

DRAFT FOR CONSULTATION

Incorporated Societies Bill

Government Bill

Explanatory note

[To come]

Hon Paul Goldsmith

Incorporated Societies Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Incorporated Societies Act **2016**.

2 Commencement

- (1) **Sections 194 and 197** come into force on the day after the date on which this Act receives the 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, any provision of this Act that is not already in force on **1 June 2020** comes into force on that date.

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 financial gain; and

- (b) provide a legislative framework that promotes high quality governance of societies; and
- (c) promote accessibility to the law of societies by providing a comprehensive legislative framework; 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 are private bodies that should be self-governing and free from inappropriate Government interference; and
 - (iii) 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 operating for the financial gain 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 the society’s balance date under **section 81**
 - charitable entity** has the same meaning as in section 4(1) of the Charities Act 2005
 - committee**, in relation to a society, means the governing body of the society, however described

contact officer means the person holding office as the contact officer of the society in accordance with its constitution (*see sections 42 to 44*)

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 Courts)

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 122**

infringement offence means an offence under **section 120**

interested has the meaning set out in **section 56**

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being 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 **section 24(4)**

officer has the meaning set out in **section 36**

register means the register of incorporated societies established under **section 170**

Registrar means the Registrar of Incorporated Societies appointed in accordance with **section 179**

regulations means regulations made under this Act

society means a society incorporated under this Act

standard provisions means the standard provisions issued under **section 33**.

- (2) A requirement under this Act to provide the **contact details** of a contact officer is a requirement to provide at least the person's telephone number and email address.
- (3) 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.

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, on an application under **section 9**, incorporate a society under this Act for any lawful purpose other than financial gain.
- (2) *See* **subpart 2 of Part 3** (financial gain).
- (3) This section is subject to **sections 9 to 16**.

*Application for incorporation***9 Application for incorporation**

An application for incorporation must—

- (a) contain, or be accompanied by, the prescribed information; and
- (b) include the proposed name of the society; and
- (c) contain the name and contact details of the nominated contact officer; and
- (d) be accompanied by a copy of the society's proposed constitution; and
- (e) be accompanied by the prescribed fee; and
- (f) otherwise be made in the prescribed manner.

Compare: 1908 No 212 ss 4, 7

10 Proposed name of society

- (1) The Registrar must refuse to incorporate a society under a name if—
 - (a) the Registrar considers that—
 - (i) the use of the name would contravene any other enactment; or
 - (ii) the name is identical or almost identical to the name of any other incorporated 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
 - (iii) 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
 - (iv) the name is offensive; or

- (b) the name does not include the word “Incorporated” or the word “Manatōpū” (or both) 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.

Compare: 1908 No 212 s 11; 1993 No 105 s 22

11 Incorporation must be refused 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 financial gain (*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 referred to in **subsection (1)**.

12 Incorporation must be refused 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 the requirements of 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 referred to in **subsection (1)**.

13 Body corporate treated as equivalent to 3 members

Every 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 this Act.

Compare: 1908 No 212 s 31

Incorporation

14 Incorporation

The Registrar must, if he or she is satisfied that the requirements of this Act as to incorporation have been satisfied,—

- (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.

Compare: 1908 No 212 s 8

15 Society is body corporate

- (1) A society is, 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

16 Certificate of incorporation

Every certificate of incorporation of a society issued under **section 14** is conclusive evidence that—

- (a) all the requirements of this Act as to 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.

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

Part 3**Administration of societies****Subpart 1—Capacity, powers, and validity of actions****17 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, 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;
- issue negotiable instruments;

- receive and make gifts (see, however, **subpart 2**, which contains restrictions relating to financial gain):
- enter into contracts and leases:
- employ persons:
- belong to other societies or associations.

Compare: 1993 No 105 s 16

18 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

19 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 duly appointed; or
 - (iii) does not have authority to exercise a power that, given the nature of the society, an officer customarily has authority to exercise:
 - (c) a person held out by the society as an employee or agent of the society—
 - (i) has not been duly appointed; or
 - (ii) does not have authority to exercise a power that, given the nature of the society, a person appointed to that capacity customarily 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 him or her 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, by virtue of the person’s position with or relationship to the society, knowledge of those matters.

- (3) **Subsection (1)** applies even though 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) means, 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

20 Persons not treated as having knowledge of constitution merely because it is registered or available for inspection

A person is not affected by, or deemed to have notice or knowledge of the contents of, the constitution of, or any other document relating to, a society merely because—

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

Compare: 1993 No 105 s 19

Subpart 2—Financial gain

21 Society must not operate for financial gain

- (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 contravenes **subsection (1)**; and
- (b) the contravention 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).

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

22 Financial gain

- (1) A society (or proposed society) must be treated as having a purpose of financial gain if—
- (a) it distributes, or may distribute, any gain, profit, dividend, or other financial benefit to any of its members (whether in money or in kind); or

-
- (b) it has, or may have, capital that is divided into shares or stock held by its members; or
 - (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) However, a society (or proposed society) does not have a purpose of financial gain, 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 not-for-profit member for matters that are incidental to the purposes of the society (*see* **subsection (4)**);
 - (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 and those persons include members of the society or their families;
 - (e) pay a member a salary or wages or other payments for services on arm's length terms (*see* **subsection (5)**);
 - (f) enter into any other transaction with a member on arm's length terms (*see* **subsection (5)**);
 - (g) provide a member with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the society.
- (4) In **subsection (3)(b)**, **not-for-profit member** means a member of the society that is a body corporate that is not carried on for the private pecuniary profit of any individual.
- (5) In **subsection (3)(e) and (f)**, salary, wages, or other payments for services, and 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, percentage of revenue, or other reward in connection with the activities of the society.

Subpart 3—Constitution

23 Society must have constitution

Every society must have a constitution that complies with **section 24**.

*Contents of constitution***24 What constitution must contain**

- (1) The constitution must contain rules regarding the following:
 - (a) the name of the society; and
 - (b) the purposes of the society; and
 - (c) how a person becomes a member of the society, including a requirement that a person must consent to be a member; 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; and
 - (f) whether, and if so how, the society will provide access for members to the register of members; and
 - (g) the composition, roles, and functions of the committee of the society, including—
 - (i) the number of members that must or may be on the committee; and
 - (ii) the election or appointment of committee members; and
 - (iii) the terms of office of the committee members; and
 - (iv) the functions and powers of the committee; and
 - (v) grounds for removal from office of committee members; and
 - (vi) how the contact officer will be elected or appointed; and
 - (h) how the society will control and manage its finances; and
 - (i) the control and use of the society's common seal (if it has one); and
 - (j) procedures for resolving disputes between members (in their capacity as members) and between members and the society, including procedures for investigating and dealing with—
 - (i) the grievances of members relating to their rights and interests as members; and
 - (ii) complaints concerning the misconduct or discipline of members; and
 - (k) arrangements and requirements for general meetings, including—
 - (i) the intervals between 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 meetings; and
 - (v) the time within which, and manner in which, notices of general meetings and notices of motion must be notified; and
 - (vi) the quorum and procedure, including voting procedures, for general meetings; and
 - (l) the method by which the constitution may be amended; and
 - (m) 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* **subsection (4) and subpart 5 of Part 5**).
- (2) The constitution must not purport to confer on any member any right, title, or interest (legal or equitable) in the property of the society.
- (3) The arrangements and requirements under **subsection (1)(l)** must include arrangements and requirements for special general meetings under **section 58(3)**.
- (4) In this Act, **not-for-profit entity** means any of the following:
- (a) a society incorporated under this Act;
 - (b) a charitable entity within the meaning of the Charities Act 2005;
 - (c) a society, institution, association, organisation, or trust that is not carried on for the private benefit of an individual, and whose funds are applied entirely or mainly for benevolent, philanthropic, cultural, or public purposes in New Zealand.

25 Bylaws, tikanga or culture, and other matters

- (1) The constitution may contain any other rules that are not inconsistent with this Act, or any other enactment, or the rules described in **section 24(1)**, including providing for—
- (a) whether, and if so how, the society can make bylaws;
 - (b) the society to express its tikanga or culture;
 - (c) reasonable penalties to be imposed on any member (and for the consequences of the non-payment of any subscription or penalty);
 - (d) any other matter relevant to the society's affairs.
- (2) A bylaw purportedly made by a society has no effect to the extent that it contravenes, or is inconsistent with, this Act or the society's constitution.
- (3) The making, amendment, 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***26 Effect of constitution**

- (1) The constitution of a society has no effect to the extent that it contravenes, or is inconsistent with, this Act.

Example: inconsistency with officers' duties

ABC Incorporated's constitution provides that its officers are not required to act in the best interests of the society (instead, the constitution requires the officers to act in the best interests of a related society).

That provision is inconsistent with **section 48** (the duty of officers to act in good faith and in the best interests of the society). Therefore, the provision is of no effect.

- (2) The constitution of a society is binding, in accordance with its terms, as between—
- (a) the society and each member; and
 - (b) each member.
- (3) **Subsection (2)** is subject to the rest of this Act.

Compare: 1993 No 105 s 31

*Amendments to constitution***27 Society may amend constitution**

- (1) A society may, subject to **subsections (2) to (5)**, amend its constitution in the manner provided by the constitution.
- (2) Every amendment of a society's constitution must be—
- (a) in writing; and
 - (b) approved at a general meeting of the society by a majority vote of members participating and voting; and
 - (c) signed by at least 3 members of the society; and
 - (d) otherwise made in the accordance with its constitution.
- (3) A society's constitution, as amended, must continue to comply with the requirements of this Act.
- (4) A society must ensure that a copy of an amendment of its constitution is given to the Registrar within 20 working days after the amendment is approved at the general meeting.
- (5) The copy of the amendment must be accompanied by a certificate by an officer of the society or a lawyer certifying that—
- (a) the amendment was made in accordance with **subsection (2)**; and
 - (b) the society's constitution, as amended, will continue to comply with the requirements of this Act.

- (6) In this section, **lawyer** has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006.

