Incorporated Societies Bill

Government Bill

As reported from the Economic Development, Science and Innovation Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Incorporated Societies Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill seeks to repeal and replace the Incorporated Societies Act 1908. It would modernise the rules for incorporated societies and address some deficiencies in the Act, which is now more than 100 years old.

New Zealand has about 24,000 incorporated societies. They comprise a wide variety of community-related organisations, including sporting, recreational, and social clubs; cultural and religious groups; political parties; and activist organisations. One benefit of registering under the Act to become incorporated is that the society gains "legal personhood". As a separate legal identity, it can sign contracts, or buy and sell property, in its own name. In general, individual members cannot be held personally liable for the society's debts or obligations.[1]

The bill's main changes

The bill stems from a review of the 1908 Act by the Law Commission in 2013, which identified various problems with the aging legislation. The bill would retain the underlying principles of the current law, but codify it in the statute, since some of it is not in the 1908 Act but has instead built up in case law over time. It would also fill

[1] Exceptions exist, for example if a member acts unlawfully or breaches a fiduciary duty.

gaps where case law is undeveloped, such as regarding officers' obligations where conflicts of interest arise.

The bill includes a list of duties that a society's officers must abide by. Despite the 1908 Act being silent on officers' obligations, case law has established that officers owe fiduciary duties to their society. The bill would codify these basic duties in one piece of law, so that officers would know exactly what their obligations are. Examples include the duty to act in good faith and in the best interests of the society, rather than for personal gain.

Another change from the 1908 Act relates to how disputes within a society should be resolved. If dispute resolution procedures are not included in a society's constitution, members may face significant challenges if they have complaints about how the society is run. The bill would require a society to determine its own dispute resolution procedures and include these in its constitution.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We raised several issues with officials regarding the legislation's design, for clarification. We are recommending one change relating to the Registrar's powers to restrict access to information about an individual in certain circumstances. This is discussed later, under "Strengthening privacy protections".

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss in detail minor or technical amendments.

Prohibition on financial gain

Clause 22 of the bill would prohibit incorporated societies from being carried on for the financial gain of any members. Under clause 23, a society is deemed to be carried on for financial gain of members if it distributes any gain, profit, dividend, or similar financial benefit to any of its members. Clause 24 provides a list of exemptions. For example, societies could reimburse members for any expenses they incur on behalf of the society.

We are concerned that the prohibition on financial gain could be interpreted too broadly and result in undesirable outcomes in some situations.

Some incorporated societies are "umbrella societies" that are made up of smaller incorporated societies. The umbrella society might distribute funds to its member societies. For example, fundraising may be done at a national level, for efficiency, and the funds dispersed to regional societies. Some submitters expressed concern that it is not clear whether distributing funds in this way would be permitted under the bill.

Other submitters told us about hardship grants or scholarship grants which they provide to their members. We are concerned that these could be considered financial gain for members and be prohibited under the bill as introduced.

Neither of these situations was intended to be covered by the prohibition on a society being carried on for the financial gain of its members. We believe these are legitimate activities for incorporated societies and recommend adding clear exemptions in clause 24 to cover them. Our proposed clause 24(1)(ba) would allow umbrella societies to disperse funds to members that are not-for-profit entities. Proposed clause 24(1)(da) and (db) would exempt payments such as hardship grants and education scholarships from being considered the financial gain of a member.

Simplifying financial reporting for small societies

Clause 95 would require societies to complete annual financial statements.[2] The bill recognises that societies vary greatly, including in their size and levels of expenditure. Some societies hold no assets, and their total income and expenditure is limited to small-scale fundraising. Conversely, some societies manage millions of dollars' worth of assets and receive corporate sponsorship.

Because of this wide variation, the bill would hold large societies to a higher standard of financial reporting than small ones. In general terms, larger societies would be required to produce detailed financial statements, in accordance with generally accepted accounting practice or other financial reporting standards. Some of these larger societies would be required to have their financial statements independently audited.

We believe it would be unfair to impose the same requirements on smaller societies. They may not have the necessary expertise, or ability to pay for the expertise, to prepare these statements and have them audited.

Clause 96(2)(b) distinguishes small societies for the purpose of financial reporting. A small society is defined as any society which, for the last 2 years, has had total assets of less than $30,000 and total operating payments of less than $10,000.

Small societies can prepare simplified financial statements in line with clause 97. As introduced, the bill would require a small society's financial statements to show its income and expenditure, assets and liabilities, and any mortgages, charges, or other security interests affecting society property. This mirrors existing requirements under the 1908 Act.

This type of reporting involves what is known as an "accrual accounting approach", where income and debts are counted as soon as they are accrued. We were advised that many small societies are misapplying the accrual accounting standard in favour of a simpler "cash accounting approach". Cash accounting only counts receipts and payments when they are actually received or paid. We are concerned that maintaining the 1908 Act's requirements, when many societies are already unable to adhere to them, would create excessive regulatory work and difficulty for societies.

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[2] This excludes incorporated societies that are also registered charities (about 8,000 societies). These societies are subject to separate financial reporting requirements under the Charities Act 2005.

We therefore recommend amending clause 97 to allow small societies to follow either a cash accounting or accrual accounting approach.

Reviewing the thresholds for a "small society"

Many submitters suggested that the thresholds for small societies in clause 96(2)(b) should be higher. Others suggested that societies should be considered small if they fulfil just one of the requirements (total assets or total operating payments), rather than needing to fulfil both. Some submitters, on the other hand, suggested that the bill should not differentiate between large and small societies at all.

We agree with submitters that these thresholds should be amended. We are concerned that the bill as introduced could place an unnecessary compliance burden on smaller societies. In particular, we note how the thresholds would affect societies that own valuable land, such as sports clubs. If the value of a club's sports field exceeds the $30,000 asset threshold, the society would be required to prepare comprehensive financial statements every year, even if its income was below the $10,000 operating payments threshold.

We see a distinction between "fixed assets" (such as land and buildings) and "current assets" (such as cash and other liquid assets). Fixed assets often remain relatively unchanged over the accounting period. In our opinion, a society should not be required to prepare comprehensive annual financial statements simply because it owns a valuable fixed asset. Conversely, if a society holds large amounts of current assets, we believe it is appropriate for the society to prepare comprehensive financial statements to ensure it is accountable to its members. We recommend excluding fixed assets from the calculation of whether a society meets the assets threshold.

For these reasons, we propose amending clause 96(2)(b) to increase both the operating payments and assets thresholds to $50,000 each. We also recommend clarifying that the assets threshold in clause 96(2)(b) would require a society to have "total current assets" of less than $50,000, rather than "total assets" (as in the bill as introduced).

We believe these amendments would create a fair distinction between small and large societies, while also providing for transparent financial reporting. After excluding incorporated societies that are also registered charities (and therefore subject to the financial reporting regime in the Charities Act 2005), it has been estimated that the bill as introduced would already classify about 40 percent of incorporated societies as small societies. We expect that these revised thresholds would allow roughly 60 percent of all incorporated societies that are not registered charities to be considered small societies. We believe this strikes the right balance.

We should point out that these proposed amendments are the result of extensive bipartisan discussions to reach a consensus that we believe would be appropriate. We wish to thank our advisers for their assistance during this process.

We are also wary of setting financial thresholds which may become unfit for purpose over time due to inflation. We therefore recommend an amendment to Schedule 4 of the bill, which would amend sections 48 and 49 of the Financial Reporting Act 2013.

Our amendment would require the Minister to review the thresholds specified in clause 96(2)(b) every 8 years. The Minister must consider any increase in the Consumers Price Index, which Statistics New Zealand uses as a general measure of inflation. If appropriate, the Minister could recommend that the Governor-General make regulations to amend the thresholds.

Reviewing which financial statements must be audited

As mentioned above, some larger societies may be required to have their annual financial statements independently audited.

Clause 98(1), as introduced, would impose this requirement on every society that is "large within the meaning of section 45 of the Financial Reporting Act 2013". That Act defines "large" as an entity which had $30 million in total revenue across its previous 2 accounting periods, or $60 million in assets at its previous 2 balance dates.

