: 15

(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. 20

- (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 25

(c) has no knowledge that the reliance is unwarranted.

Compare: 1993 No 105 s 138

56 Duties owed to society

The duties in **sections 49 to 54** are owed to the society (rather than to members). 30

Compare: 1993 No 105 s 169(3)

Conflict of interest disclosure rules

57 When officer has interest

- (1) An officer (A) is **interested** in a matter if A— 35

(a) may obtain a financial benefit from the matter; or

- (b) is the spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, or first cousin of a person who may obtain a financial benefit from the matter; or
 - (c) may have a financial interest in a person to whom the matter relates; or
 - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or 5
 - (e) may be interested in the matter because the society’s constitution so provides.
- (2) However, A is not interested in a matter—
- (a) merely because A receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act; or 10
 - (b) if A’s interest is the same or substantially the same as the benefit or interest of all or most other members of the society due to the membership of those members; or
 - (c) if A’s interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence A in carrying out A’s responsibilities under this Act or the society’s constitution. 15
- (3) In this section and **sections 58 to 60**, **matter** means—
- (a) a society’s performance of its activities or exercise of its powers; or
 - (b) an arrangement, an agreement, or a contract (a **transaction**) made or entered into, or proposed to be entered into, by the society. 20

Compare: 2004 No 115 s 62

58 Duty to disclose interest

- (1) An officer who is interested in a matter relating to the society must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified)— 25
- (a) to the committee; and
 - (b) in an interests register kept by the committee.
- (2) Disclosure under **subsection (1)** must be made as soon as practicable after the officer becomes aware that they are interested in the matter. 30

Compare: 2004 No 115 ss 63, 65

59 Consequences of being interested in matter

- (1) A member of the committee who is interested in a matter relating to a society—
- (a) must not vote or take part in a decision of the committee relating to the matter; and 35
 - (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; but

- (c) may take part in any discussion of the committee relating to the matter and be present at the time of the decision of the committee (unless the committee decides otherwise).
- (2) However,—
- (a) a member of the committee who is prevented from voting on a matter under **subsection (1)** may still be counted for the purpose of determining whether there is a quorum at any meeting at which the matter is considered; and 5
- (b) **subsection (1)(a) or (b)** does not apply to a member of the committee (A) in relation to a particular matter if all members of the committee who are not interested in the matter consent to A acting as referred to in that paragraph. 10
- (3) Despite **subsection (2)**, if 50% or more of the members of the committee are prevented from voting on the matter under **subsection (1)**, a special general meeting of the society must be called to consider and determine the matter. 15
- Compare: 2004 No 115 s 66

60 Consequences of failing to disclose interest

- (1) The committee must, in the manner prescribed by the regulations (if any), notify the members of the society of a failure to comply with **section 58 or 59**, and of any transactions affected, as soon as practicable after becoming aware of the failure. 20
- (2) A failure to comply with **section 58 or 59** does not affect the validity of an act or a matter.
- (3) However, **subsection (2)** does not limit the right of any person to apply for judicial review. 25
- Compare: 2004 No 115 s 67

61 Regulations may provide for how members are notified

- (1) Regulations made for the purposes of **section 60(1)** may, but do not need to, require every member to be notified.
- (2) The regulations may instead require notification to be made to members as a group (for example, by way of a notice on an Internet site that is reasonably accessible to the members generally). 30

62 Avoidance of transactions

- (1) A transaction entered into by the society in which an officer of the society is interested may be avoided by the society at any time before the expiry of 3 months after the transaction is notified under **section 60(1)**. 35
- (2) However, a transaction cannot be avoided if the society receives fair value under it (*see section 63*).

- (3) A transaction in which an officer is interested can only be avoided on the ground of the officer’s interest in accordance with this section.

Compare: 1993 No 105 s 141(1), (2), (6)

63 What is fair value

- (1) For the purposes of **section 62**, whether a society receives fair value under a transaction is determined on the basis of the information known to the society and to the interested officer at the time the transaction is entered into. 5

- (2) If a transaction is entered into by the society in the ordinary course of its activities and on usual terms and conditions, the society is presumed to receive fair value under the transaction. 10

Compare: 1993 No 105 s 141(3), (4)

64 Onus of proving fair value

- (1) A person who is seeking to uphold a transaction and who knew or ought to have known of the officer’s interest at the time the transaction was entered into has the onus of establishing fair value. 15

- (2) In any other case, the society has the onus of establishing that it did not receive fair value.

Compare: 1993 No 105 s 141(5)

65 Effect on third parties

The avoidance of a transaction under **section 62** does not affect the title or interest of a person to or in property that the person has acquired if the property was acquired— 20

- (a) from a person other than the society; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the transaction under which the person referred to in **paragraph (a)** acquired the property from the society. 25

Compare: 1993 No 105 s 142

66 Application of provisions in case of certain payments, indemnities given, or insurance provided 30

Sections 58 to 62 do not apply in relation to—

- (a) a salary, wages, or other payments paid to an officer as referred to in **section 24(1)(e)**; or
- (b) an indemnity given or insurance provided in accordance with **subpart 6**. 35

Compare: 1993 No 105 s 143

67 Interests register

- (1) The committee must keep and maintain a register of disclosures made by officers under **section 58** (an **interests register**).
- (2) The interests register must be made available for inspection by the officers of the society at any reasonable time.

5

Subpart 5—Members

68 Society must have at least 10 members

- (1) A society must continue to have at least 10 members.
- (2) An act of a society or the transfer of property to or by a society is not invalid merely because the society does not have at least 10 members.

10

69 Registrar may act if society has fewer than 10 members

- (1) The Registrar may, if the Registrar is satisfied that a society has fewer than 10 members, give the society written notice—
 - (a) requiring it to increase its membership in order to comply with **section 68**; and
 - (b) informing it that, if the society does not comply with that section within 6 months after the date of the notice, the Registrar may—
 - (i) apply to the High Court to put the society into liquidation; or
 - (ii) remove the society from the register under **subpart 1 of Part 5**.
- (2) The Registrar may, if the society does not comply with **section 68** at the end of the 6-month period after the date of the notice,—
 - (a) make an application under **section 205**; or
 - (b) act under **subpart 1 of Part 5**.

15

20

70 Consent to become member

- (1) A person must consent to become a member of a society.
- (2) The consent of a body corporate (**A**) to become a member of a society may be given on A's behalf by 2 directors of A, or, if A has only 1 director, by that director (and, for this purpose, **director** has the same meaning as in section 5(1) of the Financial Reporting Act 2013).

25

71 Members have no right to property of society

Membership of a society does not confer upon a member any right, title, or interest, either legal or equitable, in the property of the society.

30

Compare: 1908 No 212 s 14

72 Liability of members

- (1) A member is not liable for an obligation of a society by reason only of being a member.
- (2) The liability of a person to a society in their capacity as a member is limited to— 5
 - (a) any amount unpaid on the membership of the member:
 - (b) any liability as a member expressly provided for in the society’s constitution.
- (3) Nothing in this section affects the liability of a member of a society to the society under a contract, or for any tort, breach of a fiduciary duty, or other actionable wrong committed by the member. 10

Compare: 1993 No 105 s 97

73 Register of members

- (1) Every society must keep a register of its members.
- (2) The register must contain— 15
 - (a) the name of each member; and
 - (b) the last known contact details of each member; and
 - (c) the date on which each person became a member; and
 - (d) all other information prescribed by the regulations (if any).
- (3) Every society must update its register of members as soon as practicable after becoming aware of changes to the information recorded on the register. 20

Compare: 1908 No 212 s 22

Access to information for members

74 Information for members

- (1) A member may at any time make a written request to a society for information held by the society. 25
- (2) The request must specify the information sought in sufficient detail to enable it to be identified.
- (3) The society must, within a reasonable time after receiving a request,— 30
 - (a) provide the information; or
 - (b) agree to provide the information within a specified period; or
 - (c) agree to provide the information within a specified period if the member pays a reasonable charge to the society (which must be specified and explained) to meet the cost of providing the information; or
 - (d) refuse to provide the information, specifying the reasons for the refusal. 35

- (4) Nothing in this section or **section 75 or 76** limits information privacy principle 6 set out in section 22 of the Privacy Act 2020.

Compare: 1993 No 105 s 178(1)–(3)

75 Grounds for refusing request

- (1) A society may refuse to provide the information if— 5
- (a) withholding the information is necessary to protect the privacy of natural persons, including that of deceased natural persons; or
 - (b) the disclosure of the information would, or would be likely to, prejudice the commercial position of the society or of any of its members; or
 - (c) the disclosure of the information would, or would be likely to, prejudice the commercial position of any other person, whether or not that person supplied the information to the society; or 10
 - (d) the information is not relevant to the operation or affairs of the society; or
 - (e) the request for the information is frivolous or vexatious. 15
- (2) This section does not limit the reasons for which a society may refuse to provide the information.

Compare: 1993 No 105 s 178(4)

76 Member may withdraw request if there is charge for information

If the society requires the member to pay a charge for the information, the member may withdraw the request, and must be treated as having done so unless, within 10 working days after receiving notification of the charge, the member informs the society— 20

- (a) that the member will pay the charge; or
- (b) that the member considers the charge to be unreasonable. 25

Compare: 1993 No 105 s 178(5)

77 Court orders relating to information

- (1) A court may, on the application of a member who has made a request for information under **section 74**, make an order under this section if it is satisfied that— 30
- (a) the period specified for providing the information is unreasonable; or
 - (b) the charge set by the society is unreasonable; or
 - (c) the society does not have sufficient reason to refuse to supply the information; or
 - (d) the society has sufficient reason to refuse to supply the information but other reasons exist that outweigh the refusal. 35

- (2) The order is an order requiring the society to supply the information within the time or on payment of the charge that the court thinks fit.
- (3) The court may also specify in the order—
 - (a) the use that may be made of the information; and
 - (b) the persons to whom it may be disclosed. 5
- (4) The court may make an order for the payment of costs that it thinks fit.
 Compare: 1993 No 105 s 178(6)–(9)

General meetings

78 Annual general meetings

- (1) Every society must call an annual general meeting of members to be held— 10
 - (a) not later than 6 months after the balance date of the society; and
 - (b) not later than 15 months after the previous annual general meeting.
- (2) However, a society does not have to hold its first annual general meeting in the calendar year of its incorporation but must hold that meeting within 18 months after its incorporation. 15
- (3) The society must—
 - (a) hold the meeting on the date on which it is called to be held and in accordance with its constitution; and
 - (b) ensure that minutes of the meeting are kept.
- (4) If a society is a union or is of a kind prescribed by the regulations, the society’s constitution may provide that a right to attend an annual meeting applies only to delegates or other representatives of members (rather than to all members). 20

79 Irregularities in calling meeting

- (1) An irregularity in the manner of calling a general meeting of a society is waived if all the members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such members agree to the waiver. 25
- (2) An accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a member does not invalidate the proceedings at that meeting. 30
- (3) **Subsection (2)** is subject to the constitution of the society.

Compare: 1993 No 105 Schedule 1 cl 2(3), (3A)

80 Information to be presented at annual meeting

- (1) The committee must, at each annual general meeting, present the following information: 35

- (a) an annual report on the operations and affairs of the society during the most recently completed accounting period:
 - (b) the financial statements of the society for that period:
 - (c) notice of the disclosures, or types of disclosures, made under **section 58** (disclosure of interests) during that period (including a brief summary of the matters, or types of matters, to which those disclosures relate). 5
- (2) The annual report must contain the information prescribed by the regulations (if any).
- (3) In **subsection (1)(c)**, **matters** has the same meaning as in **section 57**. 10

81 Methods of holding meetings

- (1) A general meeting of a society must be held by a quorum of persons—
- (a) being assembled together at the time and place appointed for the meeting; or
 - (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or 15
 - (c) by a combination of both of the methods described in **paragraphs (a) and (b)**.
- (2) This section is subject to the society's constitution.
- (3) See **section 26(1)(k)**, which provides for the constitution to deal with arrangements and requirements for general meetings (including the quorum). 20

82 Right of access to financial statements and minutes of meeting

- (1) A member may, at any time, make a written request to the society for either or both of the following:
- (a) the financial statements of the society that were presented at the most recent annual general meeting of the society: 25
 - (b) the minutes of the most recent general meeting of the society.
- (2) The society must, within a reasonable period after receiving the request and without charge, provide the requested information to the member.
- (3) **Sections 74 and 75** do not limit this section. 30

Resolutions in lieu of meeting

83 Resolution in lieu of meeting

- (1) This section and **sections 84 to 86** apply if the constitution of a society allows a resolution to be passed in lieu of a meeting under **section 26(1)(k)(v)**. 35
- (2) A written resolution is as valid for the purposes of this Act and the constitution as if it had been passed at a general meeting if it is signed by no less than 75%

(or a higher percentage required by the constitution) of the number of members who are entitled to vote.

- (3) A written resolution under this section may consist of 1 or more documents in similar form (including letters, electronic mail, or other similar means of communication) each signed by or on behalf of 1 or more of the persons specified in **subsection (2)**. 5

84 Proposed resolution in lieu must be sent to members entitled to vote

- (1) The society must ensure—
- (a) that a proposed resolution under **section 83** is dated with the date on which the proposed resolution is first sent to a person entitled to vote for the purpose of signing (the **circulation date**); and 10
 - (b) that the proposed resolution is sent to an address for each person who is entitled to vote; and
 - (c) as far as is reasonably practicable, that the proposed resolution is sent under **paragraph (b)** on the circulation date; and 15
 - (d) that a proposed resolution sent under **paragraph (b)** is accompanied by a statement of the effect of **subsection (2)**.
- (2) A proposed resolution lapses if it is not passed under **section 83** within 3 months (or any shorter period provided in the constitution) after the circulation date. 20
- (3) In this section and **section 86, address**, of a person (A), means—
- (a) the address (including an electronic address) specified by A for the relevant purpose; or
 - (b) the actual or last known address (including an electronic address) for A, if— 25
 - (i) **paragraph (a)** does not apply; or
 - (ii) the society knows that the address referred to in **paragraph (a)** is not correct.

85 Accidental omission does not invalidate resolution in lieu

An accidental omission to send a proposed resolution or statement under **section 84** to a person entitled to vote does not invalidate a resolution passed under **section 83**. 30

86 Society must send copy of passed resolution in lieu to certain members

The society must, within 5 working days after a resolution is passed under **section 83**, send a copy of the resolution to an address for each person who was entitled to vote who did not sign the resolution and on whose behalf the resolution was not signed. 35

Subpart 6—Indemnities or insurance for officers, members, or
employees of society

- 87 Society restricted from indemnifying or effecting insurance for its own officers, members, and employees**
- (1) A society must not, except in accordance with this subpart, indemnify, or directly or indirectly effect insurance for, an officer, a member, or an employee of the society for—
- (a) liability for any act or omission in their capacity as an officer, a member, or an employee of that society; or
- (b) costs incurred by the officer, member, or employee of that society in defending or settling any claim or proceeding relating to that liability. 10
- (2) An indemnity given in breach of this subpart is void.
- (3) In this subpart,—
- effect insurance** includes to pay, whether directly or indirectly, the costs of the insurance 15
- employee** includes a former employee
- indemnify** includes relieve, exempt, or excuse from liability, whether before or after the liability arises
- member** includes a former member
- officer** includes a former officer. 20
- Compare: 2013 No 69 ss 526, 530
- 88 Society may indemnify or effect insurance for person in their capacity as employee of third person**
- Section 87** does not prevent a society from indemnifying, or directly or indirectly effecting insurance for, a member (**A**) in respect of A’s liability for any act or omission in A’s capacity as an employee of a person other than the society (or costs incurred by A in defending or settling any claim or proceeding relating to that liability). 25
-
- Example**
- An incorporated society (**T**) is a trade union. Its members include employees of various business, including a company (**B**). 30
- T may effect insurance for its members for liability for acts or omissions as employees of B (or for associated costs).
-
- 89 Permitted indemnities for certain liabilities or costs**
- (1) A society may indemnify an officer, a member, or an employee of the society for— 35

- (a) liability to any person other than the society for any act or omission in their capacity as an officer, a member, or an employee of that society (not being a liability specified in **subsection (2)**); or
- (b) costs incurred by the officer, member, or employee in defending or settling any claim or proceeding relating to that liability. 5
- (2) The liability specified in this subsection is—
 - (a) criminal liability; or
 - (b) a liability that arises out of a failure to act in good faith and in the best interests of the society when acting in the capacity as an officer, a member, or an employee of the society. 10
- (3) A society may indemnify an officer, a member, or an employee of the society for any costs incurred by them in defending or settling a proceeding that relates to liability of a kind referred to in **section 87(1)(a)** if—
 - (a) judgment is given in their favour or if they are acquitted; or
 - (b) the proceeding is discontinued. 15
- (4) This section is subject to **section 91**.
 Compare: 2013 No 69 s 527

90 Permitted insurance for certain liability or costs

- (1) A society may, with the prior approval of its committee, effect insurance for an officer, a member, or an employee of the society in respect of— 20
 - (a) liability (other than criminal liability) of a kind referred to in **section 87**; or
 - (b) costs incurred by the officer, member, or employee in defending or settling any claim or proceeding relating to that liability; or
 - (c) costs incurred by the officer, member, or employee in defending any criminal proceedings— 25
 - (i) that have been brought against the officer, member, or employee in relation to any alleged act or omission in their capacity as an officer, a member, or an employee; and
 - (ii) in which they are acquitted. 30
- (2) The officers of the society who vote in favour of authorising the insurance under **subsection (1)** must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the society.
- (3) The officer, member, or employee who is insured is personally liable to the society for the cost of effecting insurance if— 35
 - (a) **subsection (2) or section 91** has not been complied with in effecting the insurance; or

- (b) reasonable grounds did not exist for the opinion set out in the certificate given under **subsection (2)**.
- (4) However, **subsection (3)** does not apply to the extent that the insurance was fair to the society at the time the insurance was effected.
- Compare: 2013 No 69 s 528 5
- 91 Indemnity or insurance for breach of officers' duties, etc, must be expressly authorised by society's constitution**
- (1) Despite **sections 89 and 90**, a society may indemnify an officer under **section 89**, or effect insurance for an officer under **section 90**, for the matters specified in **subsection (2)** only if giving the indemnity or effecting the insurance is expressly authorised by the society's constitution. 10
- (2) The matters are—
- (a) liability (other than criminal liability) for a failure to comply with—
- (i) a duty under **sections 49 to 56** (officers' duties); or
- (ii) any other duty imposed on the officer in their capacity as an officer: 15
- (b) costs incurred by the officer for any claim or proceeding relating to that liability.

