MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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Exposure Draft: Incorporated Societies Bill

Including consultation on **Agricultural and Pastoral Societies** legislation

Request for Submissions

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Request for submissions

MBIE seeks submissions on the exposure draft of the Incorporated Societies Bill and standard provisions for society constitutions. These documents can be found at

http://www.mbie.govt.nz/info-services/business/business-law/incorporated-societies.

MBIE and the Ministry for Primary Industries are also consulting on whether agricultural and pastoral societies should continue to operate under sector-specific legislation or be brought within the scope of the new Incorporated Societies Act. There is discussion and a set of questions about this subject on pages 26-29.

When preparing your submission, please:

- Make any general comments first
- Make your comments on specific clauses in clause order
- Make any comments on agricultural and pastoral societies
- Provide electronic submissions to societies@mbie.govt.nz.

The closing date for submissions is **Thursday 30 June 2016**.

Publication of comments, the Official Information Act and the Privacy Act

MBIE intends to publish all submissions on its website, other than submissions that may be defamatory.

MBIE will not publish the content of your submission on the internet if you state that you object to its publication when you provide it. However, your submission will remain subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

When making your submission, please state if you have any objections to the release of any information contained in your submission. If so, please identify which parts of your submission you request to be withheld and the grounds under the Official Information Act for doing so.

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Acknowledgements

The draft Incorporated Societies Bill and standard provisions that are being exposed for comment closely follow the recommendations in the Law Commission's report entitled *A New Act for Incorporated Societies*. MBIE wishes to thank the Commission for its clear and coherent report. We also wish to thank Commissioner Geoff McLay and Commission staff Jo Dinsdale and Jacob Meagher for commenting on earlier drafts of the Bill.

Abbreviations

The following abbreviations are used throughout this document in reference to the Law Commission's report *A New Act for Incorporated Societies*:

- LCR – refers to the relevant Law Commission Recommendation number.
- LCP – refers to the relevant Law Commission Paragraph number.

Contents

Introduction

What is an incorporated society?

1 An incorporated society is a separate legal entity that operates for purposes other than financial gain of any of its members. Incorporation means that a society can enter into contracts and hold assets in its own name. Members of the society are not personally liable for any obligation or liability that the society incurs in its own name. The society continues in existence unaffected by the comings and goings of its members or office holders.

What has happened so far?

2 The Law Commission commenced a review of the Incorporated Societies Act 1908 (1908 Act) in 2010. It published an issues paper in June 2011 and received about 200 submissions. Following further formal and informal consultation, the Law Commission published a report entitled *A New Act for Incorporated Societies* in 2013. The Law Commission's main recommendation was to replace the 1908 Act with a new Incorporated Societies Act. Most of the other recommendations describe how to give effect to the main recommendation.

3 The Government response, which was tabled in December 2013, agreed to 101 of the Commission's 102 recommendations in full or in principle. The exception was Law Commission Recommendation 3 (LCR 3) relating to Agricultural and Pastoral societies (A&P societies). The Government decided to defer consideration of whether A&P societies would continue to operate under separate legislation until after further information is obtained as a part of this consultation process.

4 The latest step is the publication of this request for submissions, and the associated draft Incorporated Societies Bill and standard constitutional provisions. For the most part, the draft Bill follows the details of the LCRs. The Bill also includes several detailed provisions to give effect to general recommendations made by the Law Commission. These relate to such matters as the powers of the Registrar of Incorporated Societies and transitioning societies registered under the 1908 Act and the Charitable Trusts Act 1957 to the new Act.

Next steps

Agricultural and Pastoral Societies

5 MBIE and the Ministry for Primary Industries will analyse submissions made on agricultural and pastoral societies before providing advice to the Government on whether there should continue to be stand-alone A&P legislation, or whether A&P societies should be migrated to the new Incorporated Societies Act either in full, or with any modifications needed to reflect their particular purposes.

Incorporated societies – steps through to enactment

6 MBIE is considering whether to hold seminars in main centres during the consultation period with the aims of increasing awareness of the Bill and encouraging stakeholders to make submissions that will help ensure that a high quality Bill is introduced into Parliament in 2017. Further information will be made available about this in early 2016.

7 After introduction, the Bill will have a first reading and be referred to a select committee for consideration. The select committee will call for public submissions and consider them before reporting the Bill back to the House. The Bill will then need to go through the three remaining parliamentary processes (second reading, Committee of the Whole House and third reading) before it can be enacted, perhaps in 2018.