We believe that the thresholds in the Financial Reporting Act are too high to be applied to the incorporated societies regime. Instead, we propose having these thresholds set by regulations. We recommend amending clause 98(1) accordingly.

To ensure the regulations are not overly burdensome for societies, we also propose inserting clause 245(2A). When recommending regulations, clause 245(2A) would, among other things, require the Minister to have regard to the desirability of avoiding unnecessary administrative burdens and compliance costs for societies.

Clarifying dispute resolution provisions

Clause 26(1)(j) would require a society to include dispute resolution procedures in its constitution. Clause 38 states that dispute resolution procedures must be consistent with the rules of natural justice. Dispute resolution can take many forms, such as mediation or arbitration, or approaches based on tikanga or other cultural practices. The bill does not specify which type of dispute resolution a society must use. Societies may decide which type of dispute resolution best suits their membership.

Clause 39, as introduced, would allow a society's constitution to provide that some or all kinds of disputes must, or may, be subject to arbitration. We understand that this clause was included to make it clear that a society could refer internal disputes to an external arbitrator, and to clarify how the bill interacts with the Arbitration Act 1996.

We heard from submitters that this express reference to arbitration could be interpreted as excluding other forms of dispute resolution. While this was not the intention, we are concerned that societies might misinterpret it in this way.

We therefore recommend inserting clause 38C to clarify these provisions. New clause 38C states that a society's constitution may require or allow disputes to be submitted to any type of dispute resolution, and provides a non-exhaustive list including mediation, arbitration, facilitation, or tikanga-based practice.

We recommend a similar amendment to clause 6(2) in Schedule 2. That provision refers specifically to mediation. We propose broadening the language to include any type of consensual dispute resolution.

To further assist societies in understanding the intention of the dispute resolution provisions, we also propose adding clauses 37A and 39A. Clause 37A would clarify what a complaint or dispute is. Clause 39A would expressly allow a society's constitution to include how a decision made under the dispute resolution procedures can be appealed or reviewed.

Allowing for independent committee members

As introduced, clause 40 states that every incorporated society must have a committee of at least 3 officers. Members of the committee must also be members of the society. Under clause 41, the committee is responsible for overseeing the society's management.

Submitters told us that independent committee members, who are not members of the society, can add value by bringing impartiality, accountability, and transparency. We also note that, particularly for small societies run by volunteers, independent committee members can contribute specialist expertise to the society. For example, an accountant may sit on the committee and advise it on financial matters, but not be a member of the society.

We agree that the bill should allow for independent committee members. However, we remain convinced that, for a society to be self-governing, more than half of its committee members should be members of the society.

We therefore recommend amending clause 40 to require that a majority of the officers on a committee must be made up of members of the society, or representatives of bodies corporate that are members of the society.

Strengthening privacy protections

Like the 1908 Act, this bill would establish a publicly accessible register of incorporated societies. Under clause 223, the register's purpose would be to enable members of the public to obtain basic information such as the society's nature, purposes, and activities, and contact information.

Clause 224 lists what information the register must show. This includes details such as the society's name, registered office, financial statements, and constitution. Clause 224(1)(e) also states that the names of a society's current and former officers are to be publicly available.

Clause 225 would allow the Registrar to remove or omit information or restrict public access to the register in certain situations. They include situations where the Registrar considers that restricting access to the information is in the public interest, or where the information might prejudice the privacy or personal safety of any person.

This clause provides some protection for individuals. However, the Privacy Commissioner noted that this provision could be strengthened by expressly accounting for protection orders and other name-suppression orders. We agree. We therefore recommend inserting clause 225(2)(c) to allow the Registrar to restrict public access to information if the individual about whom it relates is:

- a protected person in relation to a protection order under the Family Violence Act 2018; or
- a person for whose benefit a suppression provision or order applies under any legislation.

Societies incorporated under private Acts

Almost all incorporated societies are incorporated under the Incorporated Societies Act 1908. However, a small number of organisations are incorporated through private Acts which were passed specifically for that purpose, such as the New Zealand Library Association Act 1939.

Some societies that are incorporated in this way have expressed a desire to transition to the Incorporated Societies Act regime. Their originating Act may no longer be fit for purpose, but any changes would require an amendment Act to be passed through Parliament.

Clause 248 of the bill would allow entities which are formed or incorporated under other Acts to reregister under the Incorporated Societies Act regime. Clauses 245(1)(o) to (q) would require the Governor-General to make regulations specifying:

- which Acts clause 248 applies to
- any conditions an entity must meet before it can reregister under the Incorporated Societies Act
- any conditions a converting entity must meet after being reregistered.

Under clause 245(3), the Governor-General can only make these regulations on the recommendation of the Minister. The Minister must first be satisfied that incorporating the entity under the Incorporated Societies Act would not be materially inconsistent with the purposes of the society's originating Act. It is implied in the bill that a recommendation would only be made if the incorporation was also consistent with the purposes of the Incorporated Societies Act. However, this is not explicit. On the advice of the Regulations Review Committee, we recommend amending clause 245(3) to make it clear that the Minister should only make a recommendation where the conversion was appropriate when having regard to the purposes of the Incorporated Societies Act.

Registered societies with the same name

Clause 11 of the bill would require the Registrar to refuse a society's application for incorporation if the society's name does not comply with certain requirements.

One of these requirements, in clause 11(1)(b), is that the name should not, in the Registrar's opinion, be identical or almost identical to the name of an existing society, company, or body corporate. In principle, this ensures that people are not misled about which society they are engaging with. However, some submitters described how an identical provision in the 1908 Act has prevented them from incorporating under their desired name and delayed the registration process.

We note that the bill provides little discretion for the Registrar. We believe that some discretion should exist. We therefore recommend inserting clause 11(3). Under this amendment, clause 11(1)(b) would not apply if the other society, company, or body corporate consents to the similar name; and the Registrar is satisfied that the society's use of the name will not be contrary to the public interest.

Other amendments

We are also proposing numerous other adjustments to the wording of the bill as introduced, including the following:

- The principle in clause 3(d) that societies are private bodies would be reinforced by referring to societies self-governing in accordance with their own tikanga, kawa, culture, and practice.
- Clause 61A would allow a society's constitution to opt out of, or modify, the bill's conflict of interest requirements. Societies would still be required to maintain minimum standards, prescribed in regulations, but can tailor their conflict of interest provisions to best suit their society.
- Clause 86A would recognise voting by proxy, postal voting, and voting by electronic means.
- New clause 118A would clarify that nothing in the bill would prevent a society from keeping its records or documents in te reo Māori.
- We propose removing clause 146, which contains an unnecessary offence provision.
- New clauses 7A to 8A in Schedule 1 would clarify how an existing society may approve a new constitution when transitioning to the new Act.

Appendix

Committee process

The Incorporated Societies bill was referred to the committee on 6 April 2021.

The closing date for submissions on the bill was 28 May 2021. We received and considered 113 submissions from interested groups and individuals. We heard oral evidence from 34 submitters.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 245.

Committee membership

Jamie Strange (Chairperson)

Glen Bennett

Naisi Chen

Melissa Lee

Hon Todd McClay

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr David Clark

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Contents

		Page
1	Title	11
2	Commencement	12
	Part 1 **Preliminary provisions**	
3	Purposes	12
4	Overview	13
5	Interpretation	13
6	Transitional, savings, and related provisions	15
7	Act binds the Crown	15
	Part 2 **Incorporation of societies**	
	Eligibility	
8	Eligibility to be incorporated society	15
	Application for incorporation	
9	Application for incorporation	16
10	Registrar has discretion about nature and extent of consideration of application	16
11	Registrar must refuse incorporation if name of society does not comply with requirements	16
12	Registrar must refuse incorporation if Registrar considers that purposes do not comply with Act	17
13	Registrar must refuse incorporation if Registrar considers that constitution does not comply with Act	17
14	Body corporate treated as equivalent to 3 members in some cases	17

Incorporation

15 Incorporation 18
16 Society is body corporate 18
17 Certificate of incorporation 18

Part 3
Administration of societies

Subpart 1—Capacity, powers, and validity of actions

18 Capacity and powers 18
19 Validity of actions 19
20 Dealings between society and other persons 19
21 No notice or knowledge of constitution merely because it is registered or available for inspection 20

