

INDUSTRIAL AND PROVIDENT SOCIETIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Industrial and Provident Societies Act 1908. Its general effect is to apply, in respect of industrial and provident societies, certain provisions that apply in respect of companies.

Clause 1 relates to the Short Title.

Clause 2 inserts a new paragraph (ca) in section 5 of the principal Act. The new paragraph provides that except with the consent of the High Court, no society shall be registered by a name which, in the opinion of the Registrar, is undesirable. The parallel provision of the Companies Act 1955 is section 31 (4).

Clause 3 inserts a new *section 5A* in the principal Act. The new section provides that if—

(a) Through inadvertence or otherwise, a society is registered by a name which contravenes paragraph (a) or paragraph (ca) of section 5 or any other enactment; or

(b) A society is for the time being registered by a name which, in the opinion of the Registrar, is undesirable,—

the society shall, within 6 weeks from the date of its being required by the Registrar to do so or within such longer period as he may allow, change its name by amending its rules.

No fee is payable for registering such an amendment. The society is liable to a fine if it does not comply with the Registrar's requirements. The new section is based on section 11A of the Incorporated Societies Act 1908 and on section 32 (2)–(4) of the Companies Act 1955.

Clause 4 inserts two new sections into the principal Act.

The new *section 10A* deals with the power of a society to compromise with creditors and members. The parallel provision of the Companies Act 1955 is section 205.

The new *section 10B* deals with information as to compromises with creditors and members. The parallel provision of the Companies Act 1955 is section 206.

Clause 5 inserts two new sections in the principal Act.

The new *section 13A* confers powers of inspection on the Registrar of Industrial and Provident Societies. The parallel provision is section 9A of the Companies Act 1955.

The new *section 13B* (which is based on section 9B of the Companies Act 1955) confers (subject to limited exceptions) a right of appeal to the High Court against any act or decision of the Registrar.

Clause 6 amends section 13 of the Industrial and Provident Societies Amendment Act 1952 (which relates to the payment of certain debts out of assets subject to a floating charge in priority to claims under the charge). The parallel provision of the Companies Act 1955 is section 101. The amendments now proposed follow those made to section 101 of the Companies Act 1955 by section 6 of the Companies Amendment Act 1980.

Clause 7 effects repeals that are consequential on the enactment of the new *section 13B* contained in *clause 5* of this Bill.

Hon. Mr McLay

INDUSTRIAL AND PROVIDENT SOCIETIES AMENDMENT

ANALYSIS

Title	5. New sections inserted
1. Short Title	13A. Powers of inspection of Registrar
2. Registry of societies	13B. Appeals from decisions of Registrar
3. Change of name	6. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge
4. New sections inserted	7. Repeal
10A. Power to compromise with creditors and members	
10B. Information as to compromises with creditors and members	

A BILL INTITULED

An Act to amend the Industrial and Provident Societies Act 1908

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same,
as follows:

1. **Short Title**—This Act may be cited as the Industrial and Provident Societies Amendment Act 1981, and shall be read together with and deemed part of the Industrial and Provident Societies Act 1908* (hereinafter referred to as the principal Act).

*1957 Reprint, Vol. 6, p. 389
Amendments: 1965, No. 89; 1967, No. 82; 1973, No. 68; 1977, No. 155;
1979, No. 10

2. Registry of societies—Section 5 of the principal Act is hereby amended by inserting, after paragraph (c) (as substituted by section 2 of the Industrial and Provident Societies Amendment Act 1952), the following paragraph:

“(ca) Except with the consent of the High Court, no society shall be registered by a name which, in the opinion of the Registrar, is undesirable:” 5

3. Change of name—The principal Act is hereby amended by inserting, after section 5, the following section:

“5A. (1) If— 10

“(a) Through inadvertence or otherwise, a society at its first registration, or on its registration by a new name, is registered by a name which is in contravention of paragraph (c) or paragraph (ca) of section 5 of this Act, or of any enactment, other than this Act, relating to restrictions on the use of any name; or 15

“(b) A society is for the time being registered by a name which, in the opinion of the Registrar, is undesirable,— 20

the society shall, within a period of 6 weeks from the date of its being required by the Registrar to do so, or such longer period as he may allow, change its name in accordance with section 7 of this Act to a name that is not in contravention as aforesaid and is not, in the opinion of the Registrar, undesirable. 25