8 It will be at least two years from the date of enactment before the new Act starts applying to societies currently registered under the 1908 Act and the Charitable Trusts Act 1957 and branches registered under the Incorporated Societies Amendment Act 1920. It will be at least four years from the date of enactment before the new Act is fully brought into effect.

The Incorporated Societies Bill

Guiding principles

9 The Law Commission notes on page 4 of its report that the following principles represent the overriding messages they received time and again in their consultation meetings and from submitters:

- Societies are private bodies that are operated by their own members.
- Societies should not distribute profits or financial benefits to members.
- Societies should be free from inappropriate government interference.

The need for reform

10 The Law Commission states that a new Act is needed to help guide the not-for-profit sector into the future. LCP 1.2 notes that:

> The [1908] Act does not set out the obligations of those who are involved in the running of incorporated societies. It fails to give sufficient guidance to the many New Zealanders who volunteer to run societies. Moreover, the statute says little about how disputes, which inevitably occur, should be dealt with. Much of what is legally necessary for the running of incorporated societies is also not expressly set out in the statute.

11 These sentiments came through in several submissions to the Law Commission. Social Development Partners stated that people are often elected onto committees without a clear understanding of the responsibilities that being an officer of a society entails. The Auckland District Law Society Inc. stated that:

> The [1908] Act falls significantly short when questions are raised about governance, rights and obligations… Case law in New Zealand is limited and what does exist is old and not necessarily appropriate for today's conditions… In our experience, members generally want to do their best for their society, are happy to follow rules and would welcome greater certainty both in terms of internal processes and rights of recourse outside the society.

12 On dispute resolution, Wynn Williams Lawyers notes on its website that:

> It is very common for disputes to arise between members of societies. It is also quite common for a society's rules to be inadequate to properly deal with those disputes. This creates uncertainty as to how the dispute can be properly resolved both from the society and a member's point of view. The consequence is numerous complaints by members that they have not been treated fairly or been properly heard.

13 The New Zealand Law Society noted in its submission to the Law Commission that:

> Lawyers advising community organisations… find little guidance in or assistance from the current legislation and the often inadequate constitutions of those organisations. The consequent difficulties in dealing with problems that arise disrupt the activities of those organisations, and cause stress and unnecessary cost.

What does the draft Bill cover?

14 The Bill has six parts and three schedules.

- Part 1 relates to preliminary matters that appear in every new Bill, such as stating the purpose of the Bill and defining terms that are used in other clauses.
- Part 2 relates to the establishment of an incorporated society.
- Part 3 relates to the operation of an incorporated society.
- Part 4 relates to enforcement. It mostly provides for societies and their members to seek remedies against possible contraventions of the law or a society's constitution. It also provides for enforcement by the Registrar in limited circumstances.

- Part 5 relates to:
  - significant structural or operational changes, such as amalgamations; and
  - the liquidation or deregistration of an incorporated society.

- Part 6 relates to all other matters. Among other things, it provides for a Registrar to be appointed, a register to be established and maintained, and powers for the Registrar to investigate and enforce serious contraventions of the law.

- Schedule 1 provides for the following existing entities to become registered under the new Act:
  - incorporated societies registered under the 1908 Act;
  - branches of incorporated societies registered under the Incorporated Societies Amendment Act 1920; and
  - charitable societies registered under the Charitable Trusts Act 1957.

- Schedule 2 outlines a framework for rights, obligations and processes for complaint and grievance purposes.

- Schedule 3 makes consequential amendments to other Acts.

The key features of the draft Bill

15 The commentary below does not discuss every clause in the Bill. Rather, it focuses on:

- what we think are the most important issues
- clauses that may raise potentially difficult issues
- clauses that do not fully conform with the detail proposed by the Law Commission.

Part 1 – Preliminary provisions

Clause 2 – Commencement

Applicable dates for different types of entity

16 We envisage that the Bill will be brought into effect in the following steps:

- **The day after the date of the Royal Assent**: No new societies will be able to register under the Charitable Trusts Act 1957 from the day after the date of the Royal Assent. They will, instead, need to register under incorporated society legislation.

- **No more than six months after Royal Assent**: Clauses 2(2) and 212 provide for the 1908 Act to be repealed on a date specified by Order in Council. At this stage, we anticipate that this date would be no more than six months after Royal Assent. This will mean that new societies will no longer be able to register under the 1908 Act from that date. They would instead need to register under the new Act.

  Although the 1908 Act will have been repealed, it will continue to apply to societies registered under the 1908 Act, to the extent needed, to give full effect to the transition as described in the next two bullet points.