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

28 Registration of amendment

- (1) The Registrar must register an amendment given under **section 27(4)** if he or she is satisfied that—
- (a) the amendment was made in accordance with **section 27(2)**; 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 or a later date that is specified in the amendment.
- (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 29**.

Compare: 1908 No 212 s 21(3)

29 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 that—
- (a) an amendment to the constitution was not made in accordance with **section 27**; or
 - (b) the constitution does not comply with the requirements of this Act; or
 - (c) it is not reasonably practicable for the society to amend the constitution itself using the procedure set out in its constitution; or
 - (d) the constitution is operating, or would operate, in an oppressive, unfairly discriminatory, or unfairly prejudicial manner; or
 - (e) for any other reason, it is just and equitable to amend the constitution.
- (2) The Registrar must amend the register accordingly on the receipt of a sealed copy of the order.
- (3) The amendment takes effect from the date of registration or a later date that is specified in the order.

Compare: 1908 No 212 s 21(3A)

30 Amendment where constitution is oppressive, unfairly discriminatory, or unfairly prejudicial

- (1) If a court makes an order under **section 29** on the ground specified in **section 29(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)** applies despite anything else in this Act, but subject to the order.

Grievances and complaints

31 Procedures in constitution for grievances and complaints

- (1) The procedures referred to in **section 24(1)(j)** must—
- (a) be consistent with the rules of natural justice; and
 - (b) at a minimum, comply with the requirements of **Schedule 2**.
- (2) *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 grievances and complaints).

32 Constitution may provide for arbitration

- (1) A society's constitution may provide that all or certain kinds of complaints or grievances referred to in **section 24(1)(j)** must or may be submitted to arbitration under the Arbitration Act 1996.
- (2) If a society's constitution provides that complaints or grievances must or may be submitted to arbitration under the Arbitration Act 1996, the relevant provisions of the constitution must be treated as an arbitration agreement that is binding on the society and the affected member.
- (3) A society's constitution may prescribe procedural matters (not inconsistent with the Arbitration Act 1996) that govern an arbitration under this section.

Standard provisions for constitutions

33 Minister may issue standard provisions for constitutions

- (1) The purpose of this section is to provide for standard provisions that may be used when preparing a constitution for a society.
- (2) The Minister may, on the recommendation of the Registrar, issue standard provisions (the **standard provisions**).
- (3) The standard provisions may, in addition to providing for the matters referred to in **section 24(1)(c) to (l)**, contain rules providing for any other matter relevant to a society's affairs.
- (4) The Registrar may make a recommendation only if he or she is satisfied that the proposed standard provisions are consistent with **sections 24, 25, and 31**.
- (5) After issuing the standard provisions, the Minister must give notice in the *Gazette* of—
- (a) the issue of the standard provisions; and
 - (b) the Internet site on which the standard provisions may be found.

- (6) The notice may include instructions or other matters relating to how the standard provisions may be used for the purposes of this Act (for example, providing for a particular provision to be used only in certain circumstances).

34 Standard provisions treated as complying with requirements of Act

- (1) A standard provision that relates to a matter in any of **paragraphs (c) to (m)** of **section 24(1)** must be treated as complying with that paragraph.

Example

The standard provisions include provisions relating to grievances and complaints. ABC Incorporated uses those standard provisions in its constitution. Those provisions must be treated as complying with **section 24(1)(j)**.

- (2) However, **subsection (1)** does not apply if the standard provision is used in a manner that is inconsistent with the instructions or other matters referred to in **section 33(6)**.

35 Status and publication of standard provisions and notice

- (1) The standard provisions and the notice under **section 33(5)** are both disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (2) The Ministry must ensure that the standard provisions (and all previous versions of the standard provisions) are available at all reasonable times on an Internet site maintained by or on behalf of the Ministry.

Subpart 4—Committee and officers

36 Definition of officer

- (1) In this Act, **officer**, in relation to a society, means a natural person who—
- (a) is a member of the committee (including the society’s contact officer);
 - (b) holds any other office provided for in the society’s constitution.
- (2) For the purposes of **sections 21 and 48 to 55 and subpart 6 of Part 4**, **officer** also includes a natural person—
- (a) in accordance with whose directions or instructions a person referred to in **subsection (1)** may be required or is accustomed to act; and
 - (b) in accordance with whose directions or instructions the committee may be required or is accustomed to act; and
 - (c) who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers that, apart from the constitution, would fall to be exercised by the committee; and
 - (d) to whom a power or duty of the committee has been directly delegated by the committee with that person’s consent or acquiescence, or who ex-

ercises the power or duty with the consent or acquiescence of the committee.

- (3) **Subsection (2)** does not include a person to the extent that the person acts only in a professional capacity.

Compare: 1993 No 105 s 126

Committee

37 Committee

- (1) Every society must have a committee of at least 3 members.
- (2) *See sections 42 to 44*, which require one of the members of the committee to be a contact officer whom the Registrar can contact when needed.

38 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

39 Qualifications of officers

- (1) A natural person who is not disqualified by **subsection (2)** may be appointed as an officer of a society.
- (2) The following persons are disqualified from being appointed or 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, in a country other than New Zealand, that is substantially similar to an offence specified in **subparagraphs (i) to (iii)**;
 - (v) a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere:
- (f) a person subject to—
- (i) a banning order under **subpart 7 of Part 4**; or
 - (ii) an order under section 108 of the Credit Contracts and Consumer Finance Act 2003; or
 - (iii) a confiscation order under the Proceeds of Crime Act 1991; or
 - (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:
- (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 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

40 Registrar may waive disqualifying factors

- (1) The Registrar may, on an application made in the prescribed manner (if any), waive the application of any of the disqualifying factors set out in **section 39(2)(b) to (f)** in relation to a particular person and a society.
- (2) If the Registrar waives the application of a disqualifying factor, the person to whom the waiver relates must not be treated as being disqualified from being an officer of the society because of that factor.

Example

The purposes of ABC Incorporated 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 the committee of the society to include a person who has been convicted of an offence identified in **section 39(2)(e)**. The Registrar, accordingly, waives the disqualifying factor in that paragraph in relation to a particular person.

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

41 Other provisions relating to waivers

- (1) A waiver under **section 40** 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 under **section 40**;
 - (b) revoke a waiver granted under that section.

Compare: 2005 No 39 s 16(6)–(8)

*Contact officer***42 Purpose**

The purpose of **sections 43 and 44** is to provide for every society to have an officer whom the Registrar can contact when needed.

43 Contact officer

- (1) Every society must at all times have a contact officer.
- (2) In the event of a vacancy in the position of contact officer, the society does not breach **subsection (1)** if the position is filled within 20 working days after the vacancy occurs.
- (3) The society's contact officer must be—
 - (a) a member of the society's committee (and, accordingly, must not be disqualified under **section 39(2)**); and
 - (b) at least 18 years of age; and
 - (c) ordinarily resident in New Zealand.
- (4) The office of contact officer may be held separately or in conjunction with any other office in the society.
- (5) In this section, a person is **ordinarily resident** in New Zealand if that 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.

44 Notice of change of contact officer

- (1) The society must ensure that notice of either of the following changes is given to the Registrar:
 - (a) a change in the contact officer of the society; or
 - (b) a change in the name or the contact details of a contact officer of the society.

- (2) The notice must be given to the Registrar in the prescribed manner (if any) within 20 working days after—
- (a) the change occurring, in the case of the appointment, election, removal, or resignation of a contact officer; or
 - (b) the society first becoming aware of the change, in any other case.

Officer ceasing to hold office

45 Officer ceasing to hold office

- (1) The office of officer of a society is vacated if the person holding that office—
- (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 39(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 by signing a written notice of resignation and delivering it to the society's registered office.
- (3) The notice of resignation is effective when it is received at that office 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

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

Compare: 1993 No 105 s 157(3)

47 Validity of officer's acts

The acts of a person as a contact officer, a committee member, or other officer are valid even though—

- (a) the person's appointment was defective; or
- (b) the person is not qualified for appointment.

Compare: 1993 No 105 s 158

Officers' duties

48 Duty of officers to act in good faith and in best interests of society

- (1) An officer, when exercising powers or performing duties, 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

49 Powers to be exercised for proper purpose

An officer must exercise a power for a proper purpose.

Compare: 1993 No 105 s 133

50 Officers to 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

51 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 him or her.

Compare: 1993 No 105 s 137

52 Reckless trading or other activities

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

53 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

54 Use of information and advice

- (1) An officer, when exercising powers or performing duties as an officer, may rely on reports, statements, 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

55 Duties owed to society

The duties in **sections 48 to 53** are owed to the society (rather than to members).

Compare: 1993 No 105 s 169(3)

*Conflict of interest disclosure rules***56 When interests must be disclosed**

- (1) In this section, **matter** means—
 - (a) a society's performance of its activities or exercise of its powers; or
 - (b) an arrangement, agreement, or contract (a **transaction**) made or entered into, or proposed to be entered into, by the society.
- (2) A person is **interested** in a matter if he or she—
 - (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive 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 interested in the matter because the society's constitution so provides.
- (3) However, a person is not interested in a matter—
 - (a) merely because he or she receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act; or
 - (b) if his or her interest is the same or substantially the same as the benefit or interest of all or most other members of the society due to their membership; or
 - (c) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities under this Act or the society's constitution.

Compare: 2004 No 115 s 62

57 Duty to disclose conflict of 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 he or she is interested in the matter.

Compare: 2004 No 115 s 63

58 Consequences of being interested in matter

- (1) An officer who is interested in a matter relating to a society—
 - (a) must not vote or take part in the 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 member 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.
- (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

59 Consequences of failing to disclose interest

- (1) The committee must, in the prescribed manner (if any), notify the members of the society of a failure to comply with **section 57 or 58**, and of any transactions affected, as soon as practicable after becoming aware of the failure.
- (2) A failure to comply with **section 57 or 58** does not affect the validity of an act or matter.
- (3) However, **subsection (2)** does not limit the right of any person to apply, in accordance with law, for judicial review.