“(2) If a society makes default in complying with the requirements of subsection (1) of this section, it commits an offence and shall be liable on summary conviction to a fine not exceeding \$10 for every day on which the offence has continued. 30

“(3) No fee shall be payable to the Registrar in respect of an alteration of the rules of a society if the alteration only changes the society's name pursuant to the requirements of subsection (1) of this section.” 35

4. New sections inserted—The principal Act is hereby amended by inserting, after section 10, the following sections:

“10A. **Power to compromise with creditors and members**—
(1) Where a compromise or arrangement is proposed between a registered society and its creditors or any class of them, or between the registered society and its members or any class of them, the High Court may, on the application of the registered society or of any creditor or member of the regis- 40

tered society, or, in the case of a registered society being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the registered society or class of members, as the case may be, to be summoned in such manner as the Court directs. If any question arises under this section as to whether or not any members or creditors of a registered society constitute a class of members or a class of creditors, as the case may be, it shall be determined by the High Court as in the circumstances it thinks proper.

“(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, voting in person or, where proxies are allowed, by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the High Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the registered society, or, in the case of a registered society in the course of being wound up, on the liquidator of the registered society.

“(3) An order made under subsection (2) of this section shall have no effect until a sealed copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the rules of the registered society issued after the order has been made.

“(4) If a registered society makes default in complying with subsection (3) of this section, the registered society and every officer of the registered society who is in default shall be liable on summary conviction to a fine not exceeding \$2 for each copy in respect of which default is made.

“(5) In this section and in section 10B of this Act—

“‘Creditor’ includes every person who has a claim that upon the winding up of the registered society would be admissible to proof in accordance with section 306 of the Companies Act 1955 (as applied by section 14 of the Industrial and Provident Societies Amendment Act 1952):

“‘Officer of the registered society who is in default’ means any officer of the registered society who—

“(a) Knowingly and wilfully authorises or permits the default, refusal, or contravention mentioned in this section or in section 10B of this Act; or

“(b) Knew or ought to have known of the default, refusal, or contravention and did not take all reasonable steps to secure compliance by the registered society with the requirements specified or imposed by this section or section 10B of this Act. 5

“**10B. Information as to compromises with creditors and members**—(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 10A of this Act there shall—

“(a) With every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the officers of the registered society, whether as officers or as members or as creditors of the registered society or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and 10 15

“(b) In every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid. 20 25

“(2) Where the compromise or arrangement affects the rights of debenture holders of the registered society, the said statement shall give the like explanation as respects the trustees of any deed for securing the debentures as it is required to give as respects the registered society’s officers. 30

“(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the registered society free of charge with a copy of the statement. 35

“(4) Where a registered society makes default in complying with any requirement of this section, the registered society and every officer of the registered society who is in default shall be liable on summary conviction to a fine not exceeding \$1,000, and for the purpose of this subsection any liquidator of the registered society and any trustee of a deed for securing any issue of debentures of the registered society shall be deemed to be an officer of the registered society: 40 45

“Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being an officer of the registered society or trustee for debenture holders, to supply the necessary
5 particulars as to his interests.

“(5) It shall be the duty of any officer of the registered society and of any trustee for debenture holders of the registered society to give notice to the registered society of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in
10 complying with this subsection shall be liable on summary conviction to a fine not exceeding \$100.”

5. New sections inserted—The principal Act is hereby amended by inserting, after section 13, the following sections:

15 “**13A. Powers of inspection of Registrar**—(1) Subject to subsection (2) of this section, the Registrar or any person authorised by him may, for the purpose of ascertaining whether a registered society or any officer of a registered society is complying or has complied with this Act, or of
20 ascertaining whether the Registrar should exercise any of his rights or powers under this Act, or of detecting offences against this Act—

“(a) Require a registered society or any officer of a registered society to produce for inspection any
25 registers, records, accounts, books, or papers that are kept by the registered society; and

“(b) In any case where the Registrar or the person authorised by him considers that the aforesaid purpose cannot be achieved by inspecting only the documents specified in paragraph (a) of this subsection,
30 require any person to produce for inspection any registers, records, accounts, books, or papers that contain information relating to any money or other property that is managed, supervised, controlled, or held in trust by the registered society; and

35 “(c) Inspect and make records of any such registers, records, accounts, books, or papers; and

“(d) For the purpose of making records thereof, take possession of and remove from the premises where
40 they are kept, for such period of time as is reasonable in the circumstances, any such registers, records, accounts, books, or papers.