- **First transition date**: On a date that is not less than two years after Royal Assent, all societies registered under the 1908 Act or the Charitable Trusts Act 1957 will be deemed to be registered under the new Act. The same applies to branches registered under the Incorporated Societies Amendment Act 1920. The new Act would start applying to all existing societies from the first transition date, but with a small number of exceptions, such as:

  - clause 24, which relates to the requirements for the contents of constitutions
  - clause 39, which relates to the qualifications of officers.

- **Second transition date**: On a date that is not less than two years after the first transition date, all remaining provisions will come into effect, meaning that the new Act will apply in full to all societies. The Registrar may declare that a society that has not lodged a law-compliant constitution has adopted one or more of the standard constitutional provisions (see the discussion of clause 33). Alternatively, the Registrar could apply to a court to liquidate a non-compliant society (see clause 158(1)(d), and clause 12(2) of Schedule 1).

17 If the Bill is enacted in 2018, the first and second transition dates will occur no earlier than dates in 2020 and 2022.

Making regulations before commencement

18 Clause 192 provides powers for various regulations to be made. We anticipate that some regulations (e.g. relating to prescribing the contents of forms) will need to be made after the Bill is enacted but before the Act is brought into force. We intend to rely on section 11 of the Interpretation Act 1999, which provides for powers in an enactment to be exercised between passing and commencement if it is necessary or desirable.

Clause 3 – Purposes

19 Clause 3 outlines the purposes of the Act. Clause 3(d) lists the three principles that underpin the Law Commission's report and recommendations, as summarised in paragraph 9 above. There are direct links between the principles listed in clause 3(d) and other provisions:

- The two principles relating to the independence of societies are used in clause 109 to limit the Registrar's power to apply for court orders.

- The principle relating to financial gain is given effect to through:
  - clause 21, which:
    - states that a society must not operate for financial gain
    - makes it an offence for an officer of a society to authorise, permit, or consent to a society operating for financial gain
  - clause 22, which defines "financial gain"
  - clause 8, which states that an entity that has a financial gain-related purpose is ineligible for registration as an incorporated society
  - clauses 106-108, which empower a court to order that a financial gain be recovered from a member or former member
  - clause 158(1)(e), which provides for the High Court to liquidate a society if it carries on any operation that is contrary to the financial gain provisions
  - clause 68, which states that members have no right to the property of a society
  - clause 24(2), which states that a society's constitution must not purport to confer on any member any right, title or interest in the property of a society
  - clause 161(2), which states that any surplus assets of a society that is liquidated or deregistered must be given to one or more other not-for-profit entities
  - clause 24(4), which defines "not-for-profit entity".

Part 2 – Incorporation of societies

Clause 8 – Eligibility to be incorporated as a society

20 Clause 8(1) states that:

- the minimum number of members at the time of registration is 10 (the 1908 Act imposes a minimum of 15). This provision is linked to clause 66, which requires a society to continue to have at least 10 members.

- a society may incorporate for any lawful purpose other than financial gain of any of its members. Also see the discussion of clause 21 (*Society must not operate for financial gain*) and clause 22 (*Financial gain*).

Clause 9 – Application for incorporation

21 LCR 5 recommends that 10 applicant members must be named on any application for incorporation. This requirement is not included in the Bill. It will instead be implemented by way of regulations made under clause 192(1)(a).

Clause 10 – Proposed name of society

22 Clause 10(1) lists the society name-related reasons that the Registrar must refuse to incorporate a society. The four reasons listed in clause 10(1)(a) have been modelled on the list in section 22(2) of the Companies Act.

Clause 10((1)(b) – Inclusion of "Incorporated" or "Manatōpū" or both

23 Clause 10(1)(b) includes a requirement for the last word or words of the name of the society to be "Incorporated" or "Manatōpū" or both. There is a related offence provision in clause 118 for the improper use of "Incorporated" or "Manatōpū".

Clause 11 – Incorporation must be refused if Registrar considers that purposes do not comply with Act

24 Clause 11 addresses the situation where the Registrar considers that a society's proposed purposes are unlawful. It states that the Registrar must refuse to incorporate the society until the purposes are amended to address the unlawfulness.

Clause 12 – Incorporation must be refused if Registrar considers that constitution does not comply with Act

25 Clause 12 is similar to clause 11, but it relates to the situation where the Registrar considers that a society's proposed constitution is unlawful.

Clause 13 – Body corporate treated as equivalent to three members

26 Clause 13 states that corporate members count as three members. It retains the rule under section 31 of the 1908 Act. It is useful for incorporated societies whose members are other incorporated societies.