Subpart 7—Accounting records, financial reporting, and annual returns

Balance date 20

92 Balance date of charitable entities

The **balance date** of a society that is a charitable entity is the entity's balance date under section 41(3) to (7) of the Charities Act 2005.

93 Balance date of other societies

- (1) The **balance date** of a society (other than a charitable entity) is the close of— 25
- (a) the date specified in the constitution as the society's balance date; or
- (b) any other date that the committee adopts as the society's balance date (if the balance date is not specified under **paragraph (a)**); or
- (c) 31 March (if the balance date is not specified under **paragraph (a) or (b)**). 30
- (2) The following apply to a society (other than a charitable entity):
- (a) the society must have a balance date in each calendar year (subject to **paragraphs (b) to (d)**):
- (b) the society need not have a balance date in the calendar year in which it is incorporated if its first balance date is in the following calendar year and is not later than 15 months after the date of its incorporation: 35

- (c) the society may change its balance date without the approval of the Registrar if—
 - (i) the period between any 2 balance dates does not exceed 15 months; and
 - (ii) the society continues to have a balance date in each calendar year: 5
- (d) the society may change its balance date with the approval of the Registrar before the change is made (and the change may be approved with or without conditions).
- (3) If the balance date is specified in the society’s constitution, a change must be made in accordance with **section 30 or 31** (without limiting **subsection (2)(c) and (d)**). 10

Accounting records

94 Accounting records must be kept

- (1) The committee must ensure that there are kept at all times accounting records that— 15
 - (a) correctly record the transactions of the society; and
 - (b) allow the society to produce financial statements that comply with the requirements of this Act; and
 - (c) would enable the financial statements to be readily and properly audited (if required under any enactment). 20
- (2) The committee must establish and maintain a satisfactory system of control of the society’s accounting records.
- (3) The accounting records must be kept—
 - (a) in written form in English or te reo Māori; or
 - (b) in a form or manner that is easily accessible and convertible into written form in English or te reo Māori. 25
- (4) The accounting records must be kept for the current accounting period and for the last 7 completed accounting periods of the society. 20

Compare: 1993 No 105 s 194

Financial reporting 30

95 Annual financial statements must be prepared and registered

- (1) Every society must ensure that, within 6 months after the end of the accounting period of the society, financial statements are—
 - (a) completed in relation to the society and that accounting period; and
 - (b) dated and signed by or on behalf of the society by 2 members of the committee. 35

- (2) The financial statements must be prepared in accordance with,—
- (a) in the case of a specified not-for-profit entity, generally accepted accounting practice; or
 - (b) in the case of a small society, any of the following:
 - (i) generally accepted accounting practice; or 5
 - (ii) a non-GAAP standard that applies for the purposes of this section; or
 - (iii) the requirements set out in **section 97**; or
 - (c) in any other case, either of the following:
 - (i) generally accepted accounting practice: 10
 - (ii) a non-GAAP standard that applies for the purposes of this section.
- (3) Every society must ensure that, within 6 months after the balance date of the society, copies of the financial statements of the society for the period ending on that date are given to the Registrar for registration.
- Compare: 1993 No 105 s 201 15
- 96 Definitions relating to financial reporting**
- (1) In this subpart,—
- applicable auditing and assurance standard** has the same meaning as in section 5(1) of the Financial Reporting Act 2013
- generally accepted accounting practice** has the same meaning as in section 8 of the Financial Reporting Act 2013 20
- non-GAAP standard** has the same meaning as in section 5(1) of the Financial Reporting Act 2013
- qualified auditor** has the same meaning as in section 35 of the Financial Reporting Act 2013. 25
- (2) In this subpart, a society is, in respect of an accounting period,—
- (a) a **specified not-for-profit entity** if it is such an entity in respect of that period under section 46 of the Financial Reporting Act 2013:
 - (b) a **small society** if,—
 - (i) in each of the 2 preceding accounting periods of the society, the total operating payments of the society are less than \$10,000; and 30
 - (ii) as at the balance date of each of the 2 preceding accounting periods, the total assets of the society are less than \$30,000; and
 - (iii) at the balance date of the accounting period, the society is not an entity described in section LD 3(2) of the Income Tax Act 2007 (a donee organisation). 35

- 97 Minimum requirements for financial statements of small societies**
- For the purposes of **section 95(2)(b)(iii)**, the financial statements for an accounting period must—
- (a) contain the following information:
 - (i) the income and expenditure of the society during the accounting period; and 5
 - (ii) the assets and liabilities of the society at the close of the accounting period; and
 - (iii) all mortgages, charges, and other security interests of any description affecting any of the property of the society at the close of the accounting period; and 10
 - (b) otherwise comply with requirements prescribed by the regulations.
- 98 Annual financial statements of large societies must be audited**
- (1) Every society that is large within the meaning of section 45 of the Financial Reporting Act 2013 must ensure that the financial statements that are required to be prepared under **section 95** are audited by a qualified auditor. 15
 - (2) *See* sections 37 to 39 of the Financial Reporting Act 2013 (which provide for the appointment of a partnership and access to information).
 - (3) An auditor must, in carrying out an audit for the purposes of this section, comply with all applicable auditing and assurance standards. 20
- 99 Auditor must report to members**
- (1) The auditor of a society (if any) must make a report to the members on the financial statements audited by the auditor.
 - (2) The auditor's report must comply with the requirements of all applicable auditing and assurance standards. 25
- Compare: 1993 No 105 s 207B
- 100 Auditor's report must be sent to Registrar and External Reporting Board if requirements have not been complied with**
- If an auditor's report indicates that the requirements of this Act have not been complied with, the auditor must, within 7 working days after signing the report, send a copy of the report and a copy of the financial statements to which it relates to the Registrar and the External Reporting Board. 30
- Compare: 1993 No 105 s 207C
- 101 Duties do not apply if alternative financial reporting duties under financial markets or charities legislation** 35
- Sections 95 to 98** do not apply to a society in relation to an accounting period if—

- (a) financial statements for the society and that accounting period are required to be prepared under subpart 3 of Part 7 of the Financial Markets Conduct Act 2013; or
- (b) the society is a charitable entity and an annual return of the society under section 41 of the Charities Act 2005 is required to be accompanied by financial statements for the society and that accounting period. 5

Compare: 1993 No 105 s 197

Annual return

102 Annual returns

- (1) Every society must, in the manner prescribed by the regulations, ensure that an annual return is given to the Registrar for registration. 10
- (2) The annual return must contain the information prescribed by the regulations.
- (3) This section does not apply to a charitable entity.

Subpart 8—Other administration matters

Registered office 15

103 Registered office

- (1) Every society must always have a registered office in New Zealand.
- (2) The registered office of a society at any particular time is the place described as such in the register (subject to **section 104**).

Compare: 1908 No 212 s 18; 1993 No 105 s 186 20

104 Change of registered office

- (1) The committee of a society may change the registered office of the society at any time.
- (2) **Subsection (1)** is subject to the society's constitution and to **subsection (4)**.
- (3) The society must, in the manner prescribed by the regulations (if any), give notice to the Registrar of any change to its registered office. 25
- (4) A change to a society's registered office takes effect on a date stated in the notice (being a date that is at least 5 working days after the notice is registered).

Compare: 1993 No 105 s 187 30

Contact person

105 Purpose

The purpose of **sections 106 to 109** is to provide for every society to have a person whom the Registrar can contact when needed.

- 106 Society must have contact person**
 Every society must at all times have at least 1 contact person (and may have up to 3 contact persons).
- 107 Who contact person may be**
- (1) A contact person must be— 5
 - (a) at least 18 years of age; and
 - (b) ordinarily resident in New Zealand.
 - (2) The position of contact person may be held separately or in conjunction with any office in the society.
 - (3) In this section, a person is **ordinarily resident** in New Zealand if the person— 10
 - (a) is domiciled in New Zealand; or
 - (b) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period. 15
- 108 Vacancy in position of contact person**
 If there is a vacancy in the position of contact person and the society has no other contact person, the society does not breach **section 106** if the position is filled within 20 working days after the vacancy occurs.
- 109 Notice of change of contact person** 20
- (1) The society must ensure that notice of the following changes is given to the Registrar:
 - (a) a change in a contact person of the society:
 - (b) a change in the name or the contact details of a contact person of the society. 25
 - (2) The notice must be given to the Registrar in the manner prescribed by the regulations (if any) within 20 working days after the society first becomes aware of the change.
- Name of society*
- 110 Change of name of society** 30
- (1) An application to change the name of a society must be made by or on behalf of the society in the manner prescribed by the regulations.
 - (2) As soon as the Registrar receives a properly completed application, the Registrar must—
 - (a) enter the new name of the society on the register; and 35

- (b) issue a certificate of incorporation for the society recording the change of name of the society.

Compare: 1993 No 105 s 23

111 Registrar may refuse application if proposed name contrary to section 11

- (1) Despite **section 110**, the Registrar must refuse to register a change to a society's name if the Registrar considers that any of **paragraphs (a) to (f) of section 11(1)** apply to the proposed new name. 5
- (2) If the Registrar refuses to register a change to a society's name, the Registrar may register a change if the proposed new name is amended to address (to the Registrar's satisfaction) the matter referred to in that subsection. 10

112 Change of name if name is contrary to section 11

- (1) The Registrar may by written notice require the society to change its name in accordance with **section 110** if the Registrar considers that any of **paragraphs (a), (b), and (d) to (f) of section 11(1)** apply to a society's name.
- (2) The society must change its name within— 15
- (a) 20 working days after the date on which the notice is served; or
- (b) any longer period specified in the notice.
- (3) If a society fails to comply with **subsection (2)**,—
- (a) the Registrar may enter a new name on the register for the society (being a name selected by the Registrar that would be acceptable under **section 11**); and 20
- (b) issue a certificate of incorporation recording the change of name of the society.

Compare: 1908 No 212 s 11A; 1993 No 105 s 24

113 Effect of change of name

- (1) A change of name of a society— 25
- (a) takes effect from the date of the certificate issued under **section 110 or 112**; and
- (b) does not affect any rights or obligations of the society, or legal proceedings by or against the society, and legal proceedings that may have been continued or commenced against the society under its former name may be continued or commenced against it under its new name. 30
- (2) If a society's name is changed, the constitution must be treated as containing the new name for the purposes of **section 26(1)(a)**.

Compare: 1993 No 105 s 23(4)

35

114 Use of society name

- (1) A society must ensure that its name is clearly stated in—

- (a) every written communication sent by, or on behalf of, the society; and
 - (b) every document issued or signed by, or on behalf of, the society that evidences or creates a legal obligation of the society.
- (2) If a document that evidences or creates a legal obligation of a society is issued or signed by or on behalf of the society and the name of the society is incorrectly stated in the document, every person who issued or signed the document is liable to the same extent as the society if the society fails to discharge the obligation unless—
- (a) the person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the society; or
 - (b) the court is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.
- (3) A society that fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$5,000.

Compare: 1993 No 105 s 25

115 Society may use abbreviation

For the purposes of **sections 114 and 116** (which relate to the manner in which a society may enter into contracts and other obligations), a society may use a generally recognised abbreviation of a word or words in its name if it is not misleading to do so.

Authority to bind society

116 Method of contracting

- (1) A contract or other enforceable obligation may be entered into by a society as follows:
- (a) an obligation that, if entered into by a natural person, would, by law, be required to be by deed may be entered into on behalf of the society in writing signed under the name of the society by—
 - (i) 2 or more officers of the society; or
 - (ii) if the constitution of the society so provides, an officer, or other person or class of persons, whose signature or signatures must be witnessed; or
 - (iii) 1 or more attorneys appointed by the society under **section 117**:
 - (b) an obligation that, if entered into by a natural person, is, by law, required to be in writing may be entered into on behalf of the society in writing by a person acting under the society’s express or implied authority:

- (c) an obligation that, if entered into by a natural person, is not, by law, required to be in writing may be entered into on behalf of the society in writing or orally by a person acting under the society's express or implied authority.
- (2) A society may, in addition to complying with **subsection (1)**, affix its common seal, if it has one, to the contract or document containing the enforceable obligation. 5
- (3) **Subsection (1)** applies to a contract or other obligation—
- (a) whether or not that contract or obligation was entered into in New Zealand; and 10
- (b) whether or not the law governing the contract or obligation is the law of New Zealand.

Compare: 1993 No 105 s 180

117 Attorneys

- (1) A society may, by an instrument signed under **section 116(1)(a)**, appoint a person as its attorney either generally or in relation to a specified matter. 15
- (2) **Subsection (1)** is subject to the society's constitution.
- (3) An act of the attorney under the instrument binds the society.
- (4) Sections 19 to 21 of the Property Law Act 2007 apply, with all necessary modifications, in relation to the power of attorney— 20
- (a) to the same extent as if the society were a natural person; and
- (b) as if a commencement of the liquidation of the society, or a removal of the society from the register, were an event revoking the power of attorney within the meaning of those sections.

Compare: 1993 No 105 s 181

25

Service of documents on society

118 Service of documents

- (1) A document in a legal proceeding may be served on a society in the manner prescribed by the regulations.
- (2) A document, other than a document in a legal proceeding, may be served on a society in the manner prescribed by the regulations. 30
- (3) A document that is served on a society must be treated as received by the society when specified by the regulations.

Part 4 Enforcement

- 119 Overview**
- (1) This Part relates to matters of enforcement, including providing for—
- (a) court orders to enforce a society’s constitution or bylaws: 5
 - (b) court orders to enforce officers’ duties:
 - (c) court orders where the operations or affairs of a society are oppressive, unfairly discriminatory, or unfairly prejudicial to a member:
 - (d) a society to recover a financial gain derived in contravention of **subpart 2 of Part 3**: 10
 - (e) offences.
- (2) This Part provides for applications for court orders to be made—
- (a) by, or on behalf of, a society or its members or former members; or
 - (b) by the Registrar (but *see* **section 142**).
- 120 Part subject to exclusive jurisdiction under other enactments** 15
- (1) This Part is subject to any other enactment that confers exclusive jurisdiction in relation to a dispute involving a society and its members (for example, if the society is a union, the exclusive jurisdiction of the Employment Authority or the Employment Court under the Employment Relations Act 2000).
- (2) The court or tribunal that has exclusive jurisdiction may make orders and otherwise act in relation to the matter under this Part as if it were the High Court. 20
- (3) Despite **subsection (2)**, the court or tribunal may order that a proceeding or any part of it be transferred to and dealt with by the High Court under this Part if the court or tribunal making the order is satisfied that it is desirable to do so. 25
- (4) The High Court may deal with the proceeding as if an application had been made to it under this Part.

Subpart 1—Court orders enforcing society’s constitution or bylaws

- 121 Court orders**
- (1) A court may, on an application under this subpart, make 1 or more of the following orders: 30
- (a) an order declaring and enforcing the rights or obligations of a society, any officer, or any member under the society’s constitution or bylaws:
 - (b) an order directing the performance and observance of a society’s constitution or bylaws by the society, an officer, or a member: 35

- (c) an order restraining a society, an officer, or a member from acting in a manner contrary to the society's constitution or bylaws:
- (d) an order for a person who has breached a society's constitution or bylaws to compensate (in whole or in part) the society, a member, or a former member for the loss or damage suffered by the society, member, or former member because of the breach: 5
- (e) any order that the court thinks just, including any order about costs.
- (2) **Section 122** does not limit this section.
- 122 Disputes under society's constitution**
- (1) This section applies to a dispute between members (in their capacity as members) or between 1 or more members and the society that has been, or is being, investigated or otherwise dealt with under the procedures in the society's constitution referred to in **section 26(1)(j)**. 10
- (2) A court may, on an application under this subpart, exercise a power under **subsection (3)** if it is satisfied that— 15
- (a) there has been a breach of the rules of natural justice or a serious breach of the procedures in the society's constitution referred to in **section 26(1)(j)**; or
- (b) a decision maker has a lack of jurisdiction or has been improperly appointed; or 20
- (c) the decision made on the dispute by a decision maker is in conflict with the public policy of New Zealand.
- (3) The court may do any 1 or more of the following:
- (a) make 1 or more of the orders under **section 121**:
- (b) make any decision it thinks should have been made by a decision maker: 25
- (c) direct the decision maker—
- (i) to hear or rehear the matter concerned; or
- (ii) to consider or determine (whether for the first time or again) any matters that the court directs; or
- (d) make any order that the court thinks just, including any order about costs. 30
- (4) The court must state its reasons for giving a direction under **subsection (3)(c)**.
- 123 When decision maker has lack of jurisdiction**
- For the purposes of **section 122(2)(b)**, a decision maker has a lack of jurisdiction only where,— 35
- (a) in the narrow and original sense of the term jurisdiction, the decision maker has no entitlement to enter upon the inquiry in question; or

- (b) the decision is outside the classes of decisions that the decision maker is authorised to make; or
- (c) the decision maker acts in bad faith.