Subpart 2—Financial gain

22 Society must not be carried on for financial gain of its members 21
23 Financial gain 21
24 When society does not have financial gain purpose 21

Subpart 3—Constitution

25 Society must have constitution 23

Contents of constitution

26 What constitution must contain 23
27 Constitution must not give members rights or interests in society's property 25
28 Bylaws, and tikanga ~~or culture~~, kawa, culture, or practice, and other matters 25

Effect of constitution

29 Effect of constitution 25

Amendments to constitution

30 Society may amend constitution 26
31 Minor or technical amendments 26
32 Amended constitution must continue to comply 26
33 Society must give Registrar copy of amendment and amended constitution 27
34 Registration of amendment 27
35 Court may amend constitution 27
36 Amendment where constitution is oppressive, unfairly discriminatory, or unfairly prejudicial 28
37 Change of name cannot be made by amending constitution 28

~~*Disputes between members and between members and society*~~

Procedures in constitution for resolving disputes

37A Meanings of dispute and complaint 28

~~38~~	~~Procedures in constitution for disputes~~	~~29~~
38	Procedures for resolving disputes must be consistent with natural justice	29
38A	Society may choose to include procedures in **Schedule 2**	29
38B	Safe harbour if **Schedule 2** is used	29
38C	Constitution may provide for types of dispute resolution	30
39	~~Constitution may provide for~~ Provisions relating to arbitration	30
39A	Constitution may provide for appeal or review	31
	Subpart 4—Committee and officers	
	Committee	
40	Committee	31
41	Management of society	31
42	Qualifications of officers	32
43	Registrar may waive disqualifying factors	33
44	Other provisions relating to waivers	33
	Officer ceasing to hold office	
45	Officer ceasing to hold office	34
46	Former officer remains liable for past acts, omissions, and decisions	34
	Notice of election or appointment and of other changes	
47	Notice of elections or appointments and of other changes relating to officers	34
	Validity of acts	
48	Validity of officer's acts	35
	Officers' duties	
49	Duty of officers to act in good faith and in best interests of society	35
50	Powers must be exercised for proper purpose	35
51	Officers must comply with Act and constitution	35
52	Officer's duty of care	35
53	Duty relating to activities that create substantial risk of serious loss to creditors	36
54	Duty in relation to obligations	36
55	Use of information and advice	36
56	Duties owed to society	36
	Conflict of interest disclosure rules	
57	When officer has interest	37
58	Duty to disclose interest	37
59	Consequences of being interested in matter	38
60	Consequences of failing to disclose interest	38
61	Regulations may provide for how members are notified	38

61A	Constitution may negate, limit, or modify conflict of interest requirements	39
62	Avoidance of transactions	39
63	What is fair value	39
64	Onus of proving fair value	39
65	Effect on third parties	40
66	Application of provisions in case of certain payments, indemnities given, or insurance provided	40
67	Interests register	40
	Subpart 5—Members	
68	Society must have at least 10 members	40
69	Registrar may act if society has fewer than 10 members	40
70	Consent to become member	41
71	Members have no right to property of society	41
72	Liability of members	41
73	Register of members	41
	Access to information for members	
74	Information for members	42
75	Grounds for refusing request	42
76	Member may withdraw request if there is charge for information	43
77	Court orders relating to information	43
	General meetings	
78	Annual general meetings	43
79	Irregularities in calling meeting	44
80	Information to be presented at annual general meeting	44
81	Methods of holding meetings	44
82	Right of access to financial statements and minutes of meeting	45
	Resolutions in lieu of meeting	
83	Resolution in lieu of meeting	45
84	Proposed resolution in lieu must be sent to members entitled to vote	46
85	Accidental omission does not invalidate resolution in lieu	46
86	Society must send copy of passed resolution in lieu to certain members	46
	Voting by proxy, postal voting, and voting by electronic means	
86A	Constitution may permit voting by proxy, post, and electronic means	46
	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	47

88	Society may indemnify or effect insurance for person in their capacity as employee of third person	47
89	Permitted indemnities for certain liabilities or costs	48
90	Permitted insurance for certain liability or costs	48
91	Indemnity or insurance for breach of officers' duties, etc, must be expressly authorised by society's constitution	49

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

Balance date

92	Balance date of charitable entities	49
93	Balance date of other societies	49

Accounting records

94	Accounting records must be kept	50

Financial reporting

95	Annual financial statements must be prepared and registered	51
96	Definitions relating to financial reporting	51
97	Minimum requirements for financial statements of small societies	52
98	Annual financial statements of ~~large~~ certain societies must be audited	52
99	Auditor must report to members	52
100	Auditor's report must be sent to Registrar and External Reporting Board if requirements have not been complied with	53
101	Duties do not apply if alternative financial reporting duties under financial markets or charities legislation	53

Annual return

102	Annual returns	53

Subpart 8—Other administration matters

Registered office

103	Registered office	53
104	Change of registered office	54

Contact person

105	Purpose	54
106	Society must have contact person	54
107	Who contact person may be	54
108	Vacancy in position of contact person	54
109	Notice of change of contact person	54

Name of society

110	Change of name of society	55
111	Registrar may refuse application if proposed name contrary to section 11	55

112	Change of name if name is contrary to section 11	55
113	Effect of change of name	56
114	Use of society name	56
115	Society may use abbreviation	57
	Authority to bind society	
116	Method of contracting	57
117	Attorneys	57
	Service of documents on society	
118	Service of documents	58
	Te reo Māori	
118A	Use of te reo Māori in records and documents	58
	Part 4 **Enforcement**	
119	Overview	58
120	Part subject to exclusive jurisdiction under other ~~enactments~~ legislation	59
	Subpart 1—Court orders enforcing society's constitution or bylaws	
121	Court orders	59
122	Disputes under society's constitution	59
123	When decision maker has lack of jurisdiction	60
124	Who may apply	60
	Subpart 2—Court orders enforcing officers' duties	
125	Court orders	61
126	Who may apply	61
127	When member or officer may apply or intervene in proceeding on behalf of society	62
128	Matters court must have regard to in determining whether to grant leave	62
129	Other matters relating to leave application	62
130	Powers of court where leave granted	62
131	Costs of action by member, officer, or Registrar to be met by society	63
132	Settlement, compromise, or withdrawal of proceeding brought by member, officer, or Registrar	63
	Subpart 3—Prejudiced members	
133	Prejudiced members	63
134	Court orders	63
	Subpart 4—Financial gain	
135	Society may recover financial gain from member	64

136	When member or officer may apply or intervene in proceeding on behalf of society	64
137	Matters court must have regard to in determining whether to grant leave	65
138	Other matters relating to leave application	65
139	Powers of court where leave granted	65
140	Costs of action by member, officer, or Registrar to be met by society	65
141	Registrar may bring proceeding to recover financial gain	66
	Subpart 5—Miscellaneous provisions relating to applications	
142	Limit on Registrar's power to apply	66
143	Court may refuse to consider application	67
144	Applications by former members	67
145	Undertaking about damages not required by Registrar	67
	Subpart 6—Offences	
~~146~~	~~Dishonest use of position~~	~~67~~
147	False statements	68
148	Fraudulent use or destruction of property	68
149	Falsification of register, records, or documents	69
150	Operating fraudulently or dishonestly incurring debt	69
151	Improper use of "Incorporated", "Inc", or "Manatōpū"	70
152	Banning order contravention	70
	Infringement offences	
153	Infringement offences	70
154	Proceedings for infringement offences	71
155	When infringement notice may be issued	71
156	Infringement notice may be revoked	71
157	What infringement notice must contain	71
158	How infringement notice may be served	72
159	Payment of infringement fee	72
160	Reminder notices	73
	Subpart 7—Banning order	
161	Court may disqualify officers	73
162	When order may be permanent or for period longer than 10 years	73
163	Notice of banning order	73
164	Applications for orders	74
165	Right to appear and give evidence	74
166	Liability for contravening banning order	74