Compare: 2004 No 115 s 67

60 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 disclosed to the members under **section 59(1)**.
- (2) A transaction cannot be avoided if the society receives fair value under it.
- (3) A transaction in which an officer is interested can only be avoided on the ground of the officer's interest in accordance with this section.

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

61 What is fair value

- (1) Whether a society receives fair value under a transaction is to be 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 operations 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)

62 Onus of proving fair value

- (1) A person 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)

63 Effect on third parties

The avoidance of a transaction under **section 60** does not affect the title or interest of a person in or to property that that 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

64 Application of sections 57 to 60 in case of certain payments, indemnities given, or insurance provided

Sections 57 to 60 do not apply in relation to—

- (a) a salary, wages, or other payments paid to an officer as referred to in **section 22(3)(e)**; or
- (b) an indemnity given or insurance provided in accordance with **subpart 6**.

Compare: 1993 No 105 s 143

65 Interests register

- (1) The committee must keep and maintain a register of disclosures made by officers under **section 57** (an **interests register**).
- (2) The interests register must be made available for inspection by the officers of the society.
- (3) A society's constitution may provide for whether (and, if so, the extent to which) the interests register is to be made available for inspection by other members of the society.

Subpart 5—Members

66 Requirement to 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.
- (3) The Registrar may, if he or she 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 **subsection (1)**; and
- (b) informing it that, if the society does not comply with that subsection within 6 months after the date of the notice, the Registrar may apply to the High Court to put the society into liquidation.
- (4) The Registrar may, if the society does not comply with **subsection (1)** at the end of the 6-month period after the date of the notice, make an application under **section 158(1)(a)**.

67 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 of the Financial Reporting Act 2013).

68 Members have no right to property of society

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

Compare: 1908 No 212 s 14

69 Liability of members

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

Compare: 1993 No 105 s 97

70 Register of members

- (1) Every society must keep a register of its members.
- (2) The register must contain—
- (a) the name and contact details of each member; and
 - (b) the date when each person became a member; and
 - (c) all other prescribed information (if any).

Compare: 1908 No 212 s 22

Access to information for members

71 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) Without limiting the reasons for which a society may refuse to provide the information, a society may refuse to provide the information if—
- (a) the disclosure of the information would or would be likely to breach an information privacy principle under the Privacy Act 1993; or
 - (b) the disclosure of the information would or would be likely to prejudice the commercial position of the society; 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 request for the information is frivolous or vexatious.
- (5) 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.
- (6) Nothing in this section limits information privacy principle 6 of the Privacy Act 1993.

Compare: 1993 No 105 s 178(1)–(5)

72 Court orders relating to information

- (1) A court may, on the application of a person who has made a request for information, make an order under **subsection (2)** 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.
- (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) A court may, on the application of a person who has made a request for information, make an order requiring the society to supply the information if it is satisfied that—
- (a) the society does not have sufficient reason to refuse to supply the information; or
 - (b) the society has sufficient reason to refuse to supply the information but that other reasons exist that outweigh the refusal.
- (4) The court may, if it makes an order under **subsection (3)**, specify—

- (a) the use that may be made of the information; and
 - (b) the persons to whom it may be disclosed.
- (5) 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

73 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
 - (b) ensure that minutes of the meeting are kept.

74 Information to be presented

- (1) The committee must, at each annual general meeting, present the following information:
- (a) an annual report on the 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 57** (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 prescribed information (if any).
- (3) In **subsection (1)(c)**, **matters** has the same meaning as in **section 56**.

75 Methods of holding meetings

An annual general meeting of a society may be held by a quorum of the members—

- (a) being assembled together at the time and place appointed for the meeting; or
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
- (c) by a combination of both of the methods described in **paragraphs (a) and (b)**.

76 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 annual 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) **Section 71** does not limit this section.

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

77 Prohibition on indemnities or insurance for officers, members, or 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 in respect of—
 - (a) liability for any act or omission in his or her capacity as an officer, a member, or an employee; or
 - (b) costs incurred by the officer, member, or employee 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

78 Permitted indemnities for certain liabilities or costs

- (1) A society may indemnify an officer, a member, or an employee of the society in respect of—
 - (a) liability to any person other than the society for any act or omission in his or her capacity as an officer, a member, or an employee (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 the best interests of the society when acting in the capacity as an officer, a member, or an employee.
- (3) A society may indemnify an officer, a member, or an employee of the society for any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in **section 77** if—
 - (a) judgment is given in his or her favour or if he or she is acquitted; or
 - (b) the proceeding is discontinued.

Compare: 2013 No 69 s 527

79 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 77**; 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 his or her capacity as an officer, a member, or an employee; and
 - (ii) in which he or she is 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 80** 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

80 Indemnity or insurance for breach of officers' duties, etc, must be expressly authorised by society's constitution

- (1) Despite **sections 78 and 79**, a society may indemnify an officer under **section 78**, or effect insurance for an officer under **section 79**, in respect of the matters specified in **subsection (2)** only if giving that indemnity or effecting that insurance (as the case may be) 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 48 to 55** (officers' duties); or
 - (ii) any other duty imposed on the officer in his or her capacity as an officer:
 - (b) costs incurred by the officer in respect of any claim or proceeding relating to that liability.

Subpart 7—Accounting records, financial reporting, and annual returns*Balance date***81 Balance date**

- (1) The **balance date** of a society that is a charitable entity (within the meaning of the Charities Act 2005) is the entity's balance date under section 41(3) to (7) of that Act.
- (2) The **balance date** of a society (other than a charitable entity) is the close of—
 - (a) 31 March; or
 - (b) any other date that the committee adopts as the society's balance date.
- (3) 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).

*Accounting records***82 Accounting records must be kept**

- (1) The committee of a society must ensure that there are kept at all times accounting records that—
 - (a) correctly record the transactions of the society; and
 - (b) will 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).
- (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
 - (b) in a form or manner that is easily accessible and convertible into written form in English.

*Financial reporting***83 Annual financial statements must be prepared and registered**

- (1) The committee of a society must ensure that, within 6 months after the end of the accounting period of the society, financial statements are—
 - (a) completed in relation to the society and that accounting period; and
 - (b) dated and signed by or on behalf of the committee 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 any other case, either generally accepted accounting practice or 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.
- (4) In this section,—

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 of the Financial Reporting Act 2013.

- (5) In this section, a society is, in respect of an accounting period, 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.

84 Duty does not apply if alternative financial reporting duties under financial markets or charities legislation

Section 83 does 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.

Annual return

85 Annual returns

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

Subpart 8—Other administration matters

Registered office

86 Registered office

- (1) Every society must 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 87**).

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

87 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 prescribed manner (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—
 - (a) on the date stated in the notice being a date later than the date the notice is received by the Registrar; or

- (b) if no date is stated in accordance with **paragraph (a)**, the date 5 working days after the date the notice is registered by the Registrar.

Compare: 1993 No 105 s 187

Change of name

88 Change of name of society

- (1) An application to change the name of a society must be made in the prescribed manner.
- (2) The Registrar must refuse to register a change to a society's name if—
 - (a) the Registrar considers that any of **subparagraphs (i) to (iv) of section 10(1)(a)** apply to the proposed new name; or
 - (b) the proposed new name does not include the word “Incorporated” or the word “Manatōpū” (or both) as the last word or words of the name.
- (3) If the Registrar refuses to register a change to a society's name under **subsection (2)**, 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.
- (4) If the Registrar registers a new name of a society, the Registrar must issue a certificate of incorporation recording the change of name of the society.
- (5) An application to change the name of a society is not an amendment of the society's constitution to which **sections 27 and 28** apply.

Compare: 1993 No 105 s 23

89 Change of name where name is contrary to section 10

- (1) This section applies if—
 - (a) the Registrar considers that any of **subparagraphs (i) to (iv) of section 10(1)(a)** apply to a society's name; or
 - (b) a society's name does not include the word “Incorporated” or the word “Manatōpū” (or both) as the last word or words of the name.
- (2) The Registrar may by written notice require the society to change its name in accordance with **section 88**.
- (3) 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 under **subsection (2)**.
- (4) If a society fails to comply with **subsection (3)**, the Registrar may enter a new name on the register for the society (being a name selected by the Registrar).

- (5) If the Registrar registers a new name under **subsection (4)**, the Registrar must issue a certificate of incorporation recording the change of name of the society.

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

90 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 88(4) or 89(5)**; 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 24(1)(a)**.

Authority to bind society

91 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 in accordance with **section 92**:
 - (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 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

92 Attorneys

- (1) A society may, by an instrument in writing executed in accordance with **section 91(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 in accordance with the instrument binds the society.
- (4) Sections 19 to 21 of the Property Law Act 2007 apply, with all necessary modifications, in relation to a power of attorney executed by a society, to the same extent as if the society were a natural person and as if a commencement of the liquidation or, if there is no liquidation, 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

93 Service of documents

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

Part 4 Enforcement

94 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 affairs of a society or its acts 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, the society or its members or former members; or
 - (b) by the Registrar (but *see* **section 109**).

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

95 Court orders

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, or of 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, a member, or any other person:
- (c) an order restraining a society, a member, or any other person 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 the society, a member, or a former member (in whole or in part) for the loss or damage suffered by the society, member, or former member because of a breach of the society’s constitution or bylaws.