124 Who may apply

- (1) An application for an order under this subpart may be made by— 5
 - (a) a society; or
 - (b) a member of a society; or
 - (c) a former member of a society (*see* **section 144**); or
 - (d) an officer of a society; or
 - (e) the Registrar (*see* **section 142**). 10
- (2) The Registrar may apply only if the Registrar considers that making the application is in the public interest.
- (3) *See* **section 143** (which provides for the court to refuse to consider an application).

Subpart 2—Court orders enforcing officers’ duties 15

125 Court orders

A court may, on an application under this subpart, make 1 or more of the following orders against an officer or a former officer of a society if the court is satisfied that the officer or former officer has breached, or is likely to breach, a duty under the society’s constitution or bylaws or this Act: 20

- (a) an order declaring and enforcing those duties:
- (b) an order directing the performance and observance of those duties:
- (c) an order restraining the officer from acting in a manner contrary to their duties:
- (d) an order for the officer or former officer to compensate (in whole or in part) the society for the loss or damage suffered by the society because of a breach of those duties: 25
- (e) an order for an account of profits (including an order for the computation and payment to the society of profits made in connection with a breach of a duty): 30
- (f) an order for the officer or former officer to return property to the society:
- (g) any other order that the court thinks just, including any order about costs.

126 Who may apply

- (1) An application for an order under this subpart may be made by— 35
 - (a) a society; or

- (b) a member or an officer of a society (but only under **sections 127 to 130**); or
- (c) the Registrar.
- (2) The Registrar may apply only if the Registrar considers that—
- (a) the breach, or likely breach, of duty is or would be serious; and 5
- (b) making the application is in the public interest (*see section 142*).
- (3) *See section 143* (which provides for the court to refuse to consider an application).
- 127 When member or officer may apply or intervene in proceeding on behalf of society** 10
- (1) A court may, on the application of a member or an officer of a society, grant leave to the member or officer to—
- (a) apply under this subpart in the name and on behalf of the society; or
- (b) intervene in a proceeding under this subpart to which the society is a party for the purpose of continuing, defending, or discontinuing the proceeding on behalf of the society. 15
- (2) The court may grant the leave only if it is satisfied that—
- (a) either—
- (i) the society does not intend to bring, defend, or diligently continue a proceeding under this subpart; or 20
- (ii) the society has discontinued a proceeding under this subpart; and
- (b) it is in the interests of the society that the conduct of a proceeding under this subpart should not be left to the officers or to the determination of the members as a whole.
- 128 Matters court must have regard to in determining whether to grant leave** 25
- The court must, in determining whether to grant leave, have regard to—
- (a) the likelihood of the proceeding succeeding;
- (b) the costs of the proceeding in relation to the relief likely to be obtained;
- (c) any action already taken by the society to obtain relief;
- (d) the interests of the society in the proceeding being commenced, continued, defended, or discontinued. 30
- 129 Other matters relating to leave application**
- (1) Notice of an application under **section 127** must be served on the society.
- (2) The society, in relation to the application,—
- (a) may appear and be heard; and 35

- (b) must inform the court whether or not it intends to bring, continue, defend, or discontinue a proceeding under this subpart.

130 Powers of court where leave granted

- (1) The court may make any order it thinks fit in relation to an application under **section 127** made by a member or an officer or in a proceeding in which a member or an officer intervenes with leave of the court under that section. 5
- (2) The orders may include (without limitation) an order—
 - (a) authorising the member, officer, or any other person to control the conduct of the proceeding:
 - (b) giving directions for the conduct of the proceeding: 10
 - (c) requiring the society, the officers, or a member to provide information or assistance in relation to the proceeding.

131 Costs of action by member, officer, or Registrar to be met by society

- (1) The court must, on the application of a person to whom leave was granted under **section 127** or of the Registrar, order that the society must meet the whole or a part of the reasonable costs of bringing or intervening in a proceeding under this subpart. 15
- (2) Those costs may include any costs relating to a settlement, compromise, or discontinuance approved under **section 132**.
- (3) **Subsection (1)** does not apply if the court considers that it would be unjust or inequitable for the society to bear those costs. 20

132 Settlement, compromise, or withdrawal of proceeding brought by member, officer, or Registrar

A proceeding under this subpart that is brought by a member, an officer, or the Registrar, or in which a member or an officer intervenes, may be settled, compromised, or discontinued only with the approval of the court. 25

Subpart 3—Prejudiced members

133 Prejudiced members

- (1) A member or former member of a society may apply to a court for an order under this subpart on the grounds that— 30
 - (a) the operations or affairs of the society have been, are being, or are likely to be conducted in a manner that is oppressive, unfairly discriminatory, or unfairly prejudicial to the member or former member in their capacity as a member; or
 - (b) any act or acts of the society have been, are, or are likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to the member or former member in that capacity. 35

- (2) *See* **section 143** (which provides for the court to refuse to consider an application).
- (3) *See also* **section 144** (which relates to applications by former members).

134 Court orders

- (1) A court may, on an application under this subpart and if it considers that it is just and equitable to do so, make any orders that it thinks fit. 5
- (2) The orders may include (without limitation) an order—
- (a) requiring the society or any other person to pay compensation to a member or former member; or
 - (b) regulating the future conduct of the society's operations or affairs; or 10
 - (c) appointing a receiver of the society; or
 - (d) directing the rectification of the records of the society; or
 - (e) putting the society into liquidation under **subpart 4 of Part 5**; or
 - (f) setting aside an action taken by the society or its committee in breach of this Act or the society's constitution or its bylaws. 15
- (3) No order may be made against the society or any other person under this section unless the society or person is a party to the proceeding.
- (4) *See* **sections 35 and 36** (which provide for a court to amend a society's constitution, including where the constitution is operating, or is likely to operate, in an oppressive, unfairly discriminatory, or unfairly prejudicial manner). 20

Subpart 4—Financial gain

135 Society may recover financial gain from member

- (1) A member or former member who obtains a financial gain as a result of the society contravening **subpart 2 of Part 3** must be treated as having received the financial gain for the benefit of the society. 25
- (2) The society may recover the financial gain from the member (or former member) in any court of competent jurisdiction as a debt due to the society.
- (3) *See* **section 143** (which provides for the court to refuse to consider an application).
- Compare: 1908 No 212 s 20(4) 30

136 When member or officer may apply or intervene in proceeding on behalf of society

- (1) A court may, on the application of a member or an officer of a society, grant leave to the member or officer to—
- (a) bring a proceeding under this subpart in the name and on behalf of the society; or 35

- (b) intervene in a proceeding under this subpart to which the society is a party for the purpose of continuing, defending, or discontinuing the proceeding on behalf of the society.
- (2) The court may grant the leave only if is satisfied that—
 - (a) either— 5
 - (i) the society does not intend to bring, defend, or diligently continue, a proceeding under this subpart; or
 - (ii) the society has discontinued a proceeding under this subpart; and
 - (b) it is in the interests of the society that the conduct of a proceeding under this subpart should not be left to the officers or to the determination of the members as a whole. 10

137 Matters court must have regard to in determining whether to grant leave

The court must, in determining whether to grant leave, have regard to—

- (a) the likelihood of the proceeding succeeding:
- (b) the costs of the proceeding in relation to the relief likely to be obtained: 15
- (c) any action already taken by the society to obtain relief:
- (d) the interests of the society in the proceeding being commenced, continued, defended, or discontinued.

138 Other matters relating to leave application

- (1) Notice of an application under **section 136** must be served on the society. 20
- (2) The society, in relation to the application,—
 - (a) may appear and be heard; and
 - (b) must inform the court whether or not it intends to bring, continue, defend, or discontinue a proceeding under this subpart.

139 Powers of court where leave granted 25

- (1) The court may make any order it thinks fit in relation to an application under **section 136** made by a member or an officer or in a proceeding in which a member or an officer intervenes with leave of the court under that section.
- (2) The orders may include (without limitation) an order— 30
 - (a) authorising the member, officer, or any other person to control the conduct of the proceeding:
 - (b) giving directions for the conduct of the proceeding:
 - (c) requiring the society, the officers, or a member to provide information or assistance in relation to the proceeding.

140 Costs of action by member, officer, or Registrar to be met by society

- (1) The court must, on the application of a person to whom leave was granted under **section 136** or of the Registrar, order that the society must meet the whole or a part of the reasonable costs of bringing or intervening in a proceeding under this subpart. 5
- (2) **Subsection (1)** does not apply if the court considers that it would be unjust or inequitable for the society to bear those costs.

141 Registrar may bring proceeding to recover financial gain

The Registrar may bring a proceeding under this subpart in the name and on behalf of the society if the Registrar considers that it is in the public interest to do so (*see section 142*). 10

Subpart 5—Miscellaneous provisions relating to applications

142 Limit on Registrar’s power to apply

- (1) Despite anything else in this Part, the Registrar may make an application under any of **subparts 1, 2, 4, and 7** only if the Registrar considers that it is in the public interest to do so. 15
- (2) The Registrar must, when considering whether making an application is in the public interest, have regard to—
- (a) the principles that—
 - (i) societies are organisations with members who have the primary responsibility for holding the society to account; and 20
 - (ii) societies are private bodies that should be self-governing and free from inappropriate government interference; and
 - (b) the likely effect of the application and the associated proceeding on the future conduct and governance of societies in general; and 25
 - (c) whether making the application is an efficient and effective use of the Registrar’s resources; and
 - (d) the extent to which the application and the associated proceeding involve matters of general significance or importance in terms of promoting high-quality governance of societies; and 30
 - (e) the likelihood of the society, a member, a former member, or an officer making an application (if an application has not yet been made) and diligently continuing the associated proceeding; and
 - (f) the size and nature of the society, including whether the society receives or has received any public funding or there is otherwise a significant public interest in the governance of the society; and 35
 - (g) any other matters that the Registrar considers relevant.

- (3) In **subsection (2)(f), public funding** includes any grant, donation, or gift from a public entity or from members of the public.
- (4) In **subsection (3), public entity** has the same meaning as in section 5 of the Public Audit Act 2001.

143 Court may refuse to consider application 5

A court may refuse to make an order on an application under **subparts 1 to 4** or may make an order for costs against a party, whether successful or not, if it is of the opinion that—

- (a) the issue raised in the application is trivial; or
- (b) the applicant is not an appropriate person to bring the application; or 10
- (c) it was unreasonable to make the application having regard to 1 or more of the following:
 - (i) the importance of the issue:
 - (ii) the nature of the society:
 - (iii) the availability of any other method of resolving the issue: 15
 - (iv) the costs involved:
 - (v) the lapse of time:
 - (vi) acquiescence:
 - (vii) any other relevant circumstance; or
- (d) the conduct of any party has unreasonably prolonged a dispute or increased the costs of the proceeding; or 20
- (e) the application is frivolous or vexatious or otherwise not in the public interest.

144 Applications by former members

A former member of a society may make an application under **subpart 1 or 3** only if the person was a member of the society at any time in the 6-month period before the application is made. 25

145 Undertaking about damages not required by Registrar

- (1) If the Registrar makes an application under **subpart 1, 2, or 4**, the court must not, as a condition of making an order on the application, require the Registrar to give an undertaking about damages. 30
- (2) In determining the Registrar’s application, the court must not take into account that the Registrar is not required to give an undertaking about damages.

Subpart 6—Offences

146 Dishonest use of position

- (1) A person who is an officer in a society commits an offence if they dishonestly use that position to directly or indirectly—
- (a) obtain any property, privilege, service, monetary advantage, benefit, or valuable consideration for themselves or another person other than the society; or 5
 - (b) cause loss to any other person.
- (2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 5 years, a fine not exceeding \$200,000, or both. 10
- (3) In this section, **dishonestly** has the same meaning as in section 217 of the Crimes Act 1961.

147 False statements

- (1) A person commits an offence if, with respect to a document required by or for the purposes of this Act, they— 15
- (a) make, or authorise the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading in a material particular; or
 - (b) omit, or authorise the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular. 20
- (2) An officer or employee of a society commits an offence if they—
- (a) make or provide, or authorise or permit the making or providing of, a statement or report that relates to the operations or affairs of the society, and that is false or misleading in a material particular, to— 25
 - (i) an officer, an employee, an auditor, or a member of the society; or
 - (ii) a liquidator, liquidation committee, or receiver or manager of property of the society; and
 - (b) know it to be false or misleading in a material particular. 30
- (3) For the purposes of this section, a person who voted in favour of the making of a statement at a meeting must be treated as having authorised the making of the statement.
- (4) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 1 year, a fine not exceeding \$50,000, or both. 35

Compare: 1993 No 105 s 377

148 Fraudulent use or destruction of property

- (1) An officer, a member, or an employee of a society commits an offence if they—
 - (a) fraudulently take or apply property of the society for—
 - (i) their own use or benefit; or 5
 - (ii) a use or purpose other than the use or purpose of the society; or
 - (iii) the use or benefit of a person other than the society; or
 - (b) fraudulently conceal or destroy property of the society.
- (2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 5 years, a fine not exceeding \$200,000, or both. 10

Compare: 1993 No 105 s 378

149 Falsification of register, records, or documents

- (1) An officer, a member, or an employee of a society commits an offence if, with intent to defraud or deceive a person, they— 15
 - (a) destroy, part with, mutilate, alter, or falsify any register, record, or document required by this Act or the society’s constitution; or
 - (b) make a false entry in any register, record, or document required by this Act or the society’s constitution.
- (2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 5 years, a fine not exceeding \$200,000, or both. 20

150 Operating fraudulently or dishonestly incurring debt

- (1) A person commits an offence if they are knowingly a party to a society operating— 25
 - (a) with intent to defraud creditors of the society or any other person; or
 - (b) for a fraudulent purpose.
- (2) An officer of a society commits an offence if,—
 - (a) by false pretences or other fraud, they induce a person to give credit to the society; or 30
 - (b) with intent to defraud creditors of the society, they—
 - (i) give, transfer, or cause a charge to be given on property of the society to any person; or
 - (ii) cause property to be given or transferred to any person; or
 - (iii) cause or are a party to execution being levied against property of the society; or 35
 - (iv) do any thing that causes material loss to any creditor.

- (3) An officer of a society commits an offence if—
- (a) the society incurs a debt (the **debt**); and
 - (b) the society—
 - (i) is insolvent at the time that it incurs the debt; or
 - (ii) becomes insolvent by incurring the debt; or 5
 - (iii) is insolvent at the time that it incurs debts that include the debt; or
 - (iv) becomes insolvent by incurring debts that include the debt; and
 - (c) the officer knows, at the time when the society incurs the debt, that the society is insolvent or will become insolvent as a result of incurring the debt or other debts that include the debt; and 10
 - (d) the officer’s failure to prevent the society from incurring the debt is dishonest.
- (4) In **subsection (3)**, **insolvent** means that the society is unable to pay its debts.
- (5) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 5 years, a fine not exceeding \$200,000, or both. 15

151 Improper use of “Incorporated”, “Inc”, or “Manatōpū”

- (1) Any person who, not being an incorporated body, whether alone or with other persons, dishonestly operates under any name or title of which the word “Incorporated”, the word “Inc”, or the word “Manatōpū”, or any contraction or imitation of any of those words, is the last word commits an offence and is liable on conviction to a fine not exceeding \$10,000. 20
- (2) In **subsection (1)**, **incorporated body** means either of the following:
- (a) a society incorporated under this Act:
 - (b) an entity incorporated under any other Act or overseas law. 25

152 Banning order contravention

A person who knowingly acts in contravention of an order made under **subpart 7** commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year, a fine not exceeding \$50,000, or both.

Infringement offences 30

153 Infringement offences

- (1) A society that fails to comply with any of the provisions listed in **subsection (2)** commits an infringement offence and is liable to—
- (a) an infringement fee of an amount prescribed by the regulations; or
 - (b) a fine imposed by a court not exceeding \$3,000. 35
- (2) The provisions are—

| | | |
|------------|--|----|
| (a) | section 33 (duty to notify the Registrar of amendments to the constitution): | |
| (b) | section 47 (duty to notify Registrar of appointments and other changes relating to officers): | |
| (c) | section 73 (duty to maintain a register of members): | 5 |
| (d) | section 78(1) (duty to call annual general meeting): | |
| (e) | section 78(3) (duty to hold, and keep minutes of, annual general meetings): | |
| (f) | section 86 (duty to send copy of passed resolution in lieu of meeting to certain members): | 10 |
| (g) | section 95(3) (duty to register financial statements): | |
| (h) | section 102(1) (duty to register an annual return): | |
| (i) | section 103 (duty to have registered office): | |
| (j) | section 109 (duty to give Registrar notice of change of contact person). | |
| 154 | Proceedings for infringement offences | 15 |
| (1) | A society that is alleged to have committed an infringement offence may— | |
| (a) | be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or | |
| (b) | be issued with an infringement notice as provided in section 155 . | |
| (2) | Proceedings commenced in the way described in subsection (1)(a) do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957. | 20 |
| (3) | <i>See</i> section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued. | |
| 155 | When infringement notice may be issued | 25 |
| | The Registrar may issue an infringement notice to a society if the Registrar believes on reasonable grounds that the society is committing, or has committed, an infringement offence. | |
| 156 | Infringement notice may be revoked | |
| (1) | The Registrar may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957. | 30 |
| (2) | An infringement notice is revoked by giving written notice to the society to which it was issued that the notice is revoked. | |
| (3) | The revocation of an infringement notice is not a bar to any other enforcement action against the society to which the notice was issued in respect of the same matter. | 35 |

157 What infringement notice must contain

An infringement notice must be in the form prescribed by the regulations and must contain—

- (a) details of the alleged infringement offence that fairly inform the society of the time, place, and nature of the alleged offence; and 5
- (b) the amount of the infringement fee; and
- (c) an address for the Registrar; and
- (d) how the infringement fee may be paid; and
- (e) the time within which the infringement fee must be paid; and
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and 10
- (g) a statement that the society served with the notice has a right to request a hearing; and
- (h) a statement of what will happen if the society served with the notice does not pay the fee and does not request a hearing; and 15
- (i) any other matters prescribed by the regulations.