Part 5
Removal from register, amalgamation, liquidation, and other processes

Subpart 1—Removal from register

167 Removal from register 75
168 Grounds for removal from register 75
169 When society may request removal 76

Procedural requirements before removal

170 Notice of intention to remove from register 76
171 Objection to removal from register 77
172 Objections under section 171(1)(a) to (d) 77
173 Objections under section 171(1)(e) to (g) 78
174 Registrar must send information to person who requests removal 78
175 Court may order that society not be removed 78
176 Liability of officers, members, and others to continue 79

Restoration to register

177 Restoration to register 79
178 Registrar may restore society to register 79
179 Notice of proposed restoration 79
180 Registrar must not restore society if objection received 80
181 Court may order restoration of society 80
182 Registrar or court may require provisions of this Act or regulations to be complied with 80
183 Other court orders 81

Subpart 2—Amalgamations

184 Amalgamations 81
185 Amalgamation proposal 81
186 Information relating to proposal for members, creditors, and public 81
187 Approval of amalgamation proposal 82
188 Solvency test for amalgamations 82
189 Officers must sign certificate 82
190 Registration of amalgamation 82
191 Certificate of amalgamation and changes to register 83
192 Amalgamation must not proceed if Registrar considers that name does not comply 83
193 Amalgamation must not proceed if Registrar considers that purposes do not comply with Act 83
194 Amalgamation must not proceed if Registrar considers that constitution does not comply with Act 84
195 Registrar has discretion about nature and extent of consideration of amalgamation proposal 84
196 Effect of certificate of amalgamation 84

197	Other registers	84
198	Amalgamated society may present certificate about property of society	85
199	Powers of court in other cases	85
	Subpart 3—Compromises with creditors	
200	Compromises with creditors	86
	Subpart 4—Liquidation	
	Members may resolve to put society into liquidation	
201	Members may resolve to put society into liquidation	86
202	Application of Companies Act 1993 where members resolve to put society into liquidation	86
	High Court may put society into liquidation	
203	High Court may put society into liquidation	87
204	Limit on liquidation where society has fewer than 10 members	87
205	Application to court to appoint liquidator	87
206	Application of Companies Act 1993 where High Court puts society into liquidation	88
	Subpart 5—Other matters relating to removal or liquidation of society	
207	Application of subpart	88
208	Who may act under subpart	88
209	Rules for disposal of surplus assets	88
210	How resolution may be passed after society is removed	89
211	When distribution under constitution does not apply	90
212	Extent of inquiries that must be made	90
213	Other provisions relating to person authorised by Registrar	90
214	Directions to facilitate liquidation or removal of society	90
214A	Direction to defer disposal of surplus assets	91
214B	Disposal of surplus assets ceases if society is restored to register	91
215	Distribution after lapse of time	91
216	Direction relating to land	92
217	No appeal against Registrar's decision	92
	Subpart 6—Procedure for certain resolutions	
218	Application of subpart	92
219	Notice of resolutions	92
220	Approval of resolution	93
221	Additional requirement for resolution providing for distribution of surplus assets	94

Part 6
Register, regulations, amendments, and other miscellaneous provisions

Subpart 1—Register of incorporated societies

Register established

222	Register of incorporated societies	94
223	Purpose of register	94
224	Contents of register	95
225	Registrar may remove or omit information and may restrict public access	95
226	Amendments to register	96
227	Registration of documents or other information	96

Searches of register

228	Search of register	97
229	Search purposes	97
230	When search constitutes interference with privacy of individual	97

Registrar of Incorporated Societies

231	Registrar of Incorporated Societies	97
232	Functions of Registrar	98
233	Power of Registrar to delegate	98
234	How delegated functions may be performed	98

Registrar's powers of inspection

235	Registrar's powers of inspection	98
236	What powers may be exercised	99
237	Offence to obstruct or hinder	100
238	Disclosure of information and reports	100
239	Inspector's report admissible in liquidation proceedings	101

Appeals against Registrar's decisions

240	Appeals against Registrar's decisions	101
241	Exercise of powers under section 235 not affected by appeal	101

Sharing of information relating to charitable entities

242	Sharing of information relating to charitable entities	102

Subpart 2—Jurisdiction

243	Jurisdiction of District Court	102
244	Jurisdiction of High Court	103

Subpart 3—Regulations

245	Regulations	103
246	Fees	106
247	Transitionals, savings, and orderly implementation of Act	106

Subpart 4—Conversion of entities into incorporated societies

248 Entities formed or incorporated by other Acts may convert to be incorporated societies 107
249 Consequences of failing to comply with terms or conditions of conversion 107

Subpart 5—Amendments to Charitable Trusts Act 1957

250 Amendments to Charitable Trusts Act 1957 108
251 Section 6 amended (Interpretation) 108
252 Section 8 replaced (Society may apply for incorporation) 108
8 Applications for incorporation may no longer be made by societies 108
253 Section 9 amended (Manner in which society may authorise application) 108
254 Section 10 amended (Applications for incorporation) 108
255 Section 11 amended (Registration of boards) 108
256 Section 17 amended (Right to appeal to court) 109
257 New section 30A inserted (Society may reregister under Incorporated Societies Act 2021) 109
30A Society may reregister under Incorporated Societies Act 2021 109
258 Schedule 2 amended 109

Subpart 6—Repeal, revocation, and consequential amendments

259 Repeal of Incorporated Societies Act 1908 109
260 Revocation of Incorporated Societies Regulations 1979 109
261 Amendments to and repeal of other Acts 109

Schedule 1 110
Transitional, savings, and related provisions

Schedule 2 121
~~Disputes procedures that are presumed to be consistent with rules of natural justice~~Optional dispute resolution procedures

Schedule 3 125
Conversion of entity into incorporated society

Schedule 4 128
Amendments to other Acts

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.

(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.

(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.

(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
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

(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

(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 in accordance with their constitutions, any bylaws, and their own tikanga, kawa, culture, and practice, and should be ~~and~~ free from inappropriate Government interference; and

(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:

(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:

(d) **Part 4** provides for enforcement, including offences and court proceedings to enforce a society's constitution or to enforce officers' duties:

(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.

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**

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 (for example, a board)

complaint has the meaning set out in **section 37A**

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**

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)

dispute has the meaning set out in **section 37A**

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

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**

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

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,—

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

(ii) a natural 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

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

(c) excludes any class or classes of natural 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**

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

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—

(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:

(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, charitable, sporting, or public purposes in New Zealand; and

(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.

(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.

(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.

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.

(2) *See* **subpart 2 of Part 3** (financial gain).

Application for incorporation

9 Application for incorporation

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

(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 elected or appointed or otherwise holding office as an officer of the society; and

(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

(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—

(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~~ any legislation; or

(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

(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

(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.

(3) **Subsection (1)(b)** does not apply if—

(a) the other society, company, or body corporate gives its consent in the manner prescribed by the regulations; and

(b) the Registrar is satisfied that the society's use of the name will not be contrary to the public interest.

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—

(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.

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**).

(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

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

(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

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 **subpart 1 of Part 3**.

(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—

(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.

(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,—

(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~~ legislation, and the general law.

(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—

- buy, sell, exchange, develop, and mortgage property:
- borrow money and give security for it:
- enter into contracts and leases:
- employ people:
- 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.

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.

(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—

(i) is not an officer of the society; or

(ii) has not been properly elected or 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—

(i) has not been properly elected or appointed; or

(ii) does not have authority to exercise a power that, given the nature of the society, a person elected or appointed to that capacity ordinarily has authority to exercise:

(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.

(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.

(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,—

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.

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—

(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

(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.

(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

(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, surplus, dividend, or other similar 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

(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)**.

(3) This section is subject to **section 24**.

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:

(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:

(ba) distribute funds to a member to further the purposes of the society (or proposed society), and the member—

(i) is a not-for-profit entity; and

(ii) is affiliated or closely related to the society (or proposed society); and

(iii) has the same, or substantially the same, purposes as those of the society (or proposed society):

(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:

(da) provide benefits to members or their families to alleviate hardship:

(db) provide educational scholarships or grants to members 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)**):

(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:

(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, surplus, dividend, or other financial benefit of the amalgamating society):

~~(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.~~

(i) in the case of a union,—

(i) 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; or

(ii) do any other thing in the ordinary course of its activities as a union.

(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.