96 Complaints and grievances under society’s constitution

- (1) This section applies to a dispute referred to in **section 24(1)(j)** (procedures in society’s constitution for resolving disputes) that has been, or is being, investigated or otherwise dealt with under the procedures in the society’s constitution referred to in that paragraph.
- (2) A court may, on an application under this subpart, exercise a power under **subsection (3)** if it is satisfied that—
 - (a) there has been a breach of natural justice or any serious breach of the procedures in the society’s constitution referred to in **section 24(1)(j)**; or
 - (b) a decision maker suffers from 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.
- (3) The court may do any 1 or more of the following:
 - (a) make 1 or more of the orders under **section 95**:
 - (b) make any decision it thinks should have been made by a decision maker:
 - (c) direct the decision maker—

- (i) to rehear the matter concerned; or
- (ii) to consider or determine (whether for the first time or again) any matters the court directs; or
- (d) make any order the court thinks just, including any order as to costs.
- (4) The court must state its reasons for giving a direction under **subsection (3)(c)**.
- (5) The court may give the decision maker any direction it thinks fit relating to—
 - (a) rehearing any matter directed to be reheard; or
 - (b) considering or determining any matter directed to be considered or determined.
- (6) For the purposes of **subsection (2)(b)**, a decision maker suffers from 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.

97 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 111**); or
 - (d) the Registrar.
- (2) The Registrar may apply only if he or she considers that making the application is in the public interest (*see* **section 109**).
- (3) *See* **section 110** (which provides for the court to refuse to consider an application).

Subpart 2—Court orders enforcing officers’ duties

98 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 his or her duties:
- (d) an order for the officer or former officer to compensate the society (in whole or in part) 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.

99 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 in accordance with **sections 100 and 101**); or
 - (c) the Registrar.
- (2) The Registrar may apply only if he or she 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 109*).
- (3) *See section 110* (which provides for the court to refuse to consider an application).

100 Derivative actions by members or officers

- (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, 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.
- (3) 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.
- (4) Notice of an application under **subsection (1)** must be served on the society.
- (5) The society, in relation to that 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.

101 Powers of court where leave granted

- (1) The court may make any order it thinks fit in relation to an application under **section 100** 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, the 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 or the officers to provide information or assistance in relation to the proceeding.

102 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 100** or of the Registrar, order that the whole or part of the reasonable costs of bringing or intervening in a proceeding under this subpart must be met by the society.
- (2) Those costs may include any costs relating to a settlement, compromise, or discontinuance approved under **section 103**.
- (3) **Subsection (1)** does not apply if the court considers that it would be unjust or inequitable for the society to bear those costs.

103 Settlement, compromise, or withdrawal of derivative action

No 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 without the approval of the court.

Subpart 3—Prejudiced members

104 Prejudiced members

- (1) A member or former member of a society may apply to the court for an order under this subpart on the grounds that—

- (a) the 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 him or her in his or her 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 him or her in that capacity.
- (2) *See* **section 110** (which provides for the court to refuse to consider an application).

105 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 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.
- (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 29 and 30** (which provide for a court to amend a society's constitution, including where the constitution is operating, or would operate, in an oppressive, unfairly discriminatory, or unfairly prejudicial manner).

Subpart 4—Financial gain

106 Society may recover financial gain from member

- (1) A member (or former member) who derives 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.

Compare: 1908 No 212 s 20(4)

107 Derivative actions by members

- (1) A court may, on the application of a member of a society, grant leave to the member 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, 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 proceeding under this subpart should not be left to the officers or to the determination of the members as a whole.
- (3) 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.
- (4) Notice of the application under **subsection (1)** must be served on the society.
- (5) The society, in relation to that 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.

108 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 he or she considers that it is in the public interest to do so (*see* **section 109**).

Subpart 5—Miscellaneous provisions relating to applications

109 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 to 4 and 7** only if he or she 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 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, or a former member 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 he or she considers relevant.
- (3) In **subsection (2)(f)**, **public funding** includes any grant, donation, or gift from a public entity (within the meaning of the Public Audit Act 2001) or from members of the public.

110 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 an inappropriate 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) there are other reasonable but unutilised methods of resolving the matters in dispute; or

- (e) the conduct of any party has unreasonably prolonged a dispute or increased the costs of the proceeding; or
- (f) the application is frivolous or vexatious or otherwise not in the public interest.

111 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.

112 Undertaking as to 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 as to 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 as to damages.

Subpart 6—Offences

113 Dishonest use of position

- (1) Every person commits an offence who is an officer in a society and who dishonestly uses that position to directly or indirectly—
 - (a) obtain any property, privilege, service, monetary advantage, benefit, or valuable consideration; or
 - (b) cause loss to any other person.
- (2) Every 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.

114 False statements

- (1) Every person commits an offence who, with respect to a document required by or for the purposes of this Act,—
 - (a) makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular.
- (2) Every officer or employee of a society commits an offence who—

- (a) makes or provides, or authorises or permits the making or providing of, a statement or report that relates to the 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) knows 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) Every 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.

115 Fraudulent use or destruction of property

- (1) Every officer, member, or employee of a society commits an offence who—
- (a) fraudulently takes or applies property of the society for his or her own use or benefit, or for a use or purpose other than the use or purpose of the society, or for the use or benefit of a person other than the society; or
 - (b) fraudulently conceals or destroys property of the society.
- (2) Every 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.

116 Falsification of register, records, or documents

- (1) Every officer, member, or employee of a society commits an offence who, with intent to defraud or deceive a person,—
- (a) destroys, parts with, mutilates, alters, or falsifies any register, record, or document required by this Act or the society's constitution; or
 - (b) makes a false entry in any register, record, or document required by this Act or the society's constitution.
- (2) Every 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.

117 Operating fraudulently or dishonestly incurring debt

- (1) Every person commits an offence who is knowingly a party to a society operating with intent to defraud creditors of the society or any other person or for a fraudulent purpose.
- (2) Every officer of a society commits an offence who,—

- (a) by false pretences or other fraud, induces a person to give credit to the society; or
- (b) with intent to defraud creditors of the society,—
 - (i) gives, transfers, or causes a charge to be given on property of the society to any person; or
 - (ii) causes property to be given or transferred to any person; or
 - (iii) caused or was a party to execution being levied against property of the society.
- (3) Every officer of a society commits an offence who, with intent to defraud a creditor or creditors of the society, does any thing that causes material loss to any creditor.
- (4) Every 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 incurring the debt is dishonest.
- (5) In **subsection (4)**, **insolvent** means that the society is unable to pay its debts.
- (6) Every 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.

118 Improper use of “Incorporated” [or “Manatōpū”?]

- (1) Any person who, not being an incorporated body, whether alone or with other persons, operates under any name or title of which the word “Incorporated” [or the word “Manatōpū”?], or any contraction or imitation of either 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.

119 Banning order contravention

A person who 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***120 Infringement offences**

- (1) Every society that fails to comply with any of the following provisions commits an offence:
 - (a) **section 27(4)** (duty to notify the Registrar of amendments to the constitution):
 - (b) **section 70** (duty to maintain a register of members):
 - (c) **section 73(1)** (duty to call annual general meeting at least every 15 months):
 - (d) **section 73(3)** (duty to hold, and keep minutes of, annual general meetings):
 - (e) **section 83(3)** (duty to register financial statements):
 - (f) **section 85(1)** (duty to register an annual return):
 - (g) **section 86** (duty to have current registered office).
- (2) Every society that commits an offence under this section is liable on conviction to a fine not exceeding \$5,000.
- (3) An offence under this section is an **infringement offence**.

121 Commencement of proceedings

- (1) If a person is alleged to have committed an infringement offence, that person may—
 - (a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be served with an infringement notice as provided in **section 122**.
- (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.

122 Infringement notices

- (1) The Registrar may issue an infringement notice to a person if the Registrar believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- (2) 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.

- (3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

123 Procedural requirements for infringement notices

- (1) An infringement notice may be served on a person—
- (a) by delivering it, or a copy of it, personally to the person who the Registrar believes has committed the infringement offence; or
 - (b) by sending it, or a copy of it, by post, addressed to the person at the person's last known place of residence or business.
- (2) An infringement notice sent under **subsection (1)(b)** must be treated as having been served on the person on the date it was posted.
- (3) An infringement notice must be in the prescribed form and must contain—
- (a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged offence; and
 - (b) the amount of the infringement fee; and
 - (c) an address at which the infringement fee may be paid; and
 - (d) the time within which the infringement fee must be paid; and
 - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - (f) a statement that the person served with the notice has a right to request a hearing; and
 - (g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and
 - (h) any other prescribed matters.
- (4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—
- (a) reminder notices may be prescribed; and
 - (b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- (5) Reminder notices must contain the prescribed information.

124 Payment of infringement fee

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

Subpart 7—Banning order

125 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 incompetent manner in the performance of his or her duties as an officer; or
 - (c) A has become of unsound mind.
- (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 things:
 - (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).
- (3) The court may make an order under this section permanent or for a period longer than 10 years only in the most serious of cases for which an order may be made.
- (4) The Registrar of the court must, as soon as practicable after an order is made under this section, 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).
- (5) The Registrar of Incorporated Societies must, after receiving a notice under **subsection (4)**, give notice in the *Gazette* of the name of the person against whom the order is made.

126 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.
- (3) **Subsection (4)** 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 125** by a person against whom an order has been made on the application of the Registrar, the Official Assignee, or the liquidator.
- (4) 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 him or her to be relevant; and
 - (b) may give evidence or call witnesses.

127 Liability for contravening banning order

- (1) A person who acts as an officer of a society 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 119** (offence for contravening a banning order).

Part 5

Removal from register, amalgamation, liquidation, and other processes

Subpart 1—Removal from register

128 Removal from register

A society is removed from the register when a notice signed by the Registrar stating that the society is removed from the register is registered under this Act.

Compare: 1993 No 105 s 317

129 Grounds for removal from register

- (1) The Registrar may remove a society from the register if—
- (a) the society is an amalgamating society, other than an amalgamated society, on the day on which the Registrar issues a certificate of amalgamation under **section 148**; or
 - (b) a request that the society be so removed on either of the grounds specified in **subsection (2)** is given to the Registrar by—

- (i) a member authorised to make the request by a resolution of members passed in accordance with **subpart 6**; or
- (ii) the committee or any other person, if the society's constitution so requires or permits; or
- (c) 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
- (d) a liquidator sends or delivers to the Registrar—
 - (i) the documents referred to in section 257(1)(a) of the Companies Act 1993 (as applied by **subpart 4**); and
 - (ii) a copy of the notice referred to in **section 130(a)**.
- (2) A request may be made on the grounds—
 - (a) that the society has ceased to operate, has discharged in full its 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 in full or in part, and no creditor has applied to the court under **subpart 4** for an order putting the society into liquidation.
- (3) A request must be made in the prescribed manner (if any).