158 How infringement notice may be served

- (1) An infringement notice may be served on a society that the Registrar believes is committing or has committed the infringement offence by—
 - (a) delivering it to a contact person of the society or, if the contact person refuses to accept it, bringing it to the contact person's notice; or 20
 - (b) sending it to an electronic address of a contact officer or of the society; or
 - (c) sending it to the society by prepaid post addressed to the society's address for service. 25
- (2) Unless the contrary is shown,—
 - (a) an infringement notice (or a copy of it) delivered or sent to a contact person or brought to a contact person's notice under **subsection (1)(a) or (b)** must be treated as having been served on the society:
 - (b) an infringement notice (or a copy of it) sent to a valid electronic address under **subsection (1)(b)** is to be treated as having been served at the time the electronic communication first enters an information system that is outside the control of the Registrar: 30
 - (c) an infringement notice (or a copy of it) sent by prepaid post to a society under **subsection (1)(c)** is to be treated as having been served on that society on the fifth working day after the date on which it was posted. 35

159 Payment of infringement fee

The Registrar must pay all infringement fees received into a Crown Bank Account.

160 Reminder notices

A reminder notice must be in the form prescribed in regulations, and must include the same particulars, or substantially the same particulars, as the infringement notice. 5

Subpart 7—Banning order

161 Court may disqualify officers

- (1) A court may make a banning order against a person (A) if— 10
- (a) A has been convicted of an offence under **subpart 6**, or has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
 - (b) A has, while an officer of a society and whether convicted or not,—
 - (i) persistently failed to comply with this Act or, if the society has failed to so comply, persistently failed to take reasonable steps to obtain compliance with this Act; or 15
 - (ii) been guilty of fraud in relation to the society or of a breach of duty to the society; or
 - (iii) acted in a reckless or an incompetent manner in the performance of A’s duties as an officer; or 20
 - (c) A has become a mentally impaired person who, in the opinion of the court, permanently lacks wholly or partly the competence to manage their own affairs.
- (2) A banning order may, permanently or for a period specified in the order, prohibit or restrict A, without the leave of the court, from doing either or both of the following: 25
- (a) being an officer of a society;
 - (b) being concerned or taking part in the management of a society in any way (whether directly or indirectly). 30

162 When order may be permanent or for period longer than 10 years

The court may make an order under **section 161** permanent or for a period longer than 10 years only in the most serious of cases for which an order may be made.

163 Notice of banning order

- (1) The Registrar of the court must, as soon as practicable after a banning order is made, give notice that the order has been made to— 35

- (a) the Registrar of Incorporated Societies; and
 - (b) the chief executive (within the meaning of section 4(1) of the Charities Act 2005).
- (2) The Registrar of Incorporated Societies must, after receiving a notice under this section, give notice in the *Gazette* of the name of the person against whom the order is made. 5

164 Applications for orders

- (1) A person intending to apply for an order under this subpart must give not less than 10 working days' notice of that intention to the person (A) against whom the order is sought, and on the hearing of the application A may appear and give evidence or call witnesses. 10
- (2) An application for an order under this subpart may be made by—
- (a) the Registrar, the Official Assignee, or the liquidator of the society; or
 - (b) a person who is, or has been, a member or creditor of the society.

165 Right to appear and give evidence 15

- (1) This section applies on the hearing of—
- (a) an application for an order under this subpart by the Registrar, the Official Assignee, or the liquidator; or
 - (b) an application for leave under **section 161(2)** by a person against whom an order has been made on the application of the Registrar, the Official Assignee, or the liquidator. 20
- (2) The Registrar, the Official Assignee, or the liquidator (as the case may be)—
- (a) must appear and call the attention of the court to any matters that seem to them to be relevant; and
 - (b) may give evidence or call witnesses. 25

166 Liability for contravening banning order

- (1) A person who acts in contravention of an order made under this subpart is personally liable to—
- (a) a liquidator of the society for every unpaid debt incurred by the society while that person was so acting; and 30
 - (b) a creditor of the society for a debt to that creditor incurred by the society while that person was so acting.
- (2) *See also* **section 152** (offence for contravening a banning order).

Part 5

Removal from register, amalgamation, liquidation, and other processes

Subpart 1—Removal from register

- 167 Removal from register** 5
- A society is removed from the register when the Registrar, acting under **section 168**, registers a notice issued by the Registrar stating that the society is removed from the register.
- Compare: 1993 No 105 s 317
- 168 Grounds for removal from register** 10
- (1) The Registrar may remove a society from the register if—
- (a) a request that the society be removed on either of the grounds specified in **section 169** is sent or delivered to the Registrar by—
 - (i) a member authorised to make the request by a resolution of members passed under **subpart 6**; or 15
 - (ii) the committee or any person, if the society’s constitution so requires or permits; or
 - (b) the Registrar has reasonable grounds to believe that—
 - (i) the society is no longer operating; and
 - (ii) there is no proper reason for the society to continue to exist; or 20
 - (c) the Registrar has reasonable grounds to believe that—
 - (i) the society’s constitution does not comply with this Act; and
 - (ii) the failure to comply is material; or
 - (d) the Registrar has given the society written notice under **section 69** requiring the society to increase its membership to ensure that it has at least 10 members and the society has not complied as referred to in **section 69(2)**; or 25
 - (e) the Registrar has reasonable grounds to believe that the society, or 1 or more of its officers, has failed in a persistent or serious way to comply with duties relating to the society under this Act; or 30
 - (f) the Registrar has reasonable grounds to believe that the society has failed to comply with—
 - (i) any of **sections 95, 97, 98, and 102** (which relate to financial reporting and annual returns); or
 - (ii) a term or condition imposed under regulations made under **section 245(1)(q)** (which relates to the conversion of entities into incorporated societies); or 35

- (g) the society has been put into liquidation, and—
 - (i) no liquidator is acting; or
 - (ii) the documents referred to in section 257(1)(a) of the Companies Act 1993 (as applied by **subpart 4**) have not been sent or delivered to the Registrar within 6 months after the liquidation of the society is completed; or
 - (h) a liquidator sends or delivers to the Registrar the documents referred to in section 257(1)(a) of the Companies Act 1993 (as applied by **subpart 4**).
- (2) The Registrar may also remove a society from the register if the society is an amalgamating society, other than an amalgamated society, on the date set out in the certificate of amalgamation under **section 191**.

Compare: 1993 No 105 s 318(1)

169 When society may request removal

- (1) A request under **section 168(1)(a)** may be made on the grounds—
- (a) that the society has ceased to operate, has discharged in full its debts and liabilities to all its known creditors, and has distributed its surplus assets in accordance with its constitution and this Act; or
 - (b) that the society has no surplus assets after paying its debts and liabilities in full or in part, and no creditor has applied to the court under **subpart 4** for an order putting the society into liquidation.
- (2) A request must be made in the manner prescribed by the regulations (if any).

Compare: 1993 No 105 s 318(2)

Procedural requirements before removal

- 170 Notice of intention to remove from register**
- (1) The Registrar may remove a society from the register under **section 168(1)** only if—
- (a) the Registrar gives notice of the intention to remove the society from the register to the public and all other persons prescribed by the regulations (if any); and
 - (b) the Registrar—
 - (i) is satisfied that no person has objected to the removal under **section 171**; or
 - (ii) if an objection to the removal has been received, has complied with **section 172 or 173**.
- (2) The notice must—

- (a) specify the date by which an objection to the removal must be delivered to the Registrar, which must be no less than the number of working days after the date of the notice that is prescribed by the regulations; and
- (b) be given in the manner prescribed by the regulations.

Compare: 1993 No 105 s 318(5)

5

171 Objection to removal from register

(1) If a notice is given under **section 170**, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any 1 or more of the following grounds:

- (a) that the grounds for removal relied on by the Registrar do not exist; or 10
- (b) that the society is still operating or there is a proper reason for it to continue in existence; or
- (c) that the society is a party to a legal proceeding; or
- (d) that the society is in receivership, or liquidation, or both; or
- (e) that the person is a creditor or another person who has an undischarged claim against the society; or 15
- (f) that the person believes that there exists, and intends to pursue, a right of action on behalf of the society under **Part 4**; or
- (g) that, for any other reason, it would not be just and equitable to remove the society from the register. 20

(2) For the purposes of **subsection (1)(e)** and **section 181(1)(a)(iv)**, section 321(2) of the Companies Act 1993 applies with all necessary modifications as if the society were a company.

(3) An objection must, if required by the Registrar, be verified by the production of original documents or certified copies of original documents or by statutory declaration. 25

Compare: 1993 No 105 s 321

172 Objections under section 171(1)(a) to (d)

If an objection is made under **section 171(1)(a) to (d)**, the Registrar must not proceed with the removal unless the Registrar is satisfied that— 30

- (a) the objection has been withdrawn; or
- (b) any facts on which the objection is based are not, or are no longer, correct; or
- (c) despite the objection, the relevant ground for removal applies; or
- (d) the objection is frivolous or vexatious. 35

Compare: 1993 No 105 s 322(1)

173 Objections under section 171(1)(e) to (g)

- (1) If an objection is made under **section 171(1)(e) to (g)**, the Registrar may give notice to the person objecting that, unless notice of a specified application is served on the Registrar not later than 20 working days after the date of the Registrar's notice, the Registrar intends to proceed with the removal. 5
- (2) In this section, a **specified application** is an application to a court under **section 175 or 205**.
- (3) The Registrar may proceed with a removal if—
- (a) notice of a specified application is not served on the Registrar; or
 - (b) the specified application is withdrawn; or 10
 - (c) on the hearing of the specified application, the court refuses to grant either an order putting the society into liquidation or an order that the society not be removed from the register.
- (4) A person who makes a specified application must give the Registrar notice in writing of the decision of the court within 5 working days after the decision is given. 15
- (5) If a specified application is withdrawn, the person who made the specified application must, within 5 working days, give the Registrar notice in writing of the withdrawal. 20
- Compare: 1993 No 105 s 322(2)–(4)

174 Registrar must send information to person who requests removal

The Registrar must send the following to a person who sends or delivers a request under **section 168(1)(a)** or a liquidator referred to in **section 168(1)(h)**:

- (a) a copy of an objection under **section 171**: 25
- (b) a copy of a notice given by or served on the Registrar under **section 173**:
- (c) if the society is removed from the register, notice of the removal.

Compare: 1993 No 105 s 322(5)

175 Court may order that society not be removed 30

- (1) A person who gives a notice objecting to a removal on a ground specified in **section 171(1)(e) to (g)** may apply to a court for an order that the society not be removed from the register.
- (2) The court may, if it is satisfied that the society should not be removed from the register on any of the grounds in **section 171(1)**, make an order that the society is not to be removed from the register. 35

Compare: 1993 No 105 s 323

176 Liability of officers, members, and others to continue

(1) The removal of a society from the register does not affect the liability of any former officer or member of the society or any other person in respect of any act or omission that took place before the society was removed from the register. 5

(2) The liability continues and may be enforced as if the society had not been removed from the register.

Compare: 1993 No 105 s 326

Restoration to register

177 Restoration to register 10

(1) A society is restored to the register when the Registrar, acting under **section 178** or an order made under **section 181**, registers a notice issued by the Registrar stating that the society is restored to the register.

(2) A society that is restored to the register must be treated as having continued in existence as if it had not been removed from the register. 15

Compare: 1993 No 105 s 330

178 Registrar may restore society to register

(1) The Registrar must, on an application made in the manner prescribed by the regulations, and may, on the Registrar’s own motion, restore a society to the register if the Registrar is satisfied that, at the time the society was removed from the register,— 20

- (a) the grounds for the removal did not exist; or
- (b) the society was a party to a legal proceeding; or
- (c) the society was in receivership or liquidation, or both.

(2) The Registrar may, on the application made in the manner prescribed by the regulations, or on the Registrar’s own motion, restore a society to the register if the Registrar is satisfied that the society was operating at the time of its removal and there is a proper reason for the society to continue to exist. 25

(3) This section does not limit **section 181**.

Compare: 1993 No 105 s 328(1), (1A), (2)

30

179 Notice of proposed restoration

(1) The Registrar must give notice of an intention to restore a society to the register before the Registrar restores the society to the register.

(2) The notice must be given to the public and all other persons prescribed by the regulations (if any) in the manner prescribed by the regulations. 35

- (3) The notice must specify the date by which an objection to the restoration may be sent or delivered to the Registrar, which must be no less than the number of working days after the date of the notice that is prescribed by the regulations.
Compare: 1993 No 105 s 328(3)
- 180 Registrar must not restore society if objection received** 5
- (1) The Registrar must not restore a society to the register if the Registrar receives an objection to the restoration within the period stated in the notice.
- (2) However, the Registrar may restore a society to the register if the Registrar is satisfied that—
- (a) the objection has been withdrawn; or 10
- (b) any facts on which the objection is based are not, or are no longer, correct; or
- (c) the objection is frivolous or vexatious.
- Compare: 1993 No 105 s 328(4)
- 181 Court may order restoration of society** 15
- (1) A court may, on the application of a person referred to in **subsection (2)**, order that a society be restored to the register if it is satisfied that,—
- (a) at the time the society was removed from the register,—
- (i) the society was still operating or another reason existed for the society to continue in existence; or 20
- (ii) the society was a party to a legal proceeding; or
- (iii) the society was in receivership or liquidation, or both; or
- (iv) the applicant was a creditor or another person who had an undischarged claim against the society; or
- (v) the applicant believed that there existed, and intended to pursue, a right of action on behalf of the society under **Part 4**; or 25
- (b) for any other reason it is just and equitable to restore the society to the register.
- (2) The following persons may apply:
- (a) any person who is prescribed by the regulations: 30
- (b) the Registrar:
- (c) with the leave of the court, any other person.
- Compare: 1993 No 105 s 329
- 182 Registrar or court may require provisions of this Act or regulations to be complied with** 35
- The Registrar or a court may require any of the provisions of this Act or any regulations to be complied with (being provisions with which a society had

failed to comply before it was removed from the register) before restoring the society to the register under **section 178** or ordering its restoration to the register under **section 181**.

Compare: 1993 No 105 s 328(5)

- 183 Other court orders** 5
- (1) This section applies if a society is restored to the register under **section 178** or its restoration to the register is ordered under **section 181**.
- (2) A court may, on the application of the Registrar or the applicant for restoration or on its own motion, give any directions or make any orders that may be necessary or desirable for the purpose of placing the society and any other persons as nearly as possible in the same position as if the society had not been removed from the register. 10
- (3) However, a direction or an order may not require the return to the society of any surplus assets that have been properly disposed of under **subpart 5**. 15
- Compare: 1993 No 105 s 328(6)

Subpart 2—Amalgamations

184 Amalgamations

- (1) Two or more societies may amalgamate as 1 society under this subpart.
- (2) The amalgamated society may continue as— 20
- (a) one of the amalgamating societies; or
 - (b) a new society.

185 Amalgamation proposal

In this subpart, an **amalgamation proposal** is a document that—

- (a) sets out the terms of the amalgamation; and
- (b) sets out the proposed constitution of the amalgamated society; and 25
- (c) sets out all other information prescribed by the regulations (if any).

186 Information relating to proposal for members, creditors, and public

The committee of each amalgamating society must, not less than 20 working days before the amalgamation is proposed to take effect,—

- (a) send to each member of that society a copy of the amalgamation proposal and all other information prescribed by the regulations (if any); and 30
- (b) send to every secured creditor of the society a copy of the amalgamation proposal and all other information prescribed by the regulations (if any); and 35

- (c) give public notice of the proposed amalgamation in the manner prescribed by the regulations.

187 Approval of amalgamation proposal

- (1) The committee of each amalgamating society must resolve that,—
- (a) in its opinion, the amalgamation is in the best interests of the amalgamating society; and
- (b) the committee is satisfied, on reasonable grounds, that the amalgamated society will, on amalgamation, satisfy the solvency test under **section 188**.
- (2) The amalgamation proposal must be approved by each amalgamating society—
- (a) by a resolution that is approved by a simple majority or, if a higher majority is required by the constitution, that higher majority, of the votes of those members entitled to vote and voting on the question; and
- (b) in accordance with its constitution.

188 Solvency test for amalgamations

- (1) For the purposes of **section 187**, a society satisfies the **solvency test** if—
- (a) the society is able to pay its debts as they become due in the normal course of its operations; and
- (b) the value of the society's assets is greater than the value of its liabilities, including contingent liabilities.
- (2) Section 4(3) and (4) of the Companies Act 1993 applies with all necessary modifications as if references to a company were references to a society and references to directors were references to officers.

189 Officers must sign certificate

- (1) Every officer of an amalgamating society who votes in favour of a resolution under **section 187(1)** must sign a certificate stating—
- (a) that, in the officer's opinion, the conditions set out in that subsection are satisfied; and
- (b) the grounds for that opinion.
- (2) An officer who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$5,000.

190 Registration of amalgamation

The following must be sent to the Registrar for an amalgamation of 2 or more societies:

- (a) the approved amalgamation proposal; and
- (b) all certificates required under **section 189**; and

- (c) all other information prescribed by the regulations (if any); and
- (d) the fee prescribed by the regulations.