“(2) No person authorised by the Registrar for the purposes of subsection (1) of this section may require the production of a document or make an inspection under that subsection unless he has first made a declaration in the prescribed form that he will not, except in accordance with subsection (3) of this section or for the purposes of this Act or in the course of any criminal proceedings, make a record of or divulge or communicate to any other person any information that he acquires by an inspection under that subsection. 5

“(3) A person who has made an inspection under subsection (1) of this section shall, upon being directed to do so by a person for the time being holding the office of Registrar or Deputy Registrar, give, divulge, or communicate any records or information that he has acquired in the course of the inspection to such of the following persons as that Registrar or Deputy Registrar specifies, namely: 10

- “(a) The Minister of Justice:
- “(b) The Secretary for Justice:
- “(c) The Registrar: 15
- “(d) A Deputy Registrar: 20
- “(e) A District Registrar:
- “(f) An Assistant Registrar:
- “(g) Any person authorised by that Registrar or Deputy Registrar to receive such records or information.

“(4) The Minister of Justice or the Secretary for Justice may, by written notice to that person, require the person for the time being holding the office of Registrar or Deputy Registrar to give a direction under subsection (3) of this section; and that person shall comply with any such requirement. 25 30

“(5) If any person makes a record of or divulges or communicates to any other person, otherwise than in accordance with subsection (3) of this section or for the purposes of this Act or in the course of any criminal proceedings, any information that he has acquired in the course of an inspection under subsection (1) of this section, he commits an offence and shall be liable on summary conviction to a fine not exceeding \$200. 35

“(6) If any registered society refuses or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1) of this section, any document that the Registrar or authorised person has under that subsection required it to produce, the registered society commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000. 40

“(7) If any officer of a registered society or other person refuses or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1) of this section, any document within the power
5 or control of that officer or person that the Registrar or authorised person has under that subsection required him to produce, that officer or person commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000.

“(8) Any person who wilfully obstructs or hinders the
10 Registrar, or any person authorised by the Registrar for the purposes of subsection (1) of this section, while the Registrar or authorised person is making an inspection or a record or taking possession of or removing any documents pursuant to that subsection commits an offence and shall be liable on
15 summary conviction to a fine not exceeding \$1,000.

“13B. Appeals from decisions of Registrar—(1) Any person who is aggrieved by the refusal of the Registrar to register a society, or to register or receive any document submitted to him under this Act or who is aggrieved by any other act
20 or decision of the Registrar under this Act, may appeal to the High Court within 21 days after the date of the refusal or other act or decision, or within such further time as the High Court may allow.

“(2) On hearing the appeal, the High Court may confirm
25 the refusal or other act or decision of the Registrar, or give such directions or make such determination in the matter as the High Court thinks fit.

“(3) No right of appeal shall lie under this section against any act or decision of the Registrar—

30 “(a) In respect of which there is any express provision in this Act in the nature of an appeal or review; or

“(b) That is declared by this Act to be conclusive or final, or that is embodied in any document declared by
35 this Act to be conclusive evidence of any act, decision, matter, or thing.

“(4) Notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the High Court in respect of an act or decision of the Registrar under section 13A of this Act, until a decision on the appeal or appli-
40 cation is given, the Registrar, and any person authorised by him under that section for the purpose, may continue to exercise his powers under that section as if no such appeal or application had been made, and no person shall be excused from fulfilling his obligations under that section by reason
45 of that appeal or application:

“Provided that, to the extent that an appeal or application in respect of any such act or decision is allowed or granted, as the case may be,—

“(a) The Registrar shall ensure that, forthwith after the decision on the appeal or application is given, all records made by him, or by a person authorised by him for that purpose, under section 13A (1) (c) of this Act in respect of that act or decision are destroyed or expunged; and 5

“(b) No information acquired under paragraph (a) or paragraph (b) of section 13A (1) of this Act in respect of that act or decision shall be admissible in evidence in any proceedings.” 10

6. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge—(1) Section 13 (2) of the Industrial and Provident Societies Amendment Act 1952 is hereby amended by omitting the words “becoming payable on the termination of employment before or by the effect of” where they secondly occur, and substituting the words “payable at the date of”. 15 20

(2) Section 13 of the Industrial and Provident Societies Amendment Act 1952 is hereby further amended by adding the following subsection:

“(5) In this section, the expression ‘floating charge’ includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge.” 25

7. Repeal—Section 5 of the principal Act is hereby consequentially amended by repealing paragraphs (f) and (g).