Compare: 1993 No 105 s 318(1), (2)

Procedural requirements before removal

130 Notice of removal

The Registrar may remove a society from the register under **section 129(1)(b) to (d)** only if—

- (a) the Registrar is satisfied that notice of the intention to remove the society from the register has been given in the prescribed manner to the public and all other prescribed persons (if any); and
- (b) the Registrar—
 - (i) is satisfied that no person has objected to the removal under **section 131**; or
 - (ii) if an objection to the removal has been received, has complied with **sections 132 and 133**.

Compare: 1993 No 105 s 318(5)

131 Objection to removal from register

- (1) If a notice is given under **section 130**, 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 society is still operating or there is other reason for it to continue in existence; or
 - (b) that the society is a party to a legal proceeding; or
 - (c) that the society is in receivership, or liquidation, or both; or
 - (d) that the person is a creditor who has an undischarged claim against the society; or
 - (e) that the person believes that there exists, and intends to pursue, a right of action on behalf of the society under **Part 4**; or
 - (f) that, for any other reason, it would not be just and equitable to remove the society from the register.
- (2) Section 321(2)(a) of the Companies Act 1993 applies for the purposes of **subsection (1)(d)**, with all necessary modifications, as if the society were a company.

Compare: 1993 No 105 s 321

132 Objections under section 131(1)(a), (b), or (c)

If an objection is made under **section 131(1)(a), (b), or (c)**, 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) the objection is frivolous or vexatious.

Compare: 1993 No 105 s 322(1)

133 Objections under section 131(1)(d), (e), or (f)

- (1) If an objection is made under **section 131(1)(d), (e), or (f)**, 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 notice, the Registrar intends to proceed with the removal.
- (2) In this section, a **specified application** is an application under **section 135 or subpart 4**.
- (3) The Registrar may, in the case of **section 131(1)(d), (e), or (f)**, 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) Every 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.

Compare: 1993 No 105 s 322(2)–(4)

134 Registrar must send information to person who requests removal

The Registrar must send the following to a person who delivered a request under **section 129(1)(b)** or a liquidator referred to in **section 129(1)(d)**:

- (a) a copy of an objection under **section 131**;
- (b) a copy of a notice given by or served on the Registrar under **section 133**;
- (c) if the society is removed from the register, notice of the removal.

Compare: 1993 No 105 s 322(5)

135 Powers of court

- (1) A person who gives a notice objecting to a removal on a ground specified in **section 131(1)(d), (e), or (f)** 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 131(1)**, make an order that the society is not to be removed from the register.

Compare: 1993 No 105 s 323

136 Liability of officers, members, and others to continue

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 and that liability continues and may be enforced as if the society had not been removed from the register.

Compare: 1993 No 105 s 326

Restoration to register

137 Registrar may restore society to register

- (1) The Registrar must, on an application made in the prescribed manner, and may, on his or her own motion, restore a society that has been removed from the register to the register if he or she is satisfied that, at the time the society was removed from the register,—
 - (a) the society was still operating or another reason existed for the society to continue in existence; or

- (b) the society was a party to a legal proceeding; or
 - (c) the society was in receivership or liquidation, or both.
- (2) This section does not limit **section 139**.

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

138 Notice of proposed restoration

- (1) Before the Registrar restores a society to the register, the Registrar must be satisfied that notice of the intention to restore the society to the register has been given in the prescribed manner to the public and all other prescribed persons (if any).
- (2) 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.

Compare: 1993 No 105 s 328(3), (4)

139 Court may restore society to register

- (1) A court may, on the application of a person referred to in **subsection (2)**, order that a society that has been removed from the register 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 a right of action existed, or 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 make an application:
- (a) any person who is prescribed for the purposes of this subsection:
 - (b) the Registrar:
 - (c) with the leave of the court, any other person.

Compare: 1993 No 105 s 329

140 Registrar or court may require requirements to be complied with

The Registrar or a court (as the case may be) may, before restoring a society to the register, require any of the provisions of this Act or any regulations to be

complied with (being provisions with which the society had failed to comply before it was removed from the register).

Compare: 1993 No 105 s 328(5)

141 Court orders

- (1) This section applies if a society is restored to the register by the Registrar or the court.
- (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, an order or a direction may not require any surplus assets that have been properly disposed of under **subpart 5** to be returned to the society.

Compare: 1993 No 105 s 328(6)

142 Restoration to register

- (1) A society is restored to the register when a notice signed by the Registrar stating that the society is restored to the register is registered under this Act.
- (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

Subpart 2—Amalgamations

143 Amalgamations

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

144 Amalgamation proposal

An amalgamation proposal must set out the terms of the amalgamation and all other prescribed information (if any).

145 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 prescribed information (if any); and

- (b) send a copy of the amalgamation proposal to every secured creditor of the society; and
- (c) give public notice of the proposed amalgamation in the prescribed manner.

146 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 **subsection (4)**.
- (2) Every committee member of an amalgamating society who votes in favour of a resolution under **subsection (1)** must sign a certificate stating—
 - (a) that, in his or her opinion, the conditions set out in that subsection are satisfied, and
 - (b) the grounds for that opinion.
- (3) The amalgamation proposal must be approved by each amalgamating society—
 - (a) by a resolution that is approved by a simple majority of the votes of those members entitled to vote and voting on the question; and
 - (b) otherwise in accordance with its constitution.
- (4) For the purposes of **subsection (1)(b)**,—
 - (a) a society satisfies the solvency test if—
 - (i) the society is able to pay its debts as they become due in the normal course of its operations; and
 - (ii) the value of the society's assets is greater than the value of its liabilities, including contingent liabilities:
 - (b) section 4(3) and (4) of the Companies Act 1993 apply with all necessary modifications as if references to a company were references to a society and references to directors were references to officers.
- (5) A committee member who fails to comply with **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$5,000.

147 Registration of amalgamation

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

- (a) the approved amalgamation proposal; and
- (b) any certificates required under **section 146**; and
- (c) all other prescribed information.

148 Certificate of amalgamation

- (1) The Registrar must, on receipt of the information under **section 147**,—
 - (a) issue a certificate of amalgamation; or
 - (b) if the amalgamated society is a new society,—
 - (i) enter particulars of the amalgamated society on the register; and
 - (ii) issue a certificate of incorporation for the amalgamated society (together with the certificate of amalgamation).
- (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 that date.

149 Amalgamation must not proceed if Registrar considers that name does not comply with section 10

- (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) either or both of the following apply:
 - (i) the Registrar considers that any of **subparagraphs (i) to (iv) of section 10(1)(a)** apply to the proposed name of the amalgamated society; or
 - (ii) the proposed name of the amalgamated society does not include the word “Incorporated” or the word “Manatōpū” (or both) as the last word or words of the name.
- (2) The Registrar must refuse to act under **section 148** until the proposed name of the amalgamated society is amended to address (to the Registrar’s satisfaction) the matter referred to in **subsection (1)(b)**.

150 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 financial gain (*see subpart 2 of Part 3*).
- (2) The Registrar must refuse to act under **section 148** until the purposes are amended to address (to the Registrar’s satisfaction) the matter referred to in **subsection (1)**.

151 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 148** until the constitution is amended to address (to the Registrar's satisfaction) the matter referred to in **subsection (1)**.

152 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.

153 Other registers

- (1) No 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 to a Registrar or any other person of a specified instrument 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) In **subsection (2)**, 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) **Subsection (5)** 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.
- (5) Despite **subsections (1) and (2)** and any other enactment or rule of law, A, on presentation of the certificate, must register the amalgamated society as the holder of the financial products or as the person entitled to the rights or interests.
- (6) In this section, **financial products** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013.
- (7) Except as provided in this section, nothing in this subpart derogates from the provisions of the Land Transfer Act 1952.

154 Powers of court in other cases

- (1) A creditor of an amalgamating society, or a person to whom an amalgamating society is under an obligation, who believes that he, she, or it would be unfairly prejudiced by a proposed amalgamation may, before the date on which the amalgamation becomes effective, apply to a court for an order under this section.
- (2) The court may, if it is satisfied that the creditor or person who is owed the obligation would be unfairly prejudiced by the proposed amalgamation, make any order 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.
- (3) An order may be made under **subsection (2)** on the conditions that the court thinks fit.

Subpart 3—Compromises with creditors

155 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 a debt is owing to that person by the society; 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

156 Members may resolve to put society into liquidation

A society may be put into liquidation if the society passes a resolution appointing a liquidator in accordance with **subpart 6**.

157 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 156**, with all necessary modifications, as if the society was a company that had been put into liquidation under section 241(2)(a) of that Act.
- (2) This section is subject to the rest of this Act and to the regulations.

158 High Court may put society into liquidation

- (1) A society may be put into liquidation by the High Court by the appointment as liquidator of a named person or of an Official Assignee for a named district under the following circumstances:
 - (a) if the members of the society are reduced in number to fewer than 10; or
 - (b) if the society suspends its operations for 1 year or more; or
 - (c) if the society is unable to pay its debts; or
 - (d) if the society's constitution does not comply with the requirements of this Act; or
 - (e) if the society carries on any operation under which a member derives a financial gain contrary to the provisions of this Act; or
 - (f) if the High Court is satisfied that it is just and equitable that the society should be put into liquidation.
- (2) A society may be put into liquidation on the circumstance specified in **subsection (1)(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 66** (which requires the Registrar to give a society 6 months' notice to increase its membership).
- (3) Nothing in **subsection (2) or section 66** prevents a society from being put into liquidation by virtue of a circumstance specified in **subsection (1)(b) to (f)**.

159 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).