191 Certificate of amalgamation and changes to register

- (1) The Registrar must, on receiving the information under **section 190**,—
 - (a) issue a certificate of amalgamation; and 5
 - (b) if the amalgamated society is one of the amalgamating societies, make any necessary changes to that society’s registration (for example, registering its new constitution); and
 - (c) if the amalgamated society is a new society, act under **section 15(1)(a) to (c)**. 10
- (2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the information, the certificate of amalgamation and any certificate of incorporation must be expressed to take effect on the date specified in the amalgamation proposal. 15

192 Amalgamation must not proceed if Registrar considers that name does not comply

- (1) This section applies if—
 - (a) the amalgamated society is to continue under a name that is different from the name of one of the amalgamating societies; and 20
 - (b) the Registrar considers that any of **paragraphs (a) to (e) of section 11(1)** apply to the proposed name of the amalgamated society.
- (2) The Registrar must refuse to act under **section 191** until the proposed name of the amalgamated society is amended to address (to the Registrar’s satisfaction) the matter. 25

193 Amalgamation must not proceed if Registrar considers that purposes do not comply with Act

- (1) This section applies if the Registrar considers that the proposed purposes of an amalgamated society include—
 - (a) an unlawful purpose; or 30
 - (b) a purpose of carrying on the society for the financial gain of any of its members (*see subpart 2 of Part 3*).
- (2) The Registrar must refuse to act under **section 191** until the purposes are amended to address (to the Registrar’s satisfaction) the matter.

- 194 Amalgamation must not proceed if Registrar considers that constitution does not comply with Act**
- (1) This section applies if the Registrar considers that the proposed constitution of an amalgamated society does not comply with the requirements of this Act (*see subpart 3 of Part 3*). 5
- (2) The Registrar must refuse to act under **section 191** until the constitution is amended to address (to the Registrar's satisfaction) the matter referred to in **subsection (1)**.
- 195 Registrar has discretion about nature and extent of consideration of amalgamation proposal** 10
- The nature and extent of the consideration that the Registrar gives to an amalgamation proposal is at the Registrar's discretion.
- 196 Effect of certificate of amalgamation**
- On and from the date shown in a certificate of amalgamation,—
- (a) the amalgamation is effective; and 15
- (b) if it is the same as a name of one of the amalgamating societies, the amalgamated society has the name specified in the amalgamation proposal; and
- (c) the Registrar must remove the amalgamating societies, other than the amalgamated society, from the register; and 20
- (d) the amalgamated society succeeds to all the property, rights, powers, and privileges of each of the amalgamating societies; and
- (e) the amalgamated society succeeds to all the liabilities and obligations of each of the amalgamating societies; and
- (f) proceedings pending by, or against, an amalgamating society may be continued by, or against, the amalgamated society; and 25
- (g) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating society may be enforced by, or against, the amalgamated society.
- 197 Other registers** 30
- (1) Neither the Registrar-General of Land, nor any other person charged with keeping any books or registers, is obliged to change the name of an amalgamating society to that of an amalgamated society in those books or registers or in any documents solely because an amalgamation has been effected under this subpart. 35
- (2) The presentation of a specified instrument to a registrar or any other person is, in the absence of evidence to the contrary, sufficient evidence that the property to which the instrument relates has become the property of the amalgamated society.

- (3) A **specified instrument** is an instrument that—
 - (a) is executed or purports to be executed by the amalgamated society; and
 - (b) relates to any property held immediately before the amalgamation by an amalgamating society; and
 - (c) states that the property has become the property of the amalgamated society under this subpart. 5
- (4) This subpart does not limit the Land Transfer Act 2017 except as provided in this section.

198 Amalgamated society may present certificate about property of society

- (1) This section applies if— 10
 - (a) any financial products issued by a person (**A**) or any rights or interests in property of a person (**A**) become, under this subpart, the property of an amalgamated society; and
 - (b) a certificate signed on behalf of the committee of the amalgamated society is presented to **A**, stating that those products, rights, or interests have, under this subpart, become the property of the amalgamated society. 15
- (2) Despite any other enactment or rule of law, **A**, on presentation of the certificate, must register the amalgamated society as the holder of the financial products or as the person entitled to the rights or interests.
- (3) This section does not limit **section 197**. 20
- (4) In this section, **financial products** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013.

199 Powers of court in other cases

- (1) This section applies if a creditor of an amalgamating society, or any other person to whom an amalgamating society is under an obligation, believes that the creditor or other person would be unfairly prejudiced by a proposed amalgamation. 25
- (2) The creditor or other person may, before the date on which the amalgamation becomes effective, apply to the court for an order under this section.
- (3) The court may, if it is satisfied that the creditor or other person would be unfairly prejudiced by the proposed amalgamation, make any order that the court thinks fit in relation to the proposal, including— 30
 - (a) directing that effect must not be given to the proposal;
 - (b) modifying the proposal in any manner specified in the order;
 - (c) directing the amalgamating society or its committee to reconsider the proposal or any part of it. 35
- (4) An order may be made on the conditions that the court thinks fit.

Subpart 3—Compromises with creditors

200 Compromises with creditors

- (1) Part 14 and Schedule 5 of the Companies Act 1993 apply to a society with all necessary modifications as if it were a company.
- (2) For the purposes of this subpart, a reference in Part 14 or Schedule 5 of the Companies Act 1993 to—
- (a) a creditor must be treated as including a reference to—
 - (i) a person who, in a liquidation, would be entitled to claim that the society owes a debt to them; and
 - (ii) a secured creditor: 10
 - (b) the board of directors of the company must be treated as a reference to the committee of the society:
 - (c) a shareholder of the company must be treated as a reference to a member of the society:
 - (d) a reference to the Registrar must be treated as a reference to the Registrar as defined in **section 5**. 15

Subpart 4—Liquidation

Members may resolve to put society into liquidation

201 Members may resolve to put society into liquidation

A society may be put into liquidation if the society passes a resolution appointing a liquidator under **subpart 6**. 20

202 Application of Companies Act 1993 where members resolve to put society into liquidation

- (1) Part 16 of the Companies Act 1993 applies to the liquidation of the society under **section 201**, with all necessary modifications, as if the society were a company that had been put into liquidation under section 241(2)(a) of that Act. 25
- (2) For the purposes of this section, a reference in Part 16 of the Companies Act 1993 to—
- (a) the board of directors of the company must be treated as a reference to the committee of the society: 30
 - (b) a shareholder of the company must be treated as a reference to a member of the society:
 - (c) a reference to the Registrar must be treated as a reference to the Registrar as defined in **section 5**.
- (3) This section is subject to the rest of this Act and to the regulations. 35

*High Court may put society into liquidation***203 High Court may put society into liquidation**

The High Court may put a society into liquidation by the appointment as liquidator of a named person or of an Official Assignee if any of the following circumstances exist:

- (a) the members of the society are reduced in number to fewer than 10; or
- (b) the society suspends its operations for 1 year or more; or
- (c) the society is unable to pay its debts; or
- (d) the society's constitution does not comply with the requirements of this Act; or
- (e) the society carries on any operations under which a member derives a financial gain contrary to the provisions of this Act; or
- (f) incorporation has been obtained for the society by fraud or mistake; or
- (g) the society exists for an illegal purpose; or
- (h) there has been, in relation to the society, failure to comply with any provision of, or any order given under, this Act; or
- (i) the High Court is satisfied that it is just and equitable that the society should be put into liquidation.

204 Limit on liquidation where society has fewer than 10 members

- (1) A society may be put into liquidation in the circumstance specified in **section 203(a)** only if—
 - (a) the application for the appointment of a liquidator of the society is made by the Registrar; and
 - (b) the Registrar has complied with **section 69** (which requires the Registrar to give a society 6 months' notice to increase its membership).
- (2) Nothing in this section or **section 69** prevents a society from being put into liquidation under **section 203(b) to (i)**.

205 Application to court to appoint liquidator

- (1) An application to the High Court for the appointment of a liquidator of a society must be made by—
 - (a) the society; or
 - (b) a member; or
 - (c) a creditor; or
 - (d) the Registrar.
- (2) All costs incurred by the Registrar in making an application must be a first charge on the assets of the society (unless the court orders otherwise).

206 Application of Companies Act 1993 where High Court puts society into liquidation

- (1) Part 16 of the Companies Act 1993 applies, with all necessary modifications,—
- (a) to an application under **section 205** as if the application were an application under section 241(2)(c) of that Act; and 5
 - (b) to the liquidation as if the liquidator had been appointed under section 241(2)(c) of that Act.
- (2) For the purposes of this section, a reference in Part 16 of the Companies Act 1993 to—
- (a) the board of directors of the company must be treated as a reference to the committee of the society: 10
 - (b) a shareholder of the company must be treated as a reference to a member of the society:
 - (c) a reference to the Registrar must be treated as a reference to the Registrar as defined in **section 5**. 15
- (3) This section is subject to the rest of this Act and to the regulations.

Subpart 5—Other matters relating to removal or liquidation of society**207 Application of subpart**

- (1) This subpart applies if a society—
- (a) has been removed from the register under **subpart 1**; or 20
 - (b) is in liquidation.
- (2) This subpart also applies for the purposes of **section 169(1)(a)** (to enable a society to request to be removed from the register).

208 Who may act under subpart

- (1) The following persons may act under this subpart: 25
- (a) a person authorised in a direction given by the Registrar in the case of **section 207(1)(a)**;
 - (b) the liquidator in the case of **section 207(1)(b)**;
 - (c) the society in the case of **section 207(2)**.
- (2) In this subpart, **relevant person** means the authorised person, the liquidator, or the society, as the case may be. 30

209 Rules for disposal of surplus assets

- (1) The relevant person must take reasonable steps to ensure that the surplus assets of the society after the payment of all costs, debts, and liabilities are disposed of to 1 or more not-for-profit entities in accordance with the following rules: 35

- (a) the assets must be distributed to the entity nominated in the society’s constitution under **section 26(1)(l)** unless more than 1 not-for-profit entity has been nominated by name, class, or description (subject to **section 211**):
- (b) if more than 1 not-for-profit entity has been nominated by name, class, or description in the society’s constitution under **section 26(1)(l)**, the assets must be distributed to those not-for-profit entities in the following manner (subject to **section 211**):
- (i) in the manner provided by the society’s constitution (unless that manner does not result in reasonable certainty about the allocation to each entity); or
- (ii) in the manner specified in a resolution approved under **subpart 6** (if the society’s constitution does not result in reasonable certainty about the allocation to each entity):
- (c) if a resolution has been approved under **subpart 6** for the purposes of this paragraph, the assets must be distributed to 1 or more not-for-profit entities in the manner specified in that resolution:
- (d) the assets must be distributed as the Registrar directs (after the Registrar has had regard to the matters provided for in the society’s constitution under **section 26(1)(l)**) if the Registrar is satisfied that—
- (i) **subsection (2)** applies; and
- (ii) an effective resolution has not been approved under **subpart 6** for the purposes of **paragraph (c)**.
- (2) This subsection applies if the Registrar is satisfied that—
- (a) the assets cannot reasonably be disposed of under **subsection (1)(a) or (b)**; or
- (b) the society or a person of a class prescribed by the regulations requests in the manner prescribed by the regulations (if any) that the Registrar act under **subsection (1)(d)**; or
- (c) the circumstances prescribed in the regulations exist.
- (3) If 1 or more entities that were nominated in the society’s constitution under **section 26(1)(l)** are not not-for-profit entities or for any reason are unable or unwilling to receive the surplus assets, those entities must be disregarded.
- 210 How resolution may be passed after society is removed**
- (1) If a society has been removed from the register, the society may, with the approval of the Registrar, be treated as being still in existence for the purposes of passing a resolution under **subpart 6**.
- (2) That subpart applies with all necessary modifications, including—

- (a) treating a reference to the committee of the society as a reference to the committee that held office immediately before the removal; and
 - (b) treating a reference to members as a reference to the persons who were members immediately before the removal; and
 - (c) any other modifications authorised by the Registrar. 5
- 211 When distribution under constitution does not apply**
- Section 209(1)(a) and (b)** does not apply if—
- (a) the not-for-profit entity or entities cannot be identified with reasonable certainty or no nominated not-for-profit entities currently exist; or
 - (b) an effective resolution has been approved under **subpart 6** for the purposes of **section 209(1)(c)**; or 10
 - (c) the Registrar has decided that **section 209(2)** applies or has made a direction under **section 209(1)(d)**.
- 212 Extent of inquiries that must be made**
- The relevant person is only required to make reasonable inquiries for the purpose of identifying the not-for-profit entity or entities to which the surplus assets of the society must be disposed of under **section 209(1)(a) or (b)**. 15
- 213 Other provisions relating to person authorised by Registrar**
- (1) A person (**A**) authorised in a direction given by the Registrar under **section 208(1)(a)** is immune from liability in civil proceedings for good-faith actions or omissions in the performance or exercise or intended performance or exercise of their duties, functions, or powers under this subpart. 20
 - (2) The costs referred to in **section 209** that must be paid before the surplus assets are disposed of include the fees and expenses properly incurred by **A** in the performance or exercise of their duties, functions, or powers under this subpart. 25
- 214 Directions to facilitate liquidation or removal of society**
- The Registrar may give 1 or more of the following directions:
- (a) a direction vesting all or any of the assets of the society without transfer, conveyance, or assignment in 1 or more persons who are specified in the direction (subject to all charges, encumbrances, estates, and interests affecting the assets): 30
 - (b) if anything remains to be done to complete any matters outstanding on the liquidation or removal of the society or to provide for the payment of the costs, debts, and liabilities of the society, the directions that are necessary or desirable to provide for the completion and payment: 35
 - (c) a direction that is otherwise necessary or desirable to facilitate the distribution of the society’s surplus assets (if any):

- (d) a direction conferring on a person the powers that are necessary or desirable to enable the person to carry out the functions and duties imposed on the person by a direction given under **section 208(1)(a), 209, or 215** or this section.

215 Distribution after lapse of time 5

- (1) This section applies if,—
- (a) after assets of a society have been disposed of under **section 209**, further assets of the society come to the attention of the Registrar; and
- (b) the Registrar considers, after taking into account the length of time since the society was liquidated or removed from the register, that it is necessary or desirable to dispose of the further assets under this section. 10
- (2) The assets must be disposed of to 1 or more not-for-profit entities in accordance with a direction given by the Registrar.
- (3) For the purposes of **subsection (2)**, the Registrar must have regard to the matters provided for in the society’s constitution under **section 26(1)(l)**. 15

Example

An incorporated society (**A**) is removed from the register. The assets that are known about at the time are distributed, in accordance with a resolution, under **section 209(1)(c)**.

However, it is discovered 10 years later that another piece of land is still in A’s name. 20

Given the lapse of time since A was removed from the register, the Registrar considers that it is impracticable to dispose of the land under **section 209**. Therefore, the Registrar decides to dispose of the land by a direction under this section.

216 Direction relating to land 25

- (1) This section applies if, by a direction under this subpart, an estate or interest in land under the Land Transfer Act 2017 is vested in a person.
- (2) The Registrar-General of Land, on receiving an application made in the manner prescribed by the regulations (if any), must alter the register of land, and generally do all of the things that may be necessary, to give full effect to the direction. 30
- (3) **Subsection (2)** applies subject to the provisions of the direction.

217 No appeal against Registrar’s decision

A person may not appeal against a decision or direction of the Registrar made or given under this subpart. 35

Subpart 6—Procedure for certain resolutions

218 Application of subpart

This subpart applies to a resolution—

- (a) to authorise a member of a society to request the society's removal from the register under **subpart 1**; or 5
- (b) for the purposes of **section 209** (being a resolution that provides for the distribution of a society's surplus assets under **subpart 5**); or
- (c) to appoint a liquidator of a society.

219 Notice of resolutions

- (1) The committee of the society must ensure that written notice of the resolution is sent to every member of the society at least 20 working days before the general meeting at which the resolution is to be submitted. 10
- (2) The notice must be sent to an address for the member and otherwise in accordance with the society's constitution.
- (3) The notice must state— 15
 - (a) the time and place of the meeting; and
 - (b) the nature of the business to be transacted at the meeting in sufficient detail to enable a member to form a reasoned judgement in relation to it; and
 - (c) the text of the resolution to be submitted to the meeting; and 20
 - (d) the right of a member to appoint a proxy (if allowed by the society's constitution); and
 - (e) in the case of a resolution for the purpose of **section 209(1)(c)**, a statement confirming that the committee has had regard to the purposes of the society under **section 221**; and 25
 - (f) any other information required by the society's constitution.
- (4) In this section, **address**, of a person (**A**), means—
 - (a) the address (including an electronic address) specified by A for the relevant purpose; or
 - (b) the actual or last known address (including an electronic address) for A, 30
 - (i) **paragraph (a)** does not apply; or
 - (ii) the society knows that the address referred to in **paragraph (a)** is not correct.

220 Approval of resolution

35

- (1) The resolution is effective only if—

- (a) it is approved by a simple majority or, if a higher majority is required by the constitution, that higher majority, of the votes of those members entitled to vote and voting on the question; and
 - (b) in the case of a resolution for the purposes of **section 209**,—
 - (i) it results in reasonable certainty about the distribution of surplus assets to 1 or more not-for-profit entities; and 5
 - (ii) all procedural requirements prescribed by the regulations (if any) are satisfied; and
 - (c) all other procedural requirements of the society’s constitution are satisfied (for example, a constitution may require the resolution to be confirmed at a subsequent general meeting). 10
- (2) An accidental omission to send a notice under **section 219** to, or a failure to receive such a notice by, a member of a society does not invalidate the resolution.

221 Additional requirement for resolution providing for distribution of surplus assets 15

- (1) This section applies to a resolution for the purposes of **section 209(1)(c)**.
- (2) The committee of the society must, in considering the not-for-profit entity or entities to which it is proposed that the surplus assets will be distributed in accordance with the resolution, have regard to the purposes of the society. 20
- (3) *See also section 210* (which provides for how a resolution may be passed after the society has been removed).

Part 6

Register, regulations, amendments, and other miscellaneous provisions 25

Subpart 1—Register of incorporated societies

Register established

222 Register of incorporated societies

- (1) A register called the register of incorporated societies is established.
- (2) The register must be an electronic register. 30
- (3) The register must be operated at all times unless—
 - (a) the Registrar suspends the operation of the register, in whole or in part, under **subsection (4)**; or
 - (b) otherwise provided in regulations.