27 Clause 13 is linked to clauses 8(1) and 69, which provide for societies to have at least 10 members. It means that a society which has corporate members only must have at least four members.

Part 3 – Administration of societies

Clause 17 – Capacity and powers

The powers of a natural person

28 Clause 17(1) states that incorporated societies have the capacities and powers of a natural person. In essence, it means that a society can do the things that an individual can lawfully do (e.g. enter into contracts).

29 Those powers are constrained in two ways:

- Clause 17(3), which provides societies with the discretion to restrict their capacities and powers through their constitutions. In particular, the statement of a society's purposes in its constitution will inevitably limit the society's capacities and powers.

- Clause 21, which states that a society must not be carried on for the financial gain of any of its members.

Avoidance-of-doubt

30 LCR 15 states that a list of seven powers should be included in the Bill for the avoidance of doubt. The seven powers are listed after clause 17, but as examples rather than within an avoidance-of-doubt provision. Adopting this approach has two implications. First, an example does not limit the provision. Second, the provision prevails if an example and the provision are inconsistent.

Authority to bind society

31 Clauses 91 and 92 are connected to clause 17. Clause 91 describes how a society may enter into a contract or other enforceable obligation. Clause 92 provides for a society to appoint an attorney either generally or in relation to a specified matter.

Clauses 18 to 20 – Validity of actions

32 Clauses 18 to 20 are closely linked to clause 17. The common law *ultra vires* doctrine means that acts taken by an entity outside those expressly or impliedly authorised by its purposes are void, because the entity lacked the legal capacity to enter into them.

33 It is unclear whether a court would apply the doctrine in relation to an incorporated society. Consistent with sections 17 to 19 of the Companies Act, clauses 18 to 20 make it clear that the common law doctrine does not apply. The main purposes are to protect the interests of members and to avoid injustices to those who honestly deal with a society while being unaware of the restrictions imposed upon the society by its rules.

Clause 21 – Society must not operate for financial gain

A prohibition on financial gain

34 Clause 21(1) states that a society must not be carried on for the financial gain of any of its members. As noted in the discussion of clause 3, there are important connections between clause 21 and clauses 8, 22, 24(2) & (4), 68, 106-108, 158(1)(e) and 161(2).

Offence provision relating to financial gain

35 The Law Commission did not consider whether or not to include an offence provision in relation to financial gain. Clause 21(2) includes one. Our preliminary view is that the most serious breaches of the financial gain rule by an officer of a society are sufficiently blameworthy to justify including an offence provision. We also consider that it would contribute to deterrence against serious offending. The proposed requirements for breaching the prohibition are as follows:

- The person was an officer – see the definition of "officer" in clause 36; and
- The society contravened the financial gain prohibition in clause 21(1); and
- The contravention took place with the officer's authority, permission or consent.

36 The Bill does not include an offence provision in relation to a person who receives a financial gain. It is not needed because it is an offence under section 66 of the Crimes Act 1961 to be a party to another offence (e.g. by abetting any person to commit the offence).

Offences under the 1908 Act

37 The financial gain-related offences are different in two ways to the equivalent offences in section 20 of the 1908 Act. First, under the 1908 Act the society is treated as having committed the offence. Second, there is a separate offence provision in relation to a member who aids, abets, procures, assists or takes part in any act of pecuniary gain.

38 The Bill does not retain the approach under the 1908 Act of treating the society as the offender for the following reasons:

- It could unfairly tarnish the reputation of the society, or individual officers or members who neither knew of the offending nor could reasonably have been expected to know.
- Creditors could be harmed if a court imposed a fine on the society. Alternatively, a court may be reluctant to impose a fine if it was concerned that it could harm the interests of creditors.

Clause 22 – Financial gain

Definition of financial gain

39 Clause 22 defines "financial gain". It is an important provision because it describes what makes incorporated societies unique. If this provision includes any material errors or is not sufficiently clear, then it could be either a barrier to societies doing useful things, or permit societies to undertake activities that are inconsistent with incorporated society principles.

40 Clause 22(1) describes financial gain in a way that we think is fully consistent with the discussion in LCP 3.24. Limb (a) draws on language used in section 2(2) of the Society Act 1996 (British Columbia). Limbs (b) and (c) are based on section 5 of the Associations Incorporation Act 2009 (New South Wales).

41 Clause 22(3) lists seven exclusions from the meaning of financial gain. The purpose is to increase legal certainty by making it clear that those activities do not contravene the financial gain prohibition.

42 LCR 4 proposes six of those seven exclusions. The exclusion that has been added to those six appears in clause 22(3)(f). It relates to any transaction with a member on arm's length terms in addition to the wages and salary-related exclusion in clause 22(3)(e). "Arm's length terms" is defined in clause 22(5).