(3) In **subsection (1)(e)**, salary, wages, or other payments for services, or other transactions, are on **arm's-length terms** if—

(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

(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,~~ share of a gain, profit, or surplus, percentage of revenue, or other reward in connection with ~~the activities of the society~~ any gain, profit, surplus, or revenue of the society.

~~(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.

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

(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

(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

(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

(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

(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**), including procedures for investigating and dealing with complaints and grievances; and~~, including providing for how a complaint may be made (*see* **sections 37A to 39A**); and

(k) arrangements and requirements for general meetings (*see* **sections 78 to 86**), including—

(i) the intervals between annual general meetings; and

(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

(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 (for example, whether votes may be cast by post or by electronic means), ~~and~~ procedures for proxies (if any), and whether the quorum takes into account members present by proxy or casting postal votes or votes by electronic means; and

(viii) the arrangements and requirements for special general meetings under **section 59(3)**; and

(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**).

(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.

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, and tikanga ~~or culture~~, kawa, culture, or practice, and other matters

(1) The constitution may contain any other matters that are not inconsistent with this Act or any other ~~Act~~ legislation, including providing for—

(a) whether and, if so, how the society can make bylaws:

(b) the society to express its tikanga ~~or culture~~, kawa, culture, or practice:

(c) reasonable penalties to be imposed on any member (and for the consequences of the non-payment of any subscription or penalty):

(d) any other matter relevant to the society's ~~activities~~ operations or affairs.

(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~~ legislation, or the society's constitution.

(3) The making, amendment, revocation, or replacement of a bylaw is not an amendment of the society's constitution.

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.

(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.

(2A) The constitution of a society is binding, in accordance with its terms, on each officer.

(3) ~~**Subsection (2)** is~~ **Subsections (2) and (2A)** are subject to the rest of this Act.

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.

(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 (or by a resolution passed in lieu of a meeting in accordance with **section 83**); and

~~(c) signed by at least 2 members of the society; and~~

(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.

(4) This section is subject to **section 31**.

Compare: 1908 No 212 s 21(1), (2)

31 Minor or technical amendments

(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—

(a) the text of the amendment; and

(b) the right of the member to object to the amendment.

(4) If no objection from a member 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.

(5) However, if such an objection is received, the society may not make the amendment under this section.

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~~ 25 working days after the amendment—

(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—

(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.

(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

(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.

(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

(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**:

(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:

(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 later date specified in the order.

(3) The amendment takes effect from the date on which the constitution on the register is amended.

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.

(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**.

~~*Disputes between members and between members and society*~~

Procedures in constitution for resolving disputes

37A Meanings of dispute and complaint

(1) A disagreement or conflict is a **dispute** if—

(a) it is between—

(i) 2 or more members; or

(ii) 1 or more members and the society; or

(iii) 1 or more members and 1 or more officers; or

(iv) 2 or more officers; or

(v) 1 or more officers and the society; or

(vi) 1 or more members or officers and the society; and

(b) the disagreement or conflict relates to an allegation that—

(i) a member or an officer has engaged in misconduct; or

(ii) a member or an officer has breached, or is likely to breach, a duty under the society's constitution or bylaws or this Act; or

(iii) the society has breached, or is likely to breach, a duty under the society's constitution or bylaws or this Act; or

(iv) a member's rights or interests as a member have been damaged or members' rights or interests generally have been damaged.

(2) A member, an officer, or a society makes a **complaint** if, in accordance with the society's constitution,—

(a) the member or officer starts a procedure for resolving a dispute in accordance with the constitution; or

(b) the society starts a procedure for resolving a dispute in accordance with the constitution (for example, the society starts a disciplinary action against a member or an officer in relation to an allegation referred to in **subsection (1)(b)(i) or (ii)**).

(3) In this section, a reference to—

(a) a member is a reference to a member acting in their capacity as a member:

(b) an officer is a reference to an officer acting in their capacity as an officer.

~~**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.~~

~~(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).~~

38 Procedures for resolving disputes must be consistent with natural justice

The procedures in a society's constitution for resolving disputes must be consistent with the rules of natural justice.

38A Society may choose to include procedures in Schedule 2

A society may choose to include all or any of the procedures in **Schedule 2** in its constitution (but is not required to do so).

38B Safe harbour if Schedule 2 is used

(1) The procedures in a society's constitution for resolving disputes must be treated as being consistent with the rules of natural justice if those procedures consist of—

(a) all of the procedures in **Schedule 2**; and

(b) any additional procedures that are consistent with those procedures.

(2) **Subsection (1)** does not prevent a society from having other procedures in its constitution for resolving disputes (as long as those procedures are consistent with the rules of natural justice).

38C Constitution may provide for types of dispute resolution

(1) A society's constitution may provide that all or certain kinds of disputes must or may be submitted to any type of dispute resolution, including—

(a) consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice); and

(b) determinative dispute resolution (for example, arbitration under the Arbitration Act 1996 or adjudication).

(2) This section and **section 39** do not apply to the extent that other legislation requires a dispute to be dealt with in a different way (and the provisions of a constitution that relate to disputes have no effect to the extent that those provisions contravene, or are inconsistent with, that legislation).

Example

An incorporated society (**T**) is a trade union. Under section 161 of the Employment Relations Act 2000, the Employment Relations 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 a union to comply with its rules.

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

39 ~~Constitution may provide for~~ Provisions relating to 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.~~

(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 or officer.

(3) A society's constitution may prescribe procedural matters (not inconsistent with the Arbitration Act 1996) that govern an arbitration under this section.

~~(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).~~

~~**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 mat-~~

~~ters 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.~~

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

39A Constitution may provide for appeal or review

A society's constitution may provide for whether and, if so, how a decision made under the procedures for resolving disputes may be subject to an appeal or a review.

Subpart 4—Committee and officers

Committee

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**.~~

(2) The committee must comprise 3 or more officers who are qualified to be elected or appointed under **section 42**.

(3) A majority of the officers on the committee must be made up of either or both of the following:

(a) members of the society:

(b) representatives of bodies corporate that are members of the society.

Example

A society (**society A**) has a committee of 5 officers.

Two of the officers are members of society A. One of the other officers represents another incorporated society (**society B**). Society B is a member of society A. Together these 3 officers are a majority on the committee.

The other 2 officers are independent officers.

(4) **Subsection (3)** does not apply in the circumstances prescribed in the regulations.

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.

(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

(1A) Every officer of a society must be a natural person.

(1) A natural person who is not disqualified by **subsection (2)** may be elected or appointed as an officer of the society, so long as that person—

(a) has consented in writing to be an officer; and

(b) certifies that they are not disqualified from being elected or appointed or otherwise holding office as an officer of the society.

(2) The following persons are disqualified from being elected or appointed or otherwise holding office as an officer of a society:

(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:

(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:

(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:

(iv) an offence under **section 22(2)**:

(v) an offence, in a country, State, or territory other than New Zealand, that is substantially similar to an offence specified in **subparagraphs (i) to (iv)**:

(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:

(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:

(fa) a person who is subject to an order that is substantially similar to an order referred to in **paragraph (f)** under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the regulations:

(g) in relation to any particular society, a person who does not comply with any qualifications for officers contained in the society's constitution.

(3) A natural 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.

Compare: 1993 No 105 s 151

43 Registrar may waive disqualifying factors

(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 (fa)** 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.

Example

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.

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.

Compare: 2005 No 39 s 16(4), (5)

44 Other provisions relating to waivers

(1) A waiver of a disqualifying factor may be granted on the terms or conditions that the Registrar thinks fit.

(2) The Registrar may—

(a) vary a waiver in the same way as a waiver may be granted:

(b) revoke a waiver that has been granted.

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

(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

(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.

Compare: 1993 No 105 s 157(1), (2)

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

(1) 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.

(2) *See*, however, the Limitation Act 2010, which provides defences to certain claims that are filed after an applicable period of time (for example, 6 years after the date of the act or omission on which the claim is based).

Compare: 1993 No 105 s 157(3)

Notice of election or appointment and of other changes

47 Notice of elections or 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 election or appointment of an officer:

(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.

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 election or appointment was defective; or

(b) the person is not qualified for election or 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.