- (4) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practical to provide access to the register.

Compare: 2005 No 39 s 21

- 223 Purpose of register** 5
- The purpose of the register is—
- (a) to enable a member of the public to—
 - (i) determine whether an entity is a society under this Act; and
 - (ii) obtain information about the nature, activities, and purposes of a society; and 10
 - (iii) know how to contact a society; and
 - (b) to assist any person—
 - (i) in the exercise of the person’s powers under this Act or any other enactment; or
 - (ii) in the performance of the person’s functions under this Act or any other enactment. 15

224 Contents of register

- (1) The register must contain the following information for each society:
- (a) the name of the society; and
 - (b) the registered office of the society; and 20
 - (c) the registration number of the society (if any); and
 - (d) the New Zealand Business Number of the society; and
 - (e) the names of the officers of the society and of all persons who have been officers of the society since the society was first registered as a society under this Act; and 25
 - (f) a copy of the constitution of the society (and copies of any amendments to the constitution); and
 - (g) notices of change of registered office, notices of the appointment of officers, notices of change of name, and notices of special resolutions; and
 - (h) the financial statements and annual returns given to the Registrar by the society; and 30
 - (i) any other information prescribed by the regulations.
- (2) This section is subject to **section 225**.

- 225 Registrar may remove or omit information and may restrict public access**
- (1) The Registrar may remove or omit from the register any information that relates to a society if the Registrar considers, in the public interest, that the information should not form part of the register.
- (2) The Registrar may, on a request from a society or an individual referred to in **paragraph (b)** or on the Registrar’s own motion, prevent or restrict public access to any information that relates to—
- (a) the society if the Registrar considers, in the public interest, that public access to that information should be prevented or restricted; or
- (b) an individual if the Registrar considers that public access to that information would be likely to prejudice the privacy or personal safety of any person.
- (3) For the purposes of **subsection (2)**, the Registrar may prevent or restrict access subject to any terms and conditions that the Registrar thinks fit.
- (4) This section does not limit the Official Information Act 1982. 15

Compare: 2005 No 39 s 25

226 Amendments to register

The Registrar may make any amendments to the register that are necessary—

- (a) to reflect any changes in the information that relates to a society; or
- (b) to rectify or correct the register if the Registrar is satisfied that any information—
- (i) has been wrongly entered in, or omitted from, the register; or
- (ii) has been incorrectly entered in the register; or
- (iii) contains a typographical error or a mistake; or
- (c) for the purposes of **section 225**; or 25
- (d) to comply with any court order.

Compare: 2005 No 39 s 26

227 Registration of documents or other information

- (1) If this Act or the regulations require or permit a document or other information to be registered or given to the Registrar, the document or information must be given in the manner specified by the Registrar (who, for example, may specify a form to be used or require notification by electronic means, or may specify any of the matters referred to in **section 245(1)(b)(i) to (iv)**). 30
- (2) The Registrar may refuse to perform or exercise a function, power, or duty in relation to the document or information if— 35
- (a) **subsection (1)** is not complied with; or

- (b) the requirements of the Act or the regulations have otherwise not been complied with (for example, where a document is not given in the manner prescribed by the regulations).
- (3) Neither registration nor refusal of registration of a document or other information by the Registrar affects, or creates a presumption about, the validity or invalidity of the document or information or the correctness or otherwise of any information (unless this Act otherwise provides). 5

Searches of register

228 Search of register

- (1) A person may search the register under this Act or the regulations. 10
- (2) The register may be searched only by reference to the following criteria:
 - (a) the name of the society:
 - (b) the registration number of the society (if any):
 - (c) the New Zealand Business Number of the society:
 - (d) the name of an officer of the society: 15
 - (e) any other criteria prescribed by the regulations.

229 Search purposes

A search of the register may be carried out only by the following persons for the following purposes:

- (a) a person for the purpose of determining whether an entity is a society under this Act: 20
- (b) a person for the purpose of obtaining information about the nature, activities, and purposes of a society:
- (c) a person for the purpose of knowing how to contact a society:
- (d) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual: 25
- (e) a person for the purpose of assisting the person in the exercise of the person's powers under this Act or any other enactment:
- (f) a person for the purpose of assisting the person in the performance of the person's functions under this Act or any other enactment. 30

Compare: 2005 No 39 s 28

230 When search constitutes interference with privacy of individual

A search of the register for personal information that has not been carried out in accordance with **sections 228 and 229** constitutes an action that is an interference with the privacy of an individual under section 69 of the Privacy Act 2020. 35

Compare: 2005 No 39 s 29

Registrar of Incorporated Societies

231 Registrar of Incorporated Societies

- (1) The chief executive of the Ministry must appoint, under the Public Service Act 2020, the Registrar of Incorporated Societies.
- (2) The Registrar is an employee of the Ministry, and the appointment may be held separately or in conjunction with any other office in the Ministry. 5

232 Functions of Registrar

The functions of the Registrar are, in accordance with this Act and the regulations, to—

- (a) consider applications under **Part 2**: 10
- (b) maintain the register and carry out other functions relating to the register:
- (c) receive financial statements, annual returns, and other documents for registration under this Act:
- (d) perform or exercise functions, duties, and powers conferred on the Registrar relating to the liquidation of societies, the removal of societies from the register, or matters of enforcement: 15
- (e) perform or exercise other functions, duties, and powers conferred on the Registrar by this Act or the regulations.

233 Power of Registrar to delegate 20

- (1) The Registrar may delegate to any employee of the public service (within the meaning of the Public Service Act 2020), either generally or particularly, any of the Registrar’s functions, duties, and powers (except this power of delegation).
- (2) A delegation— 25
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar. 30
- (3) Any reference in this Act or the regulations to the Registrar includes a reference to the delegate in respect of anything delegated to that person.

234 How delegated functions may be performed

- (1) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation. 35

- (2) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Registrar's powers of inspection

235 Registrar's powers of inspection

- (1) The Registrar or a person authorised by the Registrar may exercise 1 or more of the powers referred to in **section 236**—
- (a) for the purpose of—
- (i) ascertaining whether a society or an officer of a society is complying, or has complied, with this Act; or
- (ii) ascertaining whether the Registrar should exercise any of their rights or powers under this Act; or
- (iii) ascertaining whether there has been a contravention of this Act; but
- (b) only if, in the Registrar's opinion, it is in the public interest to do so.
- (2) A person who is authorised by the Registrar must be an employee of the public service (within the meaning of the Public Service Act 2020).
- (3) Nothing in this section limits or affects the Tax Administration Act 1994 or the Statistics Act 1975.

Compare: 1993 No 105 s 365

236 What powers may be exercised

- (1) The powers are as follows:
- (a) to require a person, in the manner specified by the Registrar or authorised person, to produce for inspection relevant documents within that person's possession or control;
- (b) to inspect and take copies of relevant documents;
- (c) to take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies;
- (d) to retain relevant documents for a period that is, in all the circumstances, reasonable if there are reasonable grounds for believing that they are evidence of the commission of an offence.
- (2) A person who fails to comply with a requirement under **subsection (1)(a)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (3) A person referred to in **subsection (1)(a)** includes a person carrying on the business of banking.
- (4) Every person has the same privileges in relation to producing relevant documents under this section as witnesses have in proceedings before a court (*see* subpart 8 of Part 2 of the Evidence Act 2006).

- (5) In this section, **relevant document**, in relation to a society, means a document that contains information relating to—
- (a) the society; or
 - (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the society.

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Compare: 1993 No 105 s 365

237 Offence to obstruct or hinder

A person commits an offence and is liable on conviction to a fine not exceeding \$10,000 if the person obstructs or hinders the Registrar or a person authorised by the Registrar while exercising a power conferred by **section 235**.

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238 Disclosure of information and reports

- (1) This section applies to a person (A) who is authorised by the Registrar for the purpose of **section 235** and who has—
- (a) obtained a document or other information in the course of making an inspection under that section; or
 - (b) prepared a report in relation to an inspection under that section.
- (2) A must, if directed to do so by the Registrar, give the document, information, or report to—
- (a) the Registrar; or
 - (b) the Minister; or
 - (c) the chief executive of the Ministry; or
 - (d) any person authorised by the Registrar to receive the document, information, or report for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or
 - (e) a liquidator for the purposes of the liquidation of a society; or
 - (f) any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting offences against any Act.
- (3) A must not disclose that document, information, or report except—
- (a) under **subsection (2)**; or
 - (b) subject to the approval of the Registrar, with the consent of the person to whom it relates; or
 - (c) subject to the approval of the Registrar, for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or
 - (d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or
 - (e) subject to the approval of the Registrar, to a liquidator for the purposes of the liquidation of a society; or

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- (f) in the course of criminal proceedings; or
 - (g) subject to the approval of the Registrar, for the purpose of detecting offences against any Act.
- (4) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$10,000. 5
- Compare: 1993 No 105 s 366

239 Inspector's report admissible in liquidation proceedings

Despite any other Act or rule of law, a report prepared by a person in relation to an inspection carried out by the person under **section 235** is admissible in evidence at the hearing of an application to the court to appoint a liquidator. 10

Compare: 1993 No 105 s 369

Appeals against Registrar's decisions

240 Appeals against Registrar's decisions

- (1) A person who is aggrieved by an act or a decision of the Registrar under this Act may appeal to the **District Court within 28 working days** after the date of notification of the act or decision, or within any further time that the court may allow. 15
- (2) On hearing the appeal, **the District Court may** approve the Registrar's act or decision or may give any directions or make any determination in the matter that the court thinks fit. 20
- (3) Despite **subsection (1)**, there is no appeal against an act or a decision of the Registrar under—
- (a) **subpart 1, 2, or 4 of Part 4** (for example, there is no appeal against the Registrar's decision on whether or not to make an application under any of those subparts): 25
 - (b) **section 208(1)(a), 209(1)(d), 214, or 215.**

Compare: 1993 No 105 s 370

241 Exercise of powers under section 235 not affected by appeal

- (1) If a person appeals or applies to the court in relation to an act or a decision of the Registrar or a person authorised by the Registrar under **section 235**, until a decision on the appeal or application is given,— 30
- (a) the Registrar, or that person, may continue to exercise the powers under that section as if no appeal or application had been made; and
 - (b) no person is excused from fulfilling an obligation under that section by reason of that appeal or application. 35
- (2) **Subsection (1)** applies despite any other provision of any Act or any rule of law, but is subject to **subsection (3)**.
- (3) If the appeal or application is allowed or granted,—

- (a) the Registrar must ensure that, promptly after the decision of the court is given, any copy of a document taken or retained by the Registrar, or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and
- (b) no document or other information acquired under **section 236** in relation to that act or decision is admissible in evidence in any proceeding unless the court hearing the proceeding in which it is sought to offer the evidence is satisfied that it was not obtained unfairly. 5

Compare: 1993 No 105 s 371

Sharing of information relating to charitable entities 10

242 Sharing of information relating to charitable entities

- (1) The Registrar may provide to the Charities Act chief executive any information, or a copy of any document, that the Registrar—
 - (a) holds in relation to the performance or exercise of the Registrar’s functions, powers, or duties; and 15
 - (b) considers may assist that chief executive in the performance or exercise of their functions, powers, or duties under the Charities Act 2005.
- (2) The Registrar may use any information, or a copy of any document, provided to them by the Charities Act chief executive under the Charities Act 2005 in the Registrar’s performance or exercise of the Registrar’s functions, powers, or duties. 20
- (3) In this section,—

Charities Act chief executive means the chief executive within the meaning of section 4 of the Charities Act 2005

Registrar’s functions, powers, or duties means the Registrar’s functions, powers, or duties under this Act or any other enactment (including functions, powers, or duties as the Registrar under 1 or more of the Companies Act 1993, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and the Financial Markets Conduct Act 2013). 25

- (4) This section applies despite anything to the contrary in any contract, deed, or document. 30
- (5) Nothing in this section limits the Privacy Act 2020.

Compare: 1993 No 105 s 371A

Subpart 2—Jurisdiction

243 Jurisdiction of District Court 35

- (1) The District Court may hear and determine appeals against the Registrar’s decisions.

- (2) The District Court may hear and determine applications for orders, or for a court to exercise any other power, under any of the provisions of this Act if—
- (a) the amount claimed or the value of the property in dispute does not exceed \$350,000; or
 - (b) no amount is claimed and there is no property in dispute; or 5
 - (c) the occasion for the making of the order or the exercise of the power arises in the course of civil proceedings properly before the court; or
 - (d) the parties agree, under section 81 of the District Court Act 2016, that the District Court has jurisdiction to hear and determine the application.
- (3) **Subsection (2)** does not limit **subsection (1)**. 10
- (4) Despite **subsection (2)**, the District Court does not have jurisdiction to hear and determine an application or other matter if this Act expressly provides that the High Court is to exercise the power in relation to the matter (for example, applications for a society to be put into liquidation).

244 Jurisdiction of High Court 15

The High Court may hear and determine the following matters:

- (a) applications for orders, or for a court to exercise any other power, under any provision of this Act:
- (b) appeals arising from any proceeding in the District Court under this Act.

Subpart 3—Regulations 20

245 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing information that must be included or provided for the purposes of this Act: 25
 - (b) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing—
 - (i) by whom, when, where, and how the thing must be done: 30
 - (ii) the form that must be used in connection with doing the thing: 30
 - (iii) what information or other evidence or documents must be provided in connection with the thing: 30
 - (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply: 30
 - (v) that fees or charges must be paid in connection with doing the thing: 35

- (vi) that the Registrar may determine or prescribe any of the matters under **subparagraphs (i) to (iv)**:
- (c) declaring any class or classes of persons to be, or not to be, officers for the purposes of this Act:
- (d) prescribing changes for the purposes of **section 47(1)(c)**: 5
- (e) prescribing kinds of societies for the purposes of **section 78(4)**:
- (f) prescribing requirements under **section 97(b)** (financial statements of small societies):
- (g) setting the infringement fee for each infringement offence, which must not exceed \$1,000: 10
- (h) prescribing information to be included in infringement notices and reminder notices and the form of notices:
- (i) prescribing matters for the purposes of **subpart 1 of Part 5**, including prescribing persons for the purposes of **sections 170(1)(a), 179(2), and 181**: 15
- (j) prescribing matters for the purposes of **subpart 5 of Part 5**, including prescribing persons for the purposes of **section 209(2)(b)** and circumstances for the purposes of **section 209(2)(c)**:
- (k) prescribing procedural requirements for resolutions referred to in **section 220(1)(b)**: 20
- (l) prescribing the manner of serving documents on a society and when the documents are treated as received:
- (m) prescribing how information may or must be given to, provided to, or served on any person under this Act and other matters relating to that procedure (including when the information is treated as received, or as having been given, provided, or served, for the purposes of this Act and the regulations): 25
- (n) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for the register, including matters that relate to— 30
- (i) the operation of the register:
- (ii) the form of the register:
- (iii) the information to be contained in the register:
- (iv) access to the register:
- (v) search criteria for the register:
- (vi) circumstances in which amendments must be made to the register: 35
- (o) specifying Acts for the purposes of **section 248 and Schedule 3** (which allow an entity formed or incorporated by or under a specified Act to apply to be reregistered as an incorporated society):

- (p) specifying the preconditions that must be met for a body corporate or other association (an **entity**) to be reregistered as an incorporated society under **section 248 and Schedule 3**;
- (q) specifying terms and conditions that must be complied with by an entity after it has reregistered as an incorporated society under **section 248 and Schedule 3**;
- (r) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations under **subsection (1)(o) to (q)** may be made only on the recommendation of the Minister.
- (3) The Minister may make a recommendation under **subsection (2)** in relation to an entity, or an entity of a particular type, that is formed or incorporated by or under an Act (the **specified Act**) only if—
- (a) the Minister is satisfied that allowing the entity, or an entity of that type, to reregister as an incorporated society—
- (i) is not materially inconsistent with the purposes of the specified Act; and
- (ii) is otherwise appropriate (having regard to whether the matter would be more appropriately dealt with by way of parliamentary enactment); and
- (b) in the case of a specified Act that imposes significant duties or requirements on the entity or on an entity of that type, the Minister is satisfied that an entity that is reregistered as an incorporated society will continue to be subject to substantially similar, or stricter, duties or requirements (subject to any minor or technical changes); and
- (c) the Minister has consulted the persons (or representatives of the persons) that the Minister considers will be substantially affected by the regulations, and those persons have had the opportunity to comment to the Minister.
- (4) Different matters for the purposes of this Act may be prescribed by the regulations for different classes of persons or different classes of circumstances.
- (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 246 Fees**
- (1) The Governor-General may, by Order in Council, make regulations prescribing—
- (a) fees or other amounts payable to the Registrar for the performance of functions or the exercise of powers under this Act or the regulations or the manner in which those fees or amounts may be calculated;

- (b) amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by or under this Act: 5
- (c) fees or other amounts payable to the Registrar for any other matter under this Act or the regulations or the manner in which those fees or amounts may be calculated. 5
- (2) The Registrar may refuse to perform a function or exercise a power until the fee or amount prescribed by the regulations is paid.
- (3) The regulations may authorise the Registrar to refund or waive, in whole or in part and on the conditions that may be prescribed, payment by 1 or more named persons of any fee or amount referred to in this section. 10
- (4) A fee or an amount payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Crown.
- (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15
- 247 Transitionals, savings, and orderly implementation of Act**
- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for any of the following purposes:
 - (a) providing that, subject to any conditions stated in the regulations, transitional or savings provisions prescribed by the regulations that relate to the implementation of this Act (in addition to, or in substitution for, any other transitional provisions in **Schedule 1**) apply during the whole or any part of the transitional implementation period ending on the 5-year date: 20
 - (b) providing that, subject to any conditions stated in the regulations, specified provisions of this Act (including definitions and any transitional provisions in **Schedule 1**), or provisions of other enactments amended, revoked, or repealed by this Act, do not apply, or continue to apply or apply with modifications or additions, or both, during the whole or any part of the transitional implementation period ending on the 5-year date: 25 30
 - (c) prescribing matters for the purposes of **Part 1 of Schedule 1**.
- (2) The Minister must not recommend the making of regulations under this section unless the Minister is satisfied that the regulations—
 - (a) are necessary or desirable for the orderly implementation of this Act; and 35
 - (b) are consistent with the purposes of this Act.
- (3) This section is repealed on the close of the 5-year date.
- (4) Any regulations made under this section that are in force on the 5-year date are revoked on the close of that day.