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

- (1) Parts 16 and 17 of the Companies Act 1993 apply, with all necessary modifications,—
- (a) to the application under **section 159** as if the application was 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) This section is subject to the rest of this Act and to the regulations.

Subpart 5—Division of surplus assets on removal or liquidation

161 Division of surplus assets on winding up

- (1) This section applies—
- (a) on or before the removal of a society from the register under **subpart 1**; or
 - (b) on the liquidation of a society.
- (2) All surplus assets of the society after the payment of all costs, debts, and liabilities must be 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 24(1)(m)** unless more than 1 not-for-profit

entity has been nominated by name, class, or description (subject to **subsection (3)**):

- (b) if more than 1 not-for-profit entity has been nominated by name, class, or description in the society's constitution under **section 24(1)(m)**, the assets must be distributed to those not-for-profit entities in the following manner (subject to **subsection (3)**):
 - (i) in the manner provided by the society's constitution (unless that manner does not result in certainty as to the allocation to each entity); or
 - (ii) in the manner specified in a resolution approved in accordance with **subpart 6** (if the society's constitution does not result in certainty as to the allocation to each entity):
 - (c) if a resolution has been approved in accordance with **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 24(1)(m)**) if—
 - (i) the assets cannot be disposed of in accordance with **paragraph (a) or (b)** or if the society requests in the prescribed manner (if any) that the Registrar act under this paragraph; and
 - (ii) a resolution has not been approved for the purposes of **paragraph (c)**.
- (3) **Subsection (2)(a) and (b)** do not apply if—
- (a) a resolution has been approved in accordance with **subpart 6** for the purposes of **subsection (2)(c)**; or
 - (b) a direction has been made under **subsection (2)(d)**.
- (4) If 1 or more entities that were nominated in the society's constitution under **section 24(1)(m)** are not not-for-profit entities or for any reason are unable or unwilling to receive the surplus assets, those entities must be disregarded.

162 Distribution after lapse of time

- (1) This section applies if,—
 - (a) after assets of a society have been disposed of under **section 161**, 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 24(1)(m)**.

Example

ABC Incorporated is removed from the register. The assets that were known about at the time are distributed in accordance with a resolution under **section 161(2)(c)**.

However, it is discovered 10 years later that another piece of land is still in the name of ABC Incorporated.

Given the lapse of time since the society was removed from the register, the Registrar considers that it is impractical to dispose of the land under **section 161**. Therefore, the Registrar decides to dispose of the land by a direction under this section.

163 Other directions

- (1) This section applies if a direction is given by the Registrar under **section 161(2)(d) or 162**.
- (2) The direction may include 1 or more of the following:
- (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) a direction that is otherwise necessary or desirable to facilitate the distribution of the surplus assets:
 - (c) 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 161 or 162** or this section.

164 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 1952 is vested in a person.
- (2) The Registrar-General of Land, on application made to him or her in the prescribed manner (if any), must make the entries in a computer register, 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.

165 No appeal from Registrar's decision

No appeal lies against a direction of the Registrar given under this subpart.

Subpart 6—Procedure for resolutions

166 Application

This subpart applies to a resolution—

- (a) to authorise a member of a society to make a request to remove the society from the register under **subpart 1**; or
- (b) for the purposes of **section 161(2)(c)** (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.

167 Notice of resolutions

- (1) The committee of the society must, in accordance with its constitution, ensure that written notice of the resolution is sent to every member of the society at least 20 working days before the general meeting at which the resolution is to be submitted.
- (2) 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
 - (e) in the case of a resolution for the purpose of **section 161(2)(c)**, a statement confirming that the committee has had regard to the purposes of the society in accordance with **section 169**; and
 - (f) other information required by the society's constitution.

168 Approval of resolution

- (1) The resolution is effective only if—
 - (a) it is approved by a simple majority (or a higher percentage specified in the society's constitution) of the valid votes cast by members voting at a general meeting in person or, if so allowed by the society's constitution, by proxy; and
 - (b) 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) The accidental omission to give notice under **section 167** to, or the failure to receive such a notice by, a member of a society does not invalidate the resolution.

169 Additional requirement for resolution providing for distribution of surplus assets

- (1) This section applies to a resolution for the purposes of **section 161(2)(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 society.

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

Subpart 1—Register of incorporated societies

*Register established***170 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, in accordance with **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.

171 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 concerning the nature, activities, and purposes of societies; 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; or
 - (ii) in the performance of the person's functions under this Act or any other enactment.

172 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; and
 - (d) 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
 - (e) a copy of the constitution of the society; and
 - (f) the financial statements and annual returns given to the Registrar by the society.
- (2) The register must contain any other information prescribed by regulations.
- (3) This section is subject to **section 173**.

173 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 on his or her own motion, prevent or restrict public access to any information that relates to the society if the Registrar considers, in the public interest, that public access to that information should be prevented or restricted.
- (3) For the purposes of **subsection (2)**, the Registrar may prevent or restrict access subject to any terms and conditions that the Registrar thinks fit.
- (4) This section does not limit the Official Information Act 1982.

Compare: 2005 No 39 s 25

174 Amendments to register

The Registrar may, at any time, 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 has been—
 - (i) wrongly entered in, or omitted from, the register; or
 - (ii) incorrectly entered in the register; or
- (c) for the purposes of **section 173**; or
- (d) to comply with any court order.

Compare: 2005 No 39 s 26

175 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 192(1)(d)(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 prescribed manner).
- (3) Neither registration nor refusal of registration of a document or other information by the Registrar affects, or creates a presumption as to, 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***176 Search of register**

- (1) A person may search the register in accordance with this Act or 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;
 - (c) the name of an officer of the society;
 - (d) any other criteria prescribed by regulations.

177 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 concerning 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:

- (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.

178 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 176 and 177** constitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

Registrar of Incorporated Societies

179 Registrar of Incorporated Societies

- (1) The chief executive of the Ministry must appoint, under the State Sector Act 1988, 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.

180 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 him or her 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 him or her by this Act or the regulations.

181 Power of Registrar to delegate

- (1) The Registrar may delegate to any employee of the Public Service (within the meaning of the State Sector Act 1988), 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) 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.
- (4) 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.
- (5) 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.

Registrar's powers of inspection

182 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 **subsection (2)**—
 - (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 his or her rights or powers under this Act; or
 - (iii) detecting offences against this Act; and
 - (b) if, in the Registrar's opinion, it is in the public interest to do so.
- (2) The powers are as follows:
 - (a) to require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; or
 - (b) to inspect and take copies of relevant documents; or
 - (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; or
 - (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.
- (3) A person who is authorised by the Registrar must be an employee of the Public Service (within the meaning of the State Sector Act 1988).
- (4) Nothing in this section limits or affects the Tax Administration Act 1994 or the Statistics Act 1975.
- (5) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power conferred by **subsection (2)**.

- (6) A person who fails to comply with a requirement under **subsection (2)(a)** or acts in contravention of **subsection (5)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (7) 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

183 Disclosure of information and reports

- (1) This section applies to a person (A) who is authorised by the Registrar for the purpose of **section 182** 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) in accordance with **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

184 Application of Official Information Act 1982 and Privacy Act 1993

- (1) This section applies to—
 - (a) the Minister; and
 - (b) the chief executive of the Ministry; and
 - (c) the Registrar.
- (2) Despite the Official Information Act 1982 or the Privacy Act 1993, a person to whom this section applies may refuse to disclose a document, information, or report in his or her possession obtained in making, or acquired as a result of, an inspection under **section 182**, until the purpose for which the inspection is carried out has been satisfied.
- (3) Despite the Official Information Act 1982, where a person requests disclosure of whether an inspection under **section 182** is being, or is proposed to be, or has been carried out, no person to whom this section applies is required to disclose that information under the Official Information Act 1982 unless—
 - (a) the disclosure of that information would not be likely to prejudice the commercial position of any person; and
 - (b) there is no other good reason for withholding that information under that Act.

Compare: 1993 No 105 s 367

185 Appeals from decisions under section 184

- (1) A person who is aggrieved by a refusal to disclose a document, information, or report under **section 184** may appeal to the High Court within 15 working days after being notified of that refusal, or within any further time that the court may allow.
- (2) On hearing the appeal, the court may confirm the refusal or give such directions or make such determination in the matter as the court thinks fit.

Compare: 1993 No 105 s 368

186 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 him or her under **section 182** is admissible in evidence at the hearing of an application to the court to appoint a liquidator.

Compare: 1993 No 105 s 369

*Appeals from Registrar's decisions***187 Appeals from Registrar's decisions**

- (1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the High Court within 15 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 High Court may approve the Registrar's act or a 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 from an act or decision of the Registrar under—
 - (a) **subpart 1, 2, or 4 of Part 4** (for example, there is no appeal from the Registrar's decision as to whether or not to make an application under any of those subparts);
 - (b) **section 161(2)(d), 162, or 163.**

Compare: 1993 No 105 s 370

188 Exercise of powers under section 182 not affected by appeal

- (1) If a person appeals or applies to the court in relation to an act or decision of the Registrar or a person authorised by the Registrar under **section 182**, 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)** is subject to **subsection (3)** but applies despite any other provision of any Act or any rule of law.
- (3) If the appeal or application is allowed or granted,—
 - (a) the Registrar must ensure that, promptly after the decision of the High 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 information acquired under **section 182** 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 adduce the evidence is satisfied it was not obtained unfairly.

Compare: 1993 No 105 s 371

*Sharing of information relating to charitable entities***189 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 exercise or performance of the Registrar’s functions, powers, or duties; and
 - (b) considers may assist that chief executive in the exercise or performance of his or her functions, powers, or duties under the Charities Act 2005.
- (2) The Registrar may use any information, or a copy of any document, provided to him or her by the Charities Act chief executive under the Charities Act 2005 in the Registrar’s exercise or performance 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 his or her functions, powers, or duties under this Act or any other enactment (including functions, powers, or duties as the Registrar under 1 or more of the Companies Act 1993, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and the Financial Markets Conduct Act 2013).