(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.

(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

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.

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,—

(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.

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

(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.

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:

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

(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.

(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

(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).

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—

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

(b) is the spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, sibling, nephew, niece, uncle, aunt, 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

(e) ~~may be~~ is 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

(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~~.~~; or

(d) if A's interest is of a kind that is specified in the society's constitution for the purposes of this subsection.

(2A) **Subsection (2)(d)** applies only if the conditions prescribed by the regulations (if any) are satisfied.

(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.

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)—

(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.

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

(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

(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.

(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.

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.

(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.

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).

61A Constitution may negate, limit, or modify conflict of interest requirements

(1) The constitution of a society may negate, limit, or modify any provisions of **sections 58, 59, 60(1), and 67** if the conditions prescribed by the regulations (if any) are satisfied.

(2) The constitution of a society may negate or limit the society's ability to avoid a transaction under **section 62(1)** if the conditions prescribed by the regulations (if any) are satisfied.

(4) This section does not limit **sections 62(2) to (4) and 63 to 66**.

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)**.

(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.

(4) A provision of a constitution is of no effect to the extent that it purports to allow a transaction to be avoided in circumstances in which the transaction could not otherwise be avoided under this Act.

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.

(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.

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.

(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—

(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.

Compare: 1993 No 105 s 142

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

~~**Sections 58 to 62**~~ **Sections 58 to 61 and 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**.

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.~~

(2) An officer of the society may inspect the interests register at any reasonable time.

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.

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**.

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).

71 Members have no right to property of society

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

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—

(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.

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—

(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.

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.

(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,—

(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.

(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—

(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

(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.

(2) ~~This section~~ **Subsection (1)** does not limit the reasons for which a society may refuse to provide the information.

(3) However, the constitution of a society may negate **subsection (2)** (with the effect that the reasons for which a society may refuse to provide the information are limited to those in **subsection (1)**).

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—

(a) that the member will pay the charge; or

(b) that the member considers the charge to be unreasonable.

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—

(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.

(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.

(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—

(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.

(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 general meeting applies only to delegates or other representatives of members (rather than to all members).

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.

(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.

(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 general meeting

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

(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).

(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**.

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

(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* **sections 26(1)(k) and 86A**, which ~~provides~~ provide for the constitution to deal with arrangements and requirements for general meetings (including the quorum, proxies, and voting by post or electronic means).

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:

(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.

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)**.

(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~~ approved 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~~ approved by or on behalf of 1 or more of the persons specified in **subsection (2)**.

(4) For the purposes of this section, a member may give their approval by—

(a) signing the resolution; or

(b) giving their approval to the resolution in any other manner permitted by the constitution (for example, by electronic means).

(5) This section does not limit **section 78** (which requires a society to call and hold an annual general meeting).

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

(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

(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.

(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—

(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**.

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.

Voting by proxy, postal voting, and voting by electronic means

86A Constitution may permit voting by proxy, post, and electronic means

(1) This section applies if this Act requires or permits the members of a society to vote on a matter (for example, to approve a resolution to amend the society's constitution under **section 30**).

(2) The members may vote in 1 or more of the following ways if permitted by the society's constitution:

(a) vote by proxy:

(b) cast a postal vote:

(c) cast a vote by electronic means.

(3) *See* **section 26(1)(k)**, which also provides for a constitution to set out procedures for voting in person at general meetings.

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.

(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

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.

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 soci-

ety (or costs incurred by A in defending or settling any claim or proceeding relating to that liability).

Example

An incorporated society (**T**) is a trade union. Its members include employees of various business, including a company (**B**).

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—

(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.

(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 what the officer, member, or employee believes to be the best interests of the society when acting in ~~the~~ their capacity as an officer, a member, or an employee of the society.

(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.

(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—

(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—

(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.

(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—

(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

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.

(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:

(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

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—

(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)**).

(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:

(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:

(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)**).

Accounting records

94 Accounting records must be kept

(1) The committee must ensure that there are kept at all times accounting records that—

(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~~ legislation or the society's constitution).

(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.

(4) The accounting records must be kept for the current accounting period and for the last 7 completed accounting periods of the society.

Compare: 1993 No 105 s 194

Financial reporting

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~~ balance date of the society, financial statements are—

(a) completed in relation to the society and that ~~accounting period~~ balance date; and

(b) dated and signed by or on behalf of the society by 2 members of the committee.

(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

(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:

(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

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

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.

(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~~ $50,000; and

(ii) as at the balance date of each of the 2 preceding accounting periods, the total current assets of the society are less than ~~$30,000~~ $50,000; 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).

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, or receipts and payments, of the society during the accounting period; and

(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

(b) otherwise comply with requirements prescribed by the regulations.

98 Annual financial statements of ~~large~~ certain societies must be audited

(1) Every society that is ~~large within the meaning of section 45 of the Financial Reporting Act 2013~~ of a kind prescribed by the regulations must ensure that the financial statements that are required to be prepared under **section 95** are audited by a qualified auditor.

(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.

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.

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.

Compare: 1993 No 105 s 207C

101 Duties do not apply if alternative financial reporting duties under financial markets or charities legislation

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.

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.

(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

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

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.

(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

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—

(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—

(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.

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

(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.

(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

(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

(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.

(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.

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~~ under **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—

(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

(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—

(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.

(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)

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.~~

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

(3) **Subsection (1)** applies to a contract or other obligation—

(a) whether or not ~~that~~ the contract or obligation was entered into in New Zealand; and

(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.

(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—

(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

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.

(3) A document that is served on a society must be treated as received by the society when specified by the regulations.

Te reo Māori

118A Use of te reo Māori in records and documents

Nothing in this Act prevents a society from—

(a) having any of the following in te reo Māori:

(i) the society's constitution:

(ii) the society's bylaws (if any):

(iii) any other document required by or for the purposes of this Act; or

(b) keeping its records in te reo Māori.

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:

(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**:

(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~~ legislation

(1) This Part is subject to any other ~~enactment~~ legislation that confers exclusive jurisdiction in relation to a ~~dispute~~ matter involving a society ~~and~~, its members, or its officers (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.

(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.

(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:

(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:

(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:

(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)**.

(2) A court may, on an application under this subpart, exercise a power under **subsection (3)** if it is satisfied that—

(aa) there has been a breach of the rules of natural justice; or

(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

(c) the decision made on the dispute by a decision maker is in conflict with the public policy of New Zealand.

(2A) **Subsection (2)(a)** does not limit **subsection (2)(aa)**.

(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:

(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.

(4) The court must state its reasons for giving a direction under **subsection (3)(c)**.

(5) **Subsection (2)(aa)** is subject to **section 38B**, which provides for when procedures in a society's constitution for resolving disputes must be treated as being consistent with the rules of natural justice.

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,—

(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—

(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**).

(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

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:

(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:

(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):

(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—

(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

(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

(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.

(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

(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

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.

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

(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.

(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:

(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.

(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.

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.

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—

(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.

(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.

(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

(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.

(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).

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.

(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)

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

(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—

(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.

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:

(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.

(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

(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—

(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.

(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**).

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.

(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

(ii) societies are private bodies that should be self-governing in accordance with their constitutions, any bylaws, and their own tikanga, kawa, culture, and practice, and should be ~~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

(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

(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

(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

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

(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:

(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

(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.

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.

(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~~

~~(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.~~

~~(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—

(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.

(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—

(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.

(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.

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

(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.

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—

(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.

150 Operating fraudulently or dishonestly incurring debt

(1) A person commits an offence if they are knowingly a party to a society operating—

(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

(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

(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

(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

(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.

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.

(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.

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

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.

(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 elections or appointments and other changes relating to officers):

(c) **section 73** (duty to maintain a register of members):

(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):

(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

(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.

(3) *See* 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

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.

(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.~~

(3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 154(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter.

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

(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

(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

(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

(b) sending it to an electronic address of a contact ~~officer~~ person or of the society; or

(c) sending it to the society by prepaid post addressed to the society's address for service.

(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:

(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.

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.

Subpart 7—Banning order

161 Court may disqualify officers

(1) A court may make a banning order against a person (**A**) if—

(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

(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

(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:

(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).