- (5) Nothing in **Schedule 1** limits this section.
- (6) In this section, **5-year date** means the date that is 5 years after the date on which this section comes into force.
- (7) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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Subpart 4—Conversion of entities into incorporated societies

248 **Entities formed or incorporated by other Acts may convert to be incorporated societies**

A body corporate or other association that is formed or incorporated by or under an Act that is specified by the regulations for the purposes of this section may be reregistered as an incorporated society under this Act in accordance with **Schedule 3**.

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249 **Consequences of failing to comply with terms or conditions of conversion**

- (1) This section applies if an incorporated society fails to comply with a term or condition imposed under regulations made under **section 245(1)(q)**.
- (2) The court may make 1 or more of the orders specified in **section 121** as if the term or condition were a provision of the society's constitution.
- (3) For the purposes of **subsection (2)**, **subpart 1 of Part 4** applies with all necessary modifications as if the term or condition were a provision of the society's constitution.
- (4) *See also* **section 168**, which specifies the failure as a ground that allows the Registrar to remove the society from the register.

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Subpart 5—Amendments to Charitable Trusts Act 1957

250 **Amendments to Charitable Trusts Act 1957**

This subpart amends the Charitable Trusts Act 1957.

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251 **Section 6 amended (Interpretation)**

- (1) In section 6, repeal the definition of **Assistant Registrar**.
- (2) In section 6, replace the definition of **Registrar** with:
- Registrar** means the Registrar of Incorporated Societies under the Incorporated Societies Act **2021**

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252 **Section 8 replaced (Society may apply for incorporation)**

Replace section 8 with:

8 Applications for incorporation may no longer be made by societies

- (1) An application for the incorporation of a society as a board under this Part may not be made on or after the commencement date.

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|------------|--|----|
| (2) | An application for the incorporation of a society as a board under this Part that is made before the commencement date must be considered and determined as if the Incorporated Societies Act 2021 had not been enacted. | |
| (3) | In this section, the commencement date means the date on which section 252 of the Incorporated Societies Act 2021 comes into force. | 5 |
| (4) | <i>See</i> section 30A , which allows a society that is incorporated as a board under this Part to choose to reregister as a society under the Incorporated Societies Act 2021 . | |
| 253 | Section 9 amended (Manner in which society may authorise application) In section 9, replace “sections 7 and 8” with “section 7”. | 10 |
| 254 | Section 10 amended (Applications for incorporation) | |
| (1) | In section 10(2)(a), delete “or society”. | |
| (2) | Repeal section 10(2)(c). | |
| (3) | Replace section 10(3) with: | |
| (3) | If the Registrar considers that any documents accompanying an application do not disclose sufficient information regarding the trusts on which any property is held by the applicant or applicants, the Registrar may refuse to register the trustees as provided in this Part until the further information that the Registrar requires is supplied to the Registrar. | 15 |
| 255 | Section 11 amended (Registration of boards) | 20 |
| (1) | In section 11(1), delete “or society (as the case may be)”. | |
| (2) | Replace section 11(1)(a) with: | |
| (a) | enter the name of the board in the register kept by the Registrar under this Part, together with details of the place of the board’s registered office and any other details that the Registrar thinks fit: | 25 |
| 256 | Section 17 amended (Right to appeal to court) In section 17(1), delete “, or that a society is not to be so registered.”. | |
| 257 | New section 30A inserted (Society may reregister under Incorporated Societies Act 2021) After section 30, insert: | 30 |
| 30A | Society may reregister under Incorporated Societies Act 2021 | |
| (1) | A society incorporated as a board under this Part may continue to be incorporated under this Part as if this Act had not been amended by sections 250 to 258 of the Incorporated Societies Act 2021 . | |

(2) However, a society incorporated as a board under this Part may apply to be reregistered as a society under the Incorporated Societies Act 2021 under **Part 1 of Schedule 1** of that Act (*see clause 2(4)* of that schedule).

258 Schedule 2 amended

In Schedule 2, repeal form 2.

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Subpart 6—Repeal, revocation, and consequential amendments

259 Repeal of Incorporated Societies Act 1908

The Incorporated Societies Act 1908 (1908 No 212) is repealed.

260 Revocation of Incorporated Societies Regulations 1979

The Incorporated Societies Regulations 1979 (SR 1979/93) are revoked.

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261 Amendments to and repeal of other Acts

(1) Amend the enactments specified in **Schedule 4** as set out in that schedule.

(2) The Plunket Society Rules Act 1959 (1959 No 1(P)) is repealed.

Schedule 1

Transitional, savings, and related provisions

s 6

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Part 1

Process for existing societies to become societies under this Act 5

1 Purpose

The purpose of this Part is to provide for an existing society to become a society under the Incorporated Societies Act **2021**.

2 Overview

- (1) **Clause 4** prevents new societies from applying for incorporation under the Incorporated Societies Act 1908 (the **1908 Act**). 10
- (2) The general scheme and effect of the transitional provisions for a society that is already incorporated under the 1908 Act is as follows:

- (a) the society continues to be subject to the 1908 Act until it reregisters as a society under this Act or until the transition date, which is the later of—
- (i) 1 December 2025; and
 - (ii) the date that is 2 years and 6 months after the commencement of **clause 4**: 5
- (b) during the period before the transition date, the society can amend its rules and make other arrangements to facilitate a transition to becoming a society under this Act. This includes ensuring that—
- (i) the society’s proposed constitution will comply with the requirements of this Act; and 10
 - (ii) the society’s officers are qualified to be appointed under **section 42**: 10
- (c) the society may apply to be reregistered as a society under this Act before the transition date. The society will be reregistered if it meets the requirements for incorporation under this Act: 15
- (d) the 1908 Act is repealed no later than the transition date. If a society is not reregistered under this Act, the following applies:
- (i) the society ceases to exist on the transition date, but may be restored to the register: 20
 - (ii) if the society is not restored, its surplus assets must be distributed under **subpart 5 of Part 5**: 20
- (3) **Section 8** of the Charitable Trusts Act 1957 (the **1957 Act**) prevents new societies from applying for incorporation as a board under Part 2 of that Act.
- (4) The general scheme and effect of the transitional provisions for a society that is already incorporated as a board under Part 2 of the 1957 Act is as follows: 25
- (a) the society may choose to reregister as a society under this Act:
 - (b) the society may continue to be subject to the 1957 Act indefinitely if it chooses not to reregister.
- (5) This clause is a guide only to the general scheme and effect of the transitional provisions for existing societies. 30
- ### 3 Interpretation
- (1) In this Part,—
- 1908 Act** means the Incorporated Societies Act 1908
- 1957 Act** means the Charitable Trusts Act 1957
- committee** means the committee or other governing body of the existing society 35
- existing society** means—
- (a) a society that is incorporated under the 1908 Act:

- (b) a society that is incorporated as a board under Part 2 of the 1957 Act
- members** means the members of the existing society
- officers** means the members of the committee or other governing body of the existing society
- rules,—** 5
- (a) in relation to an existing society that is incorporated under the 1908 Act, means the rules of the society under that Act:
- (b) in relation to an existing society that is incorporated as a board under Part 2 of the 1957 Act, means the rules and other documents (if any) providing for the constitution of the board 10
- transition date** means the later of—
- (a) 1 December 2025; and
- (b) the date that is immediately after the expiry of the period of 2 years and 6 months that starts on the date on which **clause 4** comes into force.
- (2) A reference to a society that is incorporated under the 1908 Act includes a branch or group of branches of a society that is incorporated under the Incorporated Societies Amendment Act 1920. 15
- 4 Application for incorporation may no longer be made under 1908 Act**
- (1) An application for the incorporation of a society under the 1908 Act may not be made on or after the commencement of this clause. 20
- (2) An application for the incorporation of a society under the 1908 Act that is made before the commencement of this clause must be considered and determined as if this Act had not been enacted.
- (3) An application may be treated as having been made only if it is received by the Registrar before the commencement of this clause. 25
- 5 Existing society may apply to reregister under this Act**
- (1) An existing society may apply for reregistration as a society under this Act unless the society is in liquidation.
- (2) In the case of an existing society that is incorporated under the 1908 Act, an application for reregistration may only be made before the end of the transition date. 30
- (3) Every application for reregistration must—
- (a) contain, or be accompanied by, the information prescribed by the regulations; and
- (b) include the proposed name of the society; and 35
- (c) contain the name and contact details of at least 1 contact person; and
- (d) be accompanied by a copy of the society’s proposed constitution; and

- (e) be accompanied by the fee prescribed by the regulations; and
- (f) otherwise be made in the manner prescribed by the regulations.

6 Dispute resolution provisions treated as applying

- (1) If a society's proposed constitution under **clause 5(3)(d)** does not contain provisions under **section 26(1)(j)** (which relates to dispute resolution), the constitution must be treated as including the provisions of **Schedule 2** for that purpose. 5
- (2) This clause does not apply if the Registrar refuses to reregister the society until the constitution is amended to address (to the Registrar's satisfaction) the matter referred to in **subclause (1)**. 10

7 Reregistration

- (1) The Registrar must, as soon as practicable after receiving a properly completed application for reregistration of an existing society,—
 - (a) enter the society's name in the register (together with any other information relating to the society that the Registrar thinks appropriate); and 15
 - (b) issue a certificate of incorporation (which must specify the date of reregistration); and
 - (c) register the society's constitution.
- (2) However, the Registrar may refuse to reregister the society for any of the grounds referred to in **sections 8 and 11 to 13** (and, for that purpose, those sections and **sections 10 and 14** apply with all necessary modifications as if the application for reregistration were an application for incorporation). 20
- (3) A certificate of incorporation of an existing society issued under this section is conclusive evidence that—
 - (a) all the requirements of this Part about applying for reregistration have been complied with; and 25
 - (b) on and from the date of reregistration stated in the certificate, the society is reregistered and incorporated under this Act.
- (4) The 1908 Act or Part 2 of the 1957 Act, as the case may be, ceases to apply to an existing society on its reregistration under this Act. 30

8 Existing society may amend its rules to facilitate reregistration

- (1) This clause applies—
 - (a) to the rules of an existing society; and
 - (b) despite anything to the contrary in the rules or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the rules. 35
- (2) The existing society may, subject to **subclauses (3) to (5)**, amend its rules in any manner that is necessary or desirable to ensure, or in connection with

ensuring, that the rules will comply with the requirements of this Act relating to the constitution of a society.

- (3) Every amendment of an existing society’s rules must be—
 - (a) in writing; and
 - (b) approved at a general meeting of the society by a majority vote of those members entitled to vote and voting on the question; and 5
 - (c) signed by at least 2 members of the society.
- (4) A society must ensure that a copy of an amendment of its rules and of the rules as amended is given to the Registrar within 20 working days after the amendment is approved at the general meeting. 10
- (5) The copy of the amendment and of the rules as amended must be accompanied by a certificate from an officer certifying that—
 - (a) the officer is authorised by the society to give the certificate; and
 - (b) the amendment was made in accordance with **subclauses (2) and (3)**; and 15
 - (c) the society’s rules, as amended, will continue to comply with the requirements of the 1908 Act or the 1957 Act.
- (6) Section 21(3) to (5) of the 1908 Act applies with all necessary modifications, in relation to an existing society that is incorporated under that Act, to an amendment made under this clause as if an amendment made under this clause were an alteration that has been duly made under that section. 20
- (7) In this clause, **Registrar** means the Registrar of Incorporated Societies under the 1908 Act.

9 Consequences of reregistering existing society under this Act

- (1) An existing society that is reregistered as a society under this Act continues as the same legal entity. 25
- (2) In particular, the reregistration of the existing society does not—
 - (a) create a new legal entity; or
 - (b) prejudice or affect the identity of the body corporate constituted by the existing society or its continuity as a legal entity; or 30
 - (c) affect the property, rights, or obligations of the existing society; or
 - (d) affect proceedings by or against the existing society.
- (3) **Subclause (2)(c)** is subject to the rights or obligations conferred or imposed on the existing society by or under this Act or its constitution.
- (4) Proceedings that could have been commenced or continued by or against the existing society before it reregisters as a society under this Act may be commenced or continued by or against the existing society after it is reregistered. 35

- (5) Neither the reregistration of the existing society nor anything in or effected by, or done under, this Part—
- (a) places any person in breach of, or otherwise in default under, an enactment, an instrument, a confidence, a trust, or any other rule of law or equity, or makes any person liable for a civil wrong; or 5
 - (b) entitles any person—
 - (i) to require the payment or performance of a liability or an obligation that does not otherwise arise for payment or performance; or
 - (ii) to exercise a right that does not otherwise become exercisable; or
 - (iii) to deny a liability or an obligation that the person is not otherwise entitled to deny; or 10
 - (c) invalidates or discharges an instrument or any provision of an instrument; or
 - (d) releases a surety from a liability or an obligation.
- (6) In this clause, **instrument** includes any contract, deed, or other document. 15
- 10 Consequences of not reregistering existing incorporated society under this Act**
- (1) This clause applies to an existing society that is incorporated under the 1908 Act.
- (2) If the existing society has not reregistered under this Act before the transition date,— 20
- (a) the existing society ceases to exist at the start of the transition date; and
 - (b) this Act applies, with all necessary modifications, as if the existing society had been removed from the register at the start of the transition date.
- (3) Despite **subclause (2)**, if an application for the reregistration of the existing society is received by the Registrar before the transition date but that application has not been finally determined before that date, the following applies: 25
- (a) the Registrar must continue to deal with the application as if it were made before that date:
 - (b) the society continues to be incorporated under the 1908 Act until— 30
 - (i) the date of reregistration under this Act; or
 - (ii) 28 working days after the date on which the Registrar notifies the society that the Registrar has made a final decision to refuse to reregister the society (without giving any further opportunity to address the grounds for refusal); or 35
 - (iii) the expiry of any further time allowed by a court to allow an appeal against the Registrar’s decision (where the court gives an order allowing the further time before the expiry of the 28 work-

ing days referred to in **paragraph (b)(ii)** or before the expiry of any previous extension of the time allowed by a court):

- (c) if the society is not reregistered,—
 - (i) the society ceases to exist on the later of the dates referred to in **paragraph (b)(ii) and (iii)**; and 5
 - (ii) this Act applies, with all necessary modifications, as if the existing society had been removed from the register at the start of that date.
- (4) The consequences of **subclauses (2)(b) and (3)(c)(ii)** include the following:
 - (a) the existing society may be restored to the register under **sections 177 to 183**: 10
 - (b) **subpart 5 of Part 5** applies.
- (5) However, if an existing society to which **subclause (2)(b) or (3)(c)(ii)** applies is a racing club within the meaning of section 5(1) of the Racing Industry Act 2020, section 24 of the Racing Industry Act 2020 applies instead of **sections 208 to 215** of this Act. 15
- (6) In addition to the grounds for restoration under **section 178**, the Registrar may, on the application made in the manner prescribed by the regulations, also restore an existing society to the register under **sections 177 to 183** if the Registrar is satisfied that there is a proper reason for the society to continue to exist. 20
- (7) This clause is subject to **clauses 12 and 13**.

11 Registrar may give directions to facilitate transition

- (1) The Registrar may, at any time before an existing society reregisters under this Act, give a direction under this clause if it appears to the Registrar that— 25
 - (a) the constitution of an existing society does not comply with the requirements of this Act; or
 - (b) 1 or more of the officers of an existing society are disqualified from being appointed or holding office as an officer of the society under **section 42**; or 30
 - (c) it is otherwise necessary or desirable to give a direction in order to facilitate the transition of the society to being a society in respect of which the requirements of this Act are fully complied with.
- (2) The Registrar may give 1 or more of the following directions:
 - (a) a direction requiring that the constitution be amended in order to ensure that it complies with the requirements of this Act: 35
 - (b) a direction that a person who is disqualified as referred to in **subclause (1)(b)**—

- (i) ceases to be an officer of the society on a date specified in the direction; or
- (ii) must be removed from being an officer of the society:
- (c) a direction concerning the process for amending the constitution or removing an officer (for example, the direction may provide for an amendment to be approved by the committee without seeking any further approval from the members, or may require an amendment to be approved by the members): 5
- (d) any other direction that is necessary or desirable in order to facilitate the transition of the society to being a society in respect of which the requirements of this Act are fully complied with. 10
- (3) An amendment to a constitution, the removal of an officer, or any other action taken in accordance with the direction must be treated as being effective and binding on the existing society, its members, and any other person.
- (4) **Subclause (3)** applies despite anything to the contrary in the society's rules or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the constitution or to the removal of an officer. 15
- 12 Former law continues to apply to existing dissolutions and liquidations**
- The 1908 Act, as in force immediately before the commencement of this clause, continues to apply in respect of every dissolution or liquidation of a society incorporated under that Act that commenced before the transition date. 20
- 13 Existing societies that have been dissolved or put into liquidation**
- (1) This clause applies to an existing society if—
- (a) the existing society had previously been dissolved under the 1908 Act but, after the transition date, the dissolution is revoked under section 28 of the 1908 Act (as continued in effect by **clause 12**); or 25
- (b) the existing society had been in liquidation under the 1908 Act but, after the transition date, the existing society ceases to be in liquidation under sections 24 to 27 of the 1908 Act (as continued in effect by **clause 12**). 30
- (2) The Registrar may give a notice to the society that extends the application of **clause 5** (and, if applicable, modifies the application of **clause 10**) to give the society a reasonable opportunity to reregister as a society under this Act.
- (3) The extension (and modification) are subject to any terms and conditions that the Registrar thinks fit (being terms and conditions specified in the notice). 35

Part 2

Other transitional provisions

14 Incorporated branches and groups of branches

- (1) This clause applies to a branch or group of branches of a society that, immediately before the commencement of this clause, was incorporated under the Incorporated Societies Amendment Act 1920. 5
- (2) Sections 6 and 7 of the Incorporated Societies Amendment Act 1920 continue to apply to the branch or group of branches and to the parent society with all necessary modifications for the purposes of this Act as if those provisions were still in force. 10
- (3) However, **subclause (2)** ceases to apply if the Registrar receives a notice, in the manner prescribed by the regulations, for the purposes of this subclause from both—
- (a) the parent society; and
 - (b) the branch or group. 15
- (4) In this clause, **parent society** means the society in respect of which the branch or group of branches was incorporated under the Incorporated Societies Amendment Act 1920.