- (4) This section applies despite anything to the contrary in any contract, deed, or document.
- (5) Nothing in this section limits the Privacy Act 1993.

Compare: 1993 No 105 s 371A

Subpart 2—Jurisdiction**190 Jurisdiction of District Courts**

- (1) A District Court may hear and determine applications for orders, or for a court to exercise any other power, under any of the provisions of this Act if—
 - (a) the amount claimed or the value of the property in dispute does not exceed \$200,000; or
 - (b) no amount is claimed and there is no property in dispute; 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, in accordance with section 37 of the District Courts Act 1947, that a District Court has jurisdiction to hear and determine the application.
- (2) However, a 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).

191 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 of the provisions of this Act:
- (b) appeals from the Registrar's decisions or from any proceeding in a District Court under this Act.

Subpart 3—Regulations

192 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 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:
 - (c) setting the infringement fee for each infringement offence, which must not exceed \$1,000:
 - (d) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a prescribed manner, 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)**:
 - (e) prescribing matters for the purposes of **subpart 1 of Part 5**, including prescribing persons for the purposes of **sections 130(a) and 138(1)**:
 - (f) prescribing the manner for serving documents on a society and when the documents are treated as received:
 - (g) 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):
 - (h) prescribing matters for the purposes of **Part 1 of Schedule 1**, including—
 - (i) a date for the purposes of the definition of first transition date:
 - (ii) a date for the purposes of the definition of second transition date:
 - (iii) provisions for the purposes of **clause 7(1)(a)(iii)** of that schedule:
 - (iv) provisions for the purposes of **clause 7(1)(b)** of that schedule and modifications, additions, or variations to those provisions:
 - (v) provisions to be implied into the constitutions of societies and the circumstances in which those provisions are so implied:
 - (i) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) A power to prescribe a date under **subsection (1)(h)(i) or (ii)** is capable of being exercised more than once to amend the date prescribed under a previous exercise of the power, so long as each re-exercise of the power takes effect before the previously prescribed date occurs.
- (3) Different matters for the purposes of this Act may be prescribed for different classes of persons.

193 Fees

- (1) The Governor-General may, by Order in Council, make regulations prescribing—
- (a) fees or other amounts payable to the Registrar in respect of 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 in respect of 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 prescribed fee or amount is paid.
- (3) The regulations may authorise the Registrar to waive, in whole or in part and on the conditions that may be prescribed, payment of any 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.

Subpart 4—Amendments to Charitable Trusts Act 1957

194 Principal Act

This subpart amends the Charitable Trusts Act 1957 (the **principal Act**).

195 Section 6 amended (Interpretation)

- (1) In section 6, repeal the definition of **Assistant Registrar**.
- (2) In section 6, definition of **board**, delete “or society”.
- (3) In section 6, replace the definition of **Registrar** with:

Registrar means the Registrar of Incorporated Societies under the Incorporated Societies Act **2016**

196 Section 7 amended (Trustees may apply for incorporation)

In section 7(2)(a), replace “this Part or under any other Act” with “any Act”.

197 Section 8 replaced (Society may apply for incorporation)

- (1) 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 date on which this section comes into force.
- (2) An application for the incorporation of a society as a board under this Part that is made before this section comes into force must be considered and determined as if the Incorporated Societies Act **2016** had not been enacted.
- (3) However, no society may be incorporated as a board under this Part on and from the first transition date (within the meaning of **clause 3 of Schedule 1** of the Incorporated Societies Act **2016**).

- (2) In Schedule 2, repeal form 2.

198 Section 9 amended (Manner in which society may authorise application)

In section 9, replace “sections 7 and 8” with “section 7”.

199 Section 10 amended (Applications for incorporation)

- (1) In section 10(2)(a) and (3), delete “or society”.
- (2) In section 10(2)(c), delete “by a society or”.

200 Section 11 amended (Registration of boards)

- (1) In section 11(1), delete “or society (as the case may be)”.
- (2) In section 11(1)(a), delete “or a society”.
- (3) Repeal section 11(2)(b).

201 Section 12 amended (Evidence of incorporation)

In section 12, delete “or society”.

202 Section 14 amended (Vesting of property)

- (1) In section 14(1), delete “or by any such society”.
- (2) In section 14(1), delete “or society”.

203 Section 15 amended (Name of board)

- (1) In section 15(1), delete “or society”.
- (2) In section 15(2)(b), delete ““Society”, ”.

204 Section 16 amended (Change of name)

- (1) Repeal section 16(1).
- (2) In section 16(2), delete “other”.

205 Section 17 amended (Right to appeal to court)

In section 17(1), delete “, or that a society is not to be so registered,”.

206 Section 19 amended (Form of contracts)

- (1) In section 19(1)(a), delete “that is incorporated as the board or”.
- (2) In section 19(1), delete “or by at least 2 members of the committee or other governing body of the society that is incorporated as the board”.

207 Section 20 replaced (Presumption of validity of acts of trustees, etc)

Replace section 20 with:

20 Presumption of validity of acts of trustees

All acts or deeds done or made by any person acting in good faith as one of the trustees who for the time being constitute a board are valid despite any defect that may afterwards be found in his or her appointment, and the signature of any person purporting to act as one of those trustees is, in the absence of proof to the contrary, sufficient evidence of his or her being one of those trustees.

208 Section 23 amended (New trusts, and alterations of rules, trusts, or registered office)

- (1) In section 23(1)(a), delete “or by a member of the committee or governing body of the society constituting the board,”.
- (2) In section 23(1)(b), delete “or member”.
- (3) In section 23(3), delete “, or each member of the committee or other governing body of the society incorporated as the board,”.

209 Section 24 repealed (Voluntary liquidation of society as a board)

Repeal section 24.

210 Section 26 amended (Dissolution by Registrar)

In section 26(3) and (6), replace “society” with “board” in each place.

211 Section 61 amended (Alteration of rules of society or corporation not to affect existing trusts)

In section 61, replace “this Act or any other Act” with “any Act”.

Subpart 5—Repeal, revocation, and consequential amendments**212 Repeal of Incorporated Societies Act 1908**

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

213 Revocation of Incorporated Societies Regulations 1979

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

214 Amendments to other Acts

Amend the enactments specified in **Schedule 3** as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 6

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Part 1

Process for existing societies to become societies under this Act

1 Purpose

The purpose of this Part is to provide for an existing society to become a society under the Incorporated Societies Act **2016**.

2 Overview

- (1) The general scheme and effect of the transitional provisions for a society incorporated under the Incorporated Societies Act 1908 or a society incorporated as a board under Part 2 of the Charitable Trusts Act 1957 is as follows:

- (a) the society continues to be subject to the relevant former Act until a first transition date (which is prescribed by the regulations but will be at least 2 years from the commencement of this clause):
 - (b) during that period, the society can amend its rules to facilitate a transition to becoming a society under this Act:
 - (c) on the first transition date, the society must be treated as being a society under this Act:
 - (d) on first becoming a society under this Act, certain requirements of this Act do not apply or apply with modifications. However, provisions relating to grievances and complaints and the distribution of surplus assets on removal from the register or liquidation apply immediately:
 - (e) on and after the second transition date, the requirements of the Act will fully apply (and a society can, for example, be put into liquidation if its constitution does not comply with this Act). The second transition date will also be prescribed by the regulations but will be at least 4 years from the commencement of this clause:
 - (f) the Registrar may, to facilitate the transition, give directions to a society (for example, requiring the society to amend its constitution so that it complies with this Act):
 - (g) the Registrar may declare that an existing society must be treated as having adopted the standard provisions if it does not have a complying constitution after the second transition date.
- (2) This clause is a guide only to the general scheme and effect of the transitional provisions for existing societies.

3 Interpretation

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—

- (a) means—
 - (i) a society that is incorporated under the 1908 Act;
 - (ii) a society that is incorporated as a board under Part 2 of the 1957 Act; and
- (b) includes a branch or group of branches of a society that is incorporated under the Incorporated Societies Amendment Act 1920

first transition date means the date that is prescribed for the purposes of this definition, being a date that is not earlier than the date that is 2 years after the date on which this clause comes into force

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

second transition date means the date that is prescribed for the purposes of this definition, being a date that is not earlier than the date that is 4 years after the date on which this clause comes into force.

4 Former law continues to apply to existing society until it becomes society under this Act

- (1) The 1908 Act, as in force immediately before the commencement of this clause, continues to apply in respect of—
 - (a) an existing society that is incorporated under that Act until it is treated as becoming a society under this Act (*see clause 6*):
 - (b) every dissolution or liquidation of a society incorporated under that Act that commenced before the first transition date.
- (2) Part 2 of the 1957 Act, as in force immediately before the commencement of this clause, continues to apply in respect of—
 - (a) an existing society that is incorporated as a board under that Part until it is treated as becoming a society under this Act (*see clause 6*):
 - (b) every dissolution or liquidation of a society incorporated under that Part that commenced before the first transition date.
- (3) **Subclauses (1) and (2)** apply as if this Act had not been enacted.

5 Existing society may amend its rules to facilitate transition to becoming society under this Act

- (1) This clause applies—
 - (a) to the rules of an existing society; and
 - (b) despite anything to the contrary in the rules or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the rules.

- (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 members attending and voting; and
 - (c) signed by at least 3 members of the society.
- (4) A society must ensure that a copy of an amendment of its rules is delivered to the Registrar within 20 working days after the amendment is approved at the general meeting.
- (5) The copy of the amendment must be accompanied by a certificate by an officer of the society or a lawyer certifying that—
 - (a) the amendment was made in accordance with **subclauses (2) and (3)**; and
 - (b) the society's rules, as amended, will continue to comply with the requirements of the 1908 Act or the 1957 Act.
- (6) Section 21(3) to (5) of the 1908 Act apply with all necessary modifications, in relation to an existing society that is incorporated under that Act, to an amendment made under this clause as if an amendment duly made under this clause were an alteration that has been duly made under that section.
- (7) In this clause,—

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

Registrar means the Registrar of Incorporated Societies under the 1908 Act.