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—

(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.

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.

(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

(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.

(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.

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

(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

(1) 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.

(2) *See* **section 16(2)**, which has the effect that a society is no longer in existence if it is removed from the register.

Compare: 1993 No 105 s 317

168 Grounds for removal from register

(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

(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

(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

(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

(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

(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)

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

(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

(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.

(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.

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—

(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.

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.

(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

(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.

(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.

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**:

(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

(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.

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.

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

(3) *See*, however, the Limitation Act 2010, which provides defences to certain claims that are filed after an applicable period of time (for example, 6 years after the date of the act or omission on which the claim is based).

Compare: 1993 No 105 s 326

Restoration to register

177 Restoration to register

(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.

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,—

(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.

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

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

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.

(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

(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

(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

(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

(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

(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:

(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

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

(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.

(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**.

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—

(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

(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

(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

(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

(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)**.

(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.

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

(b) the Registrar considers that any of **paragraphs (a) to ~~(e)~~ (f)** 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.

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

(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**).

(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

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

(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

(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

(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

(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.

(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.

(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—

(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.

(2) Despite any other ~~enactment~~ legislation 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**.

(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.

(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—

(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.

(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:

(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**.

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**.

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.

(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:

(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.

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

(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:

(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.

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

(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:

(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.

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:

(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.

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

(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)**.

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.

(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.

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):

(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:

(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.

214A Direction to defer disposal of surplus assets

(1) This section applies if a society has been removed from the register.

(2) The Registrar may direct that the disposal of the surplus assets of a society, and any other action under this subpart, must be deferred if the Registrar considers that a direction is necessary or desirable for either or both of the following purposes:

(a) ascertaining whether any person is likely to make an application to restore the society to the register; and

(b) giving a reasonable opportunity for a society to be restored to the register before its surplus assets are disposed of.

(3) The Registrar may—

(a) specify any period of deferral that the Registrar thinks fit; and

(b) by a further direction, extend or end the period of deferral.

(4) Nothing in this section requires the return to the society of any surplus assets that have already been properly disposed of under this subpart before the direction is made.

214B Disposal of surplus assets ceases if society is restored to register

(1) If a society that has been removed from the register is restored to the register, **section 209** ceases to apply.

(2) Nothing in this section requires the return to the society of any surplus assets that have already been properly disposed of under this subpart before the society is restored to the register (*see also* **section 183(3)**).

215 Distribution after lapse of time

(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.

(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)**.

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.

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

(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.

(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.

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

(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~~ the relevant number of days before the general meeting at which the resolution is to be submitted.

(1A) The **relevant number of days** is—

(a) 20 working days (unless **paragraph (b)** applies); or

(b) the number of working days that is specified in the society's constitution for the purposes of this section (which may be fewer or more than 20).

(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—

(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

(d) the right of a member to appoint a proxy (if allowed by the society's constitution); and

(da) the right of a member to cast a vote by post or electronic means (if the society's constitution allows); 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

(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, if—

(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

(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

(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).

(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

(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.

(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

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.

(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

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

(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~~ legislation; or

(ii) in the performance of the person's functions under this Act or any other ~~enactment~~ legislation.

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

(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

(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 election or 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

(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 (c)** 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~~.~~; or

(c) an individual if the individual is—

(i) a protected person in relation to a protection order under the Family Violence Act 2018; or

(ii) a person for whose benefit a suppression provision or order applies under any legislation.

(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.

(3A) However, in the case of **subsection (2)(c)**, the Registrar must ensure that those terms and conditions are consistent with the protection order or suppression provision or order.

(4) This section does not limit the Official Information Act 1982.

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

(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)**).

(2) The Registrar may refuse to perform or exercise a function, power, or duty in relation to the document or information if—

(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).

Searches of register

228 Search of register

(1) A person may search the register under this Act or the regulations.

(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:

(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:

(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:

(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~~ legislation:

(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~~ legislation.

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.

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.

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**:

(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:

(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

(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—

(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.

(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.

(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.

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**.

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

(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.

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.

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.

(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.

(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):

(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,—

(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.

(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.

Compare: 1993 No 105 s 371

Sharing of information relating to charitable entities

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

(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.

(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~~ legislation (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).

(4) This section applies despite anything to the contrary in any contract, deed, or document.

(5) Nothing in this section limits the Privacy Act 2020.

Compare: 1993 No 105 s 371A

Subpart 2—Jurisdiction

243 Jurisdiction of District Court

(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~~ to which the matter relates does not exceed $350,000; or

(b) no amount is claimed and there is no property ~~in dispute~~ to which the matter relates; or

(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~~ consent, under section 81 of the District Court Act 2016, ~~that~~ to the District Court ~~has~~ having jurisdiction to hear and determine the application.

(3) **Subsection (2)** does not limit **subsection (1)**.

(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

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

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:

(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:

(ii) the form that must be used in connection with doing the thing:

(iii) what information or other evidence or documents must be provided in connection with the thing:

(iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply:

(v) that fees or charges must be paid in connection with doing the thing:

(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:

(ca) prescribing circumstances for the purposes of **section 40(4)**:

(cb) prescribing countries, States, or territories for the purposes of **section 42(2)(fa)**:

(d) prescribing changes for the purposes of **section 47(1)(c)**:

(da) prescribing conditions for the purposes of **sections 57(2A) and 61A**:

(e) prescribing kinds of societies for the purposes of **section 78(4)**:

(f) prescribing requirements under **section 97(b)** (financial statements of small societies):

(fa) prescribing kinds of societies for the purposes of **section 98**:

(g) setting the infringement fee for each infringement offence, which must not exceed $1,000:

(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**:

(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)**:

(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):

(n) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for the register, including matters that relate to—

(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:

(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.~~

(2) Regulations may be made under the following only on the recommendation of the Minister:

(a) **subsection (1)(fa)**:

(b) **subsection (1)(o) to (q)**.

(2A) The Minister may make a recommendation under **subsection (2)(a)** only if the Minister has had regard to the following:

(a) the circumstances in which companies and other kinds of entities are required to have their financial statements audited under other legislation:

(b) the desirability of avoiding unnecessary administrative burdens, and unnecessary compliance costs, for incorporated societies:

(c) the principles in **section 3(d)**:

(d) the desirability of promoting confidence in the integrity of the financial reporting of incorporated societies.

(3) The Minister may make a recommendation under **subsection (2)(b)** 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 the purposes of this Act and 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:

(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.

(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.

(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).

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:

(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~~ legislation 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:

(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

(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).

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**.

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.

Subpart 5—Amendments to Charitable Trusts Act 1957

250 Amendments to Charitable Trusts Act 1957

This subpart amends the Charitable Trusts Act 1957.

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**

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.

(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.

(4) *See* **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".

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.

255 Section 11 amended (Registration of boards)

(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:

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:

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.

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.

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

Contents

Page

Part 1
Process for existing societies to become societies under this Act

1	Purpose	110
2	Overview	111
3	Interpretation	111
4	Application for incorporation may no longer be made under 1908 Act	112
5	Existing society may apply to reregister under this Act	112
6	Dispute resolution provisions treated as applying	113
7	Reregistration	113
7A	Proposed constitution must be existing rules or new constitution	114
8	Existing society may amend its rules to facilitate reregistration	114
8A	Existing society may approve new constitution to take effect on reregistration	115
9	Consequences of reregistering existing society under this Act	115
10	Consequences of not reregistering existing incorporated society under this Act	116
10A	Registrar may not restore existing society to register after 6 years	117
11	Registrar may give directions to facilitate transition	117
12	Former law continues to apply to existing dissolutions and liquidations	118
13	Existing societies that have been dissolved or put into liquidation	118

Part 2
Other transitional provisions

14	Incorporated branches and groups of branches	119
15	References to incorporated societies	119

Part 1
Process for existing societies to become societies under this Act

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**).

(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**:

(b) during the period before the transition date, the society can amend its rules (or approve a new constitution) 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

(ii) the society's officers are qualified to be elected or appointed under **section 42**:

(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:

(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:

(ii) if the society is not restored, its surplus assets must be distributed under **subpart 5 of Part 5** of this Act.

(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:

(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.