15 References to incorporated societies

- Unless the context otherwise requires,— 20
- (a) a reference in a provision of any other enactment to a society registered or incorporated under the Incorporated Societies Act 1908 (or any similar reference) includes a reference to a society registered or incorporated under this Act; and
 - (b) a reference in a provision of any other enactment to a society registered or incorporated under this Act (or any similar reference) includes a reference to a society registered or incorporated under the Incorporated Societies Act 1908. 25

Schedule 2

Disputes procedures that are presumed to be consistent with rules of natural justice

s 38

- 1 Overview of this schedule** 5
- (1) **Section 38** requires the procedures in a society's constitution relating to disputes between members and between members and the society (a **dispute**) to be consistent with the rules of natural justice.
- (2) A society is not required to include the procedures in this schedule in its constitution. However, **section 38** provides that if the procedures in the constitution are consistent with the procedures in this schedule, the procedures are presumed to be consistent with the rules of natural justice. 10
- 2 Complaints or disciplinary matter: member's right to be heard**
- (1) If a society considers a complaint, or institutes a disciplinary procedure, regarding alleged misconduct of a member, the member has a right to be heard before the complaint or procedure is resolved or any outcome is determined. 15
- (2) Without limiting the manner in which a member may be given a right to be heard, a member must be taken to have been given the right if—
- (a) the member is fairly advised of all allegations concerning the member, with sufficient details and time given to enable the member to prepare a response; and 20
- (b) the member has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and 25
- (d) an oral hearing (if any) is held before the decision maker and the member's written statement or submissions are considered by the decision maker.
- 3 Grievances: member's right to be heard**
- (1) If a society considers a member's grievance alleging damage to the member's rights or interests as a member or to members' rights or interests generally, the member has a right to be heard before the grievance is resolved or any outcome is determined. 30
- (2) Without limiting the manner in which a member may be given the right to be heard, a member must be taken to have been given the right if— 35
- (a) the member has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and

- (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (c) an oral hearing (if any) is held before the decision maker and the member’s written statement or submissions are considered by the decision maker. 5
- 4 Investigating and determining dispute**
- (1) A society must, as soon as is reasonably practicable after receiving a complaint made or a grievance brought in accordance with its constitution, investigate and determine the complaint or grievance.
 - (2) Complaints, grievances, and other disputes must be dealt with by the society in a fair, efficient, and effective manner. 10
- 5 Society may decide not to progress matter**
- Despite **clause 4**, a society may decide not to proceed with a matter further if—
- (a) the matter is trivial; or 15
 - (b) the matter does not appear to disclose or involve—
 - (i) in the case of a complaint or disciplinary matter, any material misconduct; or
 - (ii) in the case of grievance, any material damage to a member’s rights or interests; or 20
 - (c) the complaint, grievance, or disciplinary matter appears to be without foundation or there is no apparent evidence to support it; or
 - (d) in the case of a complaint or grievance, the person who makes the complaint or brings the grievance has an insignificant interest in the matter; or 25
 - (e) the conduct, incident, event, or issue has already been investigated and dealt with by or on behalf of the society.
- 6 Society may refer matter**
- (1) A society may refer a complaint, grievance, or other dispute to—
 - (a) a subcommittee or an external person to investigate and report; or 30
 - (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
 - (2) A society may, with the consent of all parties to a dispute, refer the dispute to mediation.
- 7 Decision makers** 35
- A person may not act as a decision maker in relation to a complaint, grievance, or other dispute if 2 or more members of the committee or a complaints sub-

committee consider that there are reasonable grounds to believe that the person may not be—

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.

Schedule 3

Conversion of entity into incorporated society

s 248

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| | | |
| 1 | When schedule applies | |
| | This schedule applies to a body corporate or other association (a specified entity) that is formed or incorporated by or under an Act that is specified by the regulations (the entity's Act). | 5 |
| | | |
| 2 | Specified entity may decide to be reregistered as incorporated society | |
| (1) | This clause sets out how a specified entity may decide to apply to be reregistered as an incorporated society under this Act. | 10 |
| (2) | If the rules of the entity specify a manner in which the entity may amend those rules, the decision to apply to be reregistered must be made— | |
| (a) | in the same manner (with the rules specifying the manner to apply with all necessary modifications); or | |
| (b) | in an alternative manner approved by the Registrar. | 15 |
| (3) | The Registrar may approve an alternative manner if the Registrar is satisfied that it is not reasonably practicable for the decision to be made under subclause (2)(a) . | |
| (4) | If subclause (2) does not apply, the decision to apply to be reregistered must be made by a resolution approved by a majority of 75% or more of the votes of the members of the entity. | 20 |
| | | |
| 3 | Application for reregistration | |
| | An application for reregistration under this schedule must— | |
| (a) | contain evidence that the preconditions prescribed under section 245(1)(p) (if any) have been met; and | 25 |
| (b) | contain, or be accompanied by, the information prescribed by the regulations; and | |

- (c) include the proposed name of the society; and
- (d) contain the name and contact details of at least 1 contact person; and
- (e) be accompanied by a copy of the society's proposed constitution; and
- (f) be accompanied by the fee prescribed by the regulations; and
- (g) otherwise be made in the manner prescribed by the regulations. 5
- 4 Reregistration of specified entity as incorporated society**
- (1) The Registrar must, as soon as practicable after receiving a properly completed application for reregistration of a specified entity as a society,—
- (a) enter the society's name in the register (together with any other information relating to the society that the Registrar thinks appropriate); and 10
- (b) issue a certificate of incorporation (which must specify the date of reregistration); and
- (c) register the society's constitution.
- (2) However, the Registrar—
- (a) must refuse to reregister the specified entity as a society if the Registrar— 15
- (i) is satisfied that 1 or more of the preconditions specified under **section 245(1)(p)** have not been met; or
- (ii) has reason to believe that the specified entity is likely to contravene any term or condition prescribed under **section 245(1)(q)**; 20
- and
- (b) may refuse to reregister the specified entity as a society on any of the grounds referred to in **sections 8 and 11 to 13** (and, for that purpose, those sections and **sections 10 and 14** apply with all necessary modifications as if the application for reregistration were an application for incorporation). 25
- (3) A certificate of incorporation of society issued under this clause is conclusive evidence that—
- (a) all the requirements of this schedule about applying for reregistration have been complied with; and 30
- (b) on and from the date of reregistration stated in the certificate, the specified entity is reregistered as a society and incorporated under this Act.
- 5 Entity's Act ceases to apply on reregistration**
- The entity's Act ceases to apply to the specified entity on its reregistration as a society under this Act. 35

- 6 Consequences of reregistering specified entity under this Act**
- (1) A specified entity that is reregistered as a society under this Act continues as the same legal entity.
 - (2) In particular, the reregistration of the specified entity does not—
 - (a) create a new legal entity; or 5
 - (b) prejudice or affect the identity of the body corporate or association constituted by the existing society or its continuity as a legal entity; or
 - (c) affect the property, rights, or obligations of the existing society; or
 - (d) affect proceedings by or against the existing society.
 - (3) **Subclause (2)(c)** is subject to the rights or obligations conferred or imposed on the society by or under this Act or its constitution. 10
 - (4) Proceedings that could have been commenced or continued by or against the specified entity before it reregisters as a society under this Act may be commenced or continued by or against the society after it is reregistered.
 - (5) Neither the reregistration of the specified entity nor anything in or effected by, or done under, this schedule— 15
 - (a) places any person in breach of, or otherwise in default under, an enactment, an instrument, a confidence, a trust, or any other rule of law or equity, or makes any person liable for a civil wrong; or
 - (b) entitles any person— 20
 - (i) to require the payment or performance of a liability or an obligation that does not otherwise arise for payment or performance; or
 - (ii) to exercise a right that does not otherwise become exercisable; or
 - (iii) to deny a liability or an obligation that the person is not otherwise entitled to deny; or 25
 - (c) invalidates or discharges an instrument or any provision of an instrument; or
 - (d) releases a surety from a liability or an obligation.
 - (6) In this clause, **instrument** includes any contract, deed, or other document.

Schedule 4 Amendments to other Acts

s 261

Arms Act 1983 (1983 No 44)

In section 38B(2), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”. 5

In section 38C(2), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”.

In section 38J(1)(b), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”. 10

Building Research Levy Act 1969 (1969 No 23)

In section 2, definition of **association**, after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”.

In section 13(4), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”. 15

Bylaws Act 1910 (1910 No 28)

In section 2, definition of **bylaw**, after “so made”, insert “(but does not include a bylaw of a society within the meaning of the Incorporated Societies Act **2021**)”.

Charities Act 2005 (2005 No 39)

In section 15(a), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”. 20

After section 16(2)(e), insert:

- (ea) an individual who is subject to a banning order under **subpart 7 of Part 4** of the Incorporated Societies Act **2021**:

After section 31(4), insert: 25

- (5) The Board must give a copy of an order under subsection (4)(b) to the Registrar of Incorporated Societies.

After section 42(3), insert:

- (4) Despite section 72A(2), the particulars to be contained in an annual return of a charitable entity that is a society (as defined in the Incorporated Societies Act **2021**) may include information or documentation for the purposes of that Act. 30
- (5) The chief executive must, before exercising a power under this section, consult the Registrar of Incorporated Societies.
- (6) A failure to comply with **subsection (5)** does not affect the validity of the prescribed matters. 35

After section 74, insert:

Charities Act 2005 (2005 No 39)—continued

74A Sharing of information relating to charitable entities

- (1) The chief executive may provide to the Registrar any information, or a copy of any document, that the chief executive—
 - (a) holds in relation to the exercise or performance of any functions, powers, or duties under this Act; and 5
 - (b) considers may assist the Registrar in the exercise or performance of the Registrar’s functions, powers, or duties under the Incorporated Societies Act **2021**.
- (2) The chief executive may use any information, or a copy of any document, provided to them by the Registrar under the Incorporated Societies Act **2021** in the exercise or performance of any functions, powers, or duties under this Act. 10
- (3) In this section, **Registrar** means the Registrar of Incorporated Societies under the Incorporated Societies Act **2021**.
- (4) This section applies despite anything to the contrary in any contract, deed, or document. 15
- (5) Nothing in this section limits the Privacy Act 2020.
Compare: 1993 No 105 s 371A

Defamation Act 1992 (1992 No 105)

In Schedule 1, Part 2, clause 9(2)(b), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”. 20

Employment Relations Act 2000 (2000 No 24)

In section 13(2)(a), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”.

In section 14(1)(b), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”. 25

Flags, Emblems, and Names Protection Act 1981 (1981 No 47)

In section 2, definition of **registering authority**, paragraph (a), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”.

Friendly Societies and Credit Unions Act 1982 (1982 No 118)

In section 100(2)(c), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”. 30

In section 106(1), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**” in each place.

Gambling Act 2003 (2003 No 51)

In section 4(1), definition of **corporate society**, paragraph (a), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”.

Girl Guides Association (New Zealand Branch) Incorporation Act 1942 (1942 No 3 (P)) 5

Replace section 7 with:

7 Provisions of Incorporated Societies Act 2021 to apply

The following provisions of the Incorporated Societies Act **2021** apply with all necessary modifications to the Corporation as if it were a society incorporated under that Act:

- (a) **section 71** (members have no right to property of society):
- (b) **section 72** (liability of members):
- (c) **sections 103 and 104** (registered office):
- (d) **section 116** (method of contracting):
- (e) **section 118** (service of documents).

10

15

Heavy Engineering Research Levy Act 1978 (1978 No 81)

In section 15(4), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”.

Income Tax Act 2007 (2007 No 97)

In section YA 1, definition of **company**, paragraph (f), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”. 20

In section YA 1, definition of **special corporate entity**, paragraph (j), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”.

Insolvency Act 2006 (2006 No 55)

In section 3, definition of **company**, paragraph (b), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”. 25

Lawyers and Conveyancers Act 2006 (2006 No 1)

Repeal section 377.

Major Events Management Act 2007 (2007 No 35)

In section 4, definition of **registering authority**, paragraph (b), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”. 30

Military Decorations and Distinctive Badges Act 1918 (1918 No 3)

In section 4(1), after “Incorporated Societies Act 1908”, insert “or the Incorporated Societies Act **2021**”.

New Zealand Business Number Act 2016 (2016 No 16)

In Schedule 2, after the item relating to friendly societies, insert:

Incorporated societies registered under the Incorporated Societies Act **2021**

In Schedule 2, repeal the item relating to incorporated societies registered under the Incorporated Societies Act 1908 and branches of registered incorporated societies registered under the Incorporated Societies Amendment Act 1920. 5

New Zealand Library Association Act 1939 (1939 No 17)

Replace section 3 with:

3 Provisions of Incorporated Societies Act 2021 to apply

The following provisions of the Incorporated Societies Act **2021** apply with all necessary modifications to the Association as if it were a society incorporated under that Act: 10

- (a) **subpart 2 of Part 3** (financial gain):
- (b) **section 71** (members have no right to property of society):
- (c) **section 72** (liability of members): 15
- (d) **sections 103 and 104** (registered office):
- (e) **section 116** (method of contracting):
- (f) **section 118** (service of documents).

In section 4(3), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”. 20

In section 6, replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”.

Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)

In section 71(1), definition of **Te Arataura**, after “1908”, insert “or the Incorporated Societies Act **2021**”. 25

Niue Act 1966 (1966 No 38)

Repeal section 690.

Property Law Act 2007 (2007 No 91)

In section 4, definition of **Registrar**, paragraph (c)(iii), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”. 30

Racing Industry Act 2020 (2020 No 28)

Replace section 4(3)(e) with:

- (e) provide for racing clubs that are no longer racing to be removed from the register of incorporated societies or dissolved under the Charitable Trusts Act 1957; and 35

Racing Industry Act 2020 (2020 No 28)—continued

In section 5(1), definition of **Registrar**, replace “section 32 of the Incorporated Societies Act 1908” with “**section 231** of the Incorporated Societies Act **2021**”.

In section 16(2)(a), replace “section 6 of the Incorporated Societies Act 1908” with “**subpart 3 of Part 3** of the Incorporated Societies Act **2021**”.

In the heading to section 24, replace “**on dissolution of club**” with “**when club ceases to exist or is dissolved**”. 5

In section 24(1), after “club”, insert “ceases to exist as a legal entity or”.

After section 24(3), insert:

- (4) This section applies despite anything to the contrary in—
- (a) the Incorporated Societies Act **2021** (in particular, **sections 208 to 215** of that Act do not apply to a racing club); or 10
 - (b) the Charitable Trusts Act 1957.

In section 25(2), after “proposes to”, insert “cease to exist as a legal entity or”.

In the heading to subpart 3 of Part 2, replace “Dissolution” with “Removal from register or dissolution”. 15

In the heading to section 36, after “**may be**”, insert “**removed from register or**”.

In section 36(2), replace “dissolve the racing club under section 28(1)(a) of the Incorporated Societies Act 1908 or”, with “remove the racing club from the register of incorporated societies under **section 168(1)(b)** of the Incorporated Societies Act **2021** or dissolve the racing club under”. 20

In section 36(3), after “must”, insert “remove the club from the register of incorporated societies or”.

After section 36(3), insert:

- (4) **Sections 170 to 175 and 177 to 183** of the Incorporated Societies Act **2021** do not apply to a removal under subsection (3). 25

Receiverships Act 1993 (1993 No 122)

In section 2(1), definition of **Registrar**, paragraph (c), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”.

Sale and Supply of Alcohol Act 2012 (2012 No 120)

In section 5(1), definition of **RNZRSA**, after “1908”, insert “or the Incorporated Societies Act **2021**”. 30

Scout Association of New Zealand Act 1956 (1956 No 2 (P))

Replace section 7 with:

Scout Association of New Zealand Act 1956 (1956 No 2 (P))—continued**7 Provisions of Incorporated Societies Act 2021 to apply**

The following provisions of the Incorporated Societies Act **2021** apply with all necessary modifications to the Corporation as if it were a society incorporated under that Act:

- (a) **section 71** (members have no right to property of society): 5
- (b) **section 72** (liability of members):
- (c) **sections 103 and 104** (registered office):
- (d) **section 116** (method of contracting):
- (e) **section 118** (service of documents).

Summary Proceedings Act 1957 (1957 No 87) 10

In section 2(1), definition of **infringement notice**, after paragraph (g), insert:

- (ga) **section 155** of the Incorporated Societies Act **2021**; or

Trade Unions Act 1908 (1908 No 196)

In section 16(1), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2021**”.

15