6 Existing society becomes society under this Act on first transition date

- (1) Every existing society must, at the start of the first transition date, be treated as becoming a society under this Act.
- (2) **Subclause (1)** does not apply if the existing society is, before the first transition date, dissolved or in liquidation under the 1908 Act or the 1957 Act.
- (3) **Subclause (1)** does not—
 - (a) result in the creation of 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.

- (4) Proceedings that could have been commenced or continued by or against the existing society before the first transition date may be commenced or continued by or against the existing society after it is treated as becoming a society under this Act.

7 Certain requirements do not apply or apply with modifications until second transition date

- (1) Despite **clause 6**, until the second transition date,—
- (a) the following provisions do not apply to the existing society:
 - (i) **sections 24 to 26** (requirements relating to the constitution):
 - (ii) **section 39** (qualifications of officers):
 - (iii) the provisions of this Act that are prescribed by the regulations for the purposes of this subparagraph; and
 - (b) the provisions of this Act that are prescribed by the regulations for the purposes of this paragraph apply to an existing society with modifications, additions, or variations specified in the regulations.
- (2) This clause is subject to **clause 8**.

8 Rules of existing society become its constitution

- (1) The rules of an existing society, as in force immediately before the start of the first transition date, must be treated as being the constitution of the society when it becomes treated as a society under this Act.
- (2) However, a provision of those rules has no effect to the extent that it contravenes, or is inconsistent with, any of the following:
- (a) **section 24(1)(j) or 31** (grievances and complaints):
 - (b) **subpart 2 of Part 3** (financial gain) or **section 24(1)(m) or subpart 5 of Part 5** (distribution of surplus assets):
 - (c) any provisions implied into the constitution by regulations referred to in **subclause (3)**.
- (3) The constitution of a society referred to in **subclause (1)** must, in the prescribed circumstances, be treated as containing any provision that is implied into the constitution by regulations made under **section 192(1)(h)(v)** (being provisions relating to, for example, grievances and complaints and the distribution of surplus assets).

9 Officers of existing society become its officers

The officers of an existing society who hold office immediately before the start of the first transition date must be treated as being the officers of the society when it becomes treated as a society under this Act.

10 Registrar must enter details of society on register

- (1) The Registrar must, after an existing society is treated as becoming a society under this Act,—
 - (a) enter on the register the particulars of the society required under **section 172** (to the extent that those particulars are known by the Registrar); and
 - (b) issue a certificate of incorporation.
- (2) A certificate of incorporation of an existing society issued under this clause is conclusive evidence that, on and from the first transition date, the society is incorporated under this Act.

11 Registrar may give directions to facilitate transition

- (1) The Registrar may, at any time before the second transition date, give a direction under this clause if it appears to the Registrar that—
 - (a) the constitution of an existing society does not comply with the requirements of this Act; or
 - (b) 1 or more of the officers of an existing society are disqualified from being appointed or holding office as an officer of the society under **section 39**; 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 is 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 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 the direction 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 constitution, a 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 constitution or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the constitution or to the removal of an officer.

12 Society must comply with Act by second transition date

- (1) On and from the second transition date,—
 - (a) the constitution of an existing society must comply with the requirements of this Act; and
 - (b) all of the officers of an existing society must be qualified to be appointed as an officer of the society under **section 39**.
- (2) *See* **subpart 4 of Part 5** (which provides for the High Court to put a society into liquidation if its constitution does not comply with the requirements of this Act).

13 Registrar may declare that society must be treated as having adopted standard provisions

- (1) This clause applies if, at any time after the second transition date, the Registrar is satisfied that the constitution of an existing society does not comply with the requirements of this Act.
- (2) The Registrar may, by written notice to the existing society, make a declaration that the society must be treated as having adopted the standard provisions (with effect from a date stated in the notice).
- (3) The Registrar must, in the notice, specify—
 - (a) the society's purposes for the purposes of **section 24(1)(b)**; and
 - (b) the society's rules for the purposes of **section 24(1)(m)**; and
 - (c) any additional provisions for the society's constitution (being provisions that are not inconsistent with the standard provisions and otherwise comply with this Act).
- (4) For the purposes of **subclause (3)**,—
 - (a) the Registrar may specify any purposes, rules, or other provisions that the Registrar thinks fit; but
 - (b) the Registrar must, before so acting, have regard to the society's purposes and rules as in force before the declaration is made.
- (5) If a declaration is made under this clause, the society's constitution (on and from the date the declaration takes effect) consists of—
 - (a) the standard provisions; and

- (b) the name of the society; and
 - (c) the purposes of the society (as specified in the notice under **subclause (3)**); and
 - (d) the society's rules for the purposes of **section 24(1)(m)** (as specified in the notice under **subclause (3)**); and
 - (e) the provisions (if any) referred to in **subclause (3)(c)**.
- (6) Nothing in this clause prevents the constitution from being subsequently amended under **subpart 3 of Part 3**.

14 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 or the 1957 Act but, after the first transition date, the dissolution is revoked under section 28 of the 1908 Act or section 26 of the 1957 Act (as continued in effect by **clause 4**); or
 - (b) the existing society had been in liquidation under the 1908 Act or the 1957 Act but, after the first transition date, the existing society ceases to be in liquidation under sections 24 to 27 of the 1908 Act or section 24 or 25 of the 1957 Act (as continued in effect by **clause 4**).
- (2) The society must, on and from the relevant date, be treated as becoming a society under this Act.
- (3) The Registrar may give a notice to the society that extends the application of **clause 7** (and, if applicable, suspends the application of **clause 12**) to a date after the second transition date.
- (4) The extension (and suspension) are subject to any terms and conditions that the Registrar thinks fit (being terms and conditions specified in the notice).
- (5) In this clause, the **relevant date** is the date on which the dissolution is revoked or the society ceases to be in liquidation.

Part 2

Other transitional provisions

15 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 (including on and after the first transition date).

- (3) However, **subclause (2)** ceases to apply if the Registrar receives a notice, in the prescribed manner, 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.

Schedule 2

Complaints and grievances procedures

s 31

1 Complaints: member's right to be heard

- (1) If a society considers a complaint, or institutes a disciplinary procedure, regarding alleged misconduct of a member, the member has a right to be heard before the complaint or procedure is resolved or any outcome is determined.
- (2) Without limiting the manner in which a member may be given a right to be heard, a member must be taken to have been given the right if—
 - (a) the member is fairly advised of all allegations concerning the member, with sufficient details and time given to enable the member to prepare a response; and
 - (b) the member has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
 - (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (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.

2 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.

3 Investigating and determining complaint or grievance

- (1) A society must, as soon as is reasonably practicable after receiving a complaint or grievance made in accordance with its constitution, investigate and determine the complaint or grievance.

- (2) Those complaints and grievances must be dealt with by the society in a fair, efficient, and effective manner.

4 Society may decide not to progress complaint or grievance

Despite **clause 3**, a society may decide not to proceed with a matter further if—

- (a) the matter is trivial; or
- (b) the matter does not appear to disclose—
 - (i) in the case of a complaint, any material misconduct; or
 - (ii) in the case of grievance, any material damage to a member's rights or interests; or
- (c) the complaint or grievance appears to be without foundation or there is no apparent evidence to support it; or
- (d) 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 has already been investigated and dealt with by or on behalf of the society.

5 Society may refer complaint to subcommittee or other investigator

A society may refer a complaint or grievance 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.

6 Decision makers

A person may not act as a decision maker in relation to a complaint or grievance 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—

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

Schedule 3 Amendments to other Acts

s 214

Part 1 Amendments relating to incorporated societies

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 **2016**”.

In section 13(4), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

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 **2016**)”.

Charities Act 2005 (2005 No 39)

In section 15(a), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

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 **2016**:

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 **2016**) 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:

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—

Charities Act 2005 (2005 No 39)—*continued*

- (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 **2016**.
- (2) The chief executive may use any information, or a copy of any document, provided to him or her by the Registrar under the Incorporated Societies Act **2016** 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 **2016**.
- (4) This section applies despite anything to the contrary in any contract, deed, or document.
- (5) Nothing in this section limits the Privacy Act 1993.

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 **2016**”.

Employment Relations Act 2000 (2000 No 24)

In section 13(2)(a), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

In section 14(1)(b), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

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

In section 2, definition of **registering authority**, paragraph (a), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

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

In section 100(a)(iii), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

In section 104(1)(b)(iii), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

In section 106(1), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**” 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 **2016**”.

Heavy Engineering Research Levy Act 1978 (1978 No 81)

In section 15(4), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

Income Tax Act 2007 (2007 No 97)

In section YA 1, definition of **company**, paragraph (f), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

In section YA 1, definition of **special corporate entity**, paragraph (j), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

Insolvency Act 2006 (2006 No 55)

In section 3, definition of **company**, paragraph (b), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

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), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

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 **2016**”.

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 **2016**”.

Niue Act 1966 (1966 No 38)

Repeal section 690.

Privacy Act 1993 (1993 No 28)

In Schedule 2, Part 1, replace the item relating to the Incorporated Societies Act 1908 with:

Incorporated Societies Act **2016** **section 170**

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 **2016**”.

Racing Act 2003 (2003 No 3)

Replace section 23(2)(a) with:

Racing Act 2003 (2003 No 3)—*continued*

- (a) the code's constitution, as required by **section 24** of the Incorporated Societies Act **2016**; and

Replace section 27 with: [to come]

Receiverships Act 1993 (1993 No 122)

In section 2(1), definition of **Registrar**, paragraph (c), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

Summary Proceedings Act 1957 (1957 No 87)

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

- (ga) **section 122** of the Incorporated Societies Act **2016**; or

Trade Unions Act 1908 (1908 No 196)

In section 16(1), replace “Incorporated Societies Act 1908” with “Incorporated Societies Act **2016**”.

Part 2**Amendment relating to Charitable Trusts Act 1957****Gambling Act 2003 (2003 No 51)**

In section 4(1), definition of **corporate society**, repeal paragraph (b).