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

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,—

(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

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.

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.

(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.

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.

(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

(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.

(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)**.

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

(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).

(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

(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.

7A Proposed constitution must be existing rules or new constitution

A proposed constitution that an existing society provides under **clause 5(3)(d)** must be—

(a) the rules of the existing society (*see* **clause 8**, which allows the society to amend the rules to ensure that they will comply with the requirements of this Act); or

(b) a new constitution that is approved in accordance with **clause 8A**.

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~~ legislation, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the rules.

(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~~

(b) either—

(i) approved at a general meeting of the existing society by a majority vote of those members entitled to vote and voting on the question; or

(ii) approved in the manner prescribed by the regulations; and

(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.~~

~~(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~~

~~(c) the society's rules, as amended, will continue to comply with the requirements of the 1908 Act or the 1957 Act.~~

(4) An approval under **subclause (3)(b)** may provide for either or both of the following:

(a) 1 or more particular amendments to take effect under the 1908 Act or the 1957 Act (before the existing society is reregistered):

(b) 1 or more particular amendments to take effect only on the existing society's reregistration under this Act.

(5) If any particular amendments are intended to take effect under the 1908 Act or the 1957 Act, the existing society must ensure that the following are given to the Registrar within 25 working days after the amendments are approved:

(a) a copy of those amendments; and

(b) the information or documents prescribed by the regulations (if any).

(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 that is intended to take effect under that Act as if an amendment made under this clause were an alteration that has been duly made under that section.

(7) In this clause, **Registrar** means the Registrar of Incorporated Societies under the 1908 Act.

8A Existing society may approve new constitution to take effect on reregistration

(1) An existing society may approve a constitution to take effect on its reregistration under this Act.

(2) The constitution must be—

(a) either—

(i) approved at a general meeting of the existing society by a majority vote of those members entitled to vote and voting on the question; or

(ii) approved in a manner prescribed by the regulations; and

(b) signed by at least 2 members of the society.

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.

(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

(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.

(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,~~ any legislation, 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—

(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

(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.

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,—

(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:

(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—

(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

(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 working 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

(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**:

(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.

(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.

(7) This clause is subject to ~~**clauses 12 and 13**~~ **clauses 10A, 12, and 13**.

10A Registrar may not restore existing society to register after 6 years

(1) The Registrar may not restore an existing society to the register under **sections 177 to 180** after the sixth anniversary of the date on which it ceases to exist under **clause 10**.

(2) **Subclause (1)** does not apply if, at any time, the existing society was incorporated under this Act.

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—

(a) the proposed 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 elected or appointed or holding office as an officer of the society under **section 42**; or

(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~~ or allowing the proposed constitution to be amended in order to ensure that it complies with the requirements of this Act:

(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 proposed 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):

(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.

(3) An amendment to a proposed 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~~ legislation, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the rules or constitution or to the removal of an officer.

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.

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

(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**).

(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).

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.

(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.

(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.

(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,—

(a) a reference in a provision of any other ~~enactment~~ legislation 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~~ legislation 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.

Schedule 2

~~Disputes procedures that are presumed to be consistent with rules of natural justice~~Optional dispute resolution procedures

s 38A

1 Overview of this schedule

(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 may choose (but 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.~~

(3) The procedures in a society's constitution must be treated as being consistent with the rules of natural justice if those procedures consist of—

(a) all of the procedures in this schedule; and

(b) any additional procedures that are consistent with those procedures.

1A How complaint is made

(1) A member or an officer may make a complaint by giving to the committee (or a complaints subcommittee) a notice in writing that—

(a) states that the member or officer is starting a procedure for resolving a dispute in accordance with the society's constitution; and

(b) sets out the allegation to which the dispute relates and whom the allegation is against; and

(c) sets out any other information reasonably required by the society.

(2) The society may make a complaint involving an allegation against a member or an officer by giving to the member or officer a notice in writing that—

(a) states that the society is starting a procedure for resolving a dispute in accordance with the society's constitution; and

(b) sets out the allegation to which the dispute relates.

(3) The information given under **subclause (1)(b) or (2)(b)** must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

(4) A complaint may be made in any other reasonable manner permitted by the society's constitution.

1B Person who makes complaint has right to be heard

(1) A member or an officer who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.

(2) If the society makes a complaint,—

(a) the society has a right to be heard before the complaint is resolved or any outcome is determined; and

(b) an officer may exercise that right on behalf of the society.

(3) Without limiting the manner in which the member, officer, or society may be given the right to be heard, they must be taken to have been given the right if—

(a) they have 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

(d) the member's, officer's, or society's written statement or submissions (if any) are considered by the decision maker.

2 ~~Complaints or disciplinary matter: member's right to be heard~~Person who is subject of complaint has 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.~~

(1) This clause applies if a complaint involves an allegation that a member, an officer, or the society (the **respondent**)—

(a) has engaged in misconduct; or

(b) has breached, or is likely to breach, a duty under the society's constitution or bylaws or this Act; or

(c) has damaged the rights or interests of a member or the rights or interests of members generally.

(1A) The respondent has a right to be heard before the complaint is resolved or any outcome is determined.

(1B) If the respondent is the society, an officer may exercise the right on behalf of the society.

(2) Without limiting the manner in which a ~~member~~ respondent may be given a right to be heard, a ~~member~~ respondent must be taken to have been given the right if—

(a) the ~~member~~ respondent is fairly advised of all allegations concerning the ~~member~~ respondent, with sufficient details and time given to enable the ~~member~~ respondent to prepare a response; and

(b) the ~~member~~ respondent 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

(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.~~; and

(e) the respondent's written statement or submissions (if any) 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.~~

~~(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—~~

~~(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.~~

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.~~

(1) A society must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its constitution, ensure that the dispute is investigated and determined.

(2) ~~Complaints, grievances, and other disputes~~ Disputes must be dealt with ~~by the society~~ under the constitution in a fair, efficient, and effective manner.

5 Society may decide not to ~~progress matter~~ proceed further with complaint

Despite **clause 4**, a society may decide not to proceed ~~with a matter further~~ further with a complaint if—

(a) the ~~matter~~ complaint is trivial; or

~~(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~~

(b) the complaint does not appear to disclose or involve any allegation of the following kind:

(i) that a member or an officer has engaged in material misconduct:

(ii) that a member, an officer, or the society has materially breached, or is likely to materially breach, a duty under the society's constitution or bylaws or this Act:

(iii) that a member's rights or interests or members' rights or interests generally have been materially damaged:

(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

(e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with ~~by or on behalf of the society.~~ under the constitution; or

(f) there has been an undue delay in making the complaint.

6 Society may refer ~~matter~~ complaint

(1) A society may refer a complaint~~, grievance, or other dispute~~ to—

(a) a subcommittee or an external person to investigate and report; or

(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~~ complaint, refer the ~~dispute to mediation~~ complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

7 Decision makers

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 subcommittee 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

Contents

		Page
1	When schedule applies	125
2	Specified entity may decide to be reregistered as incorporated society	125
3	Application for reregistration	125
4	Reregistration of specified entity as incorporated society	126
5	Entity's Act ceases to apply on reregistration	126
6	Consequences of reregistering specified entity under this Act	127

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**).

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.

(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.

(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.

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

(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.

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

(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—

(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)**; 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).

(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

(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.

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

(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.

(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—

(a) places any person in breach of, or otherwise in default under, ~~an enactment~~ any legislation, 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—

(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

(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**".

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**".

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**".

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**".

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:

(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.

(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.

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

(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.

(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.

(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**".

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**".

Financial Reporting Act 2013 (2013 No 101)

In section 48(1)(a), after "2005,", insert "**section 96(2)(b)** of the Incorporated Societies Act **2021**,".

After section 49(ca), insert:

(cb) amending the amounts specified in **section 96(2)(b)** of the Incorporated Societies Act **2021**:

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**".

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))

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).

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**".

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**".

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**".

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.

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:

(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):

(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**".

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**".

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**".

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

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**".

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
>
> (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".

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".

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).

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**".

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

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).

Summary Proceedings Act 1957 (1957 No 87)

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**".

Legislative history

17 March 2021	Introduction (Bill 15–1)
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