43 As recommended by the Law Commission, the list in clause 22(3) differs from section 5 of the 1908 Act in one material respect. Section 5(b) exempts distribution of property of a society to members of the society on its dissolution. Clause 22 does not provide such an exemption because it is inconsistent with the financial gain principle.

44 Societies will instead need to identify a not-for-profit entity or class of not-for-profit entity to which any surplus assets will be transferred on or before the removal of a society from the register or on its liquidation (see the discussion of clause 161).

Pecuniary gain, monetary gain or financial gain

45 The 1908 Act uses "pecuniary gain". LCR 4 recommended replacing "pecuniary" with "monetary" because many individuals involved in societies do not understand the meaning of "pecuniary". We agree that monetary is better than pecuniary. However, we prefer financial gain because clause 22(1)(b) and (c) relate to ownership interests. In our view, ownership interests are outside the plain meaning of "monetary".

Clause 24 – What a constitution must contain

The proposals in LCR 57

46 Clause 24(1) lists various matters that every constitution must address in order to be lawful. It is largely consistent with numerous recommendations in LCR 57. However, clause 24(1) does not include the following three items and one sub-item listed in LCR 57:

- *LCR 57(c): How the location of the registered office of the society will be determined* – We consider that the minimum acceptable requirements are adequately addressed by clause 86 (*Registered office*) and clause 87 (*Change of registered office*).

- *LCR 57(g): How the society can enter into legal obligations* – We consider that the minimum acceptable requirements are adequately addressed by clause 91 (*Method of contracting*) and clause 92 (*Attorneys*).

- *LCR 57(k): What information held by the society members can have access to and how that access will be provided* – We consider that this matter is adequately addressed by clause 71 (*Information for members*). It adopts the Commission's proposal in LCP 7.118 to provide a regime under which members can request information from a society modelled on section 178 of the Companies Act.

- *The fourth bullet point in LCR 57(f): Qualifications for appointment of committee members* – We consider that the minimum acceptable requirements are adequately addressed by clause 39 (*Qualifications of officers*).

Links between clause 24(1) and other provisions

47 Most of the requirements listed in clause 24(1) are linked to fuller provisions appearing elsewhere in the Bill. Table 1 (see next page) identifies the links to the related clauses.

The impact that clause 24 is likely to have on most existing societies

48 We expect that most existing societies will already have provisions in their current constitutions that comply with 11 of the 13 requirements of clause 24(1). The two exceptions are:

- clause 24(1)(k), which requires the constitution to include rules relating to the resolution of disputes between members, and between members and the society. Also see clauses 31-32 and Schedule 2 of the draft Bill, and Standard Constitutional Provision No. 8 in the Annex to this document.
- clause 24(1)(p), which requires a society to nominate a not-for-profit entity or class of not-for-profit entity to which any surplus assets should be distributed on the liquidation or deregistration of the society. Also see clauses 161-165 and 24(4).

Table 1: Links from clause 24 to other clauses

Clause no.	What the constitution must contain	Related clauses
24(1)(a)	The name of the society	10 & 88-90
24(1)(b)	The purposes of the society	Nil
24(1)(c)-(d)	How a person becomes a member and ceases to be a member	67
24(1)(e)-(f)	Arrangements relating to keeping a register of members and members' access to the register	70
24(1)(g)	The composition, roles and functions of the committee	37-41
24(1)(h)	How the society will control and manage its finances	82
24(1)(i)	Control and use of society's common seal	91(2)
24(1)(j)	Procedures for resolving internal disputes	31-32 & Schedule 2
24(1)(k)	Arrangements and requirements for general meetings	73-76, 58(3) & 24(3)
24(1)(l)	The method by which the constitution may be amended	27
24(1)(m)	The distribution of surplus assets to other not-for-profit entities	161-165 & 24(4)

Clause 26 – Effect of constitution

49 Consistent with section 31 of the Companies Act, clause 26 states that the constitution is invalid to the extent that it contravenes or is inconsistent with the new Act. This provision is wider than LCR 29, which only proposed to invalidate provisions in constitutions that attempt to exclude any officers' duties (Those duties appear in clauses 48-53).

Clause 33 – Standard provisions for constitutions (see Annex 1)

50 LCR 51 states that the new Act should enable a model constitution to be made in regulations. LCRs 52-54 describe how to give effect to LCR 51. LCRs 55-56 envisage that the proposed model constitution will contribute to the process of reregistering existing societies under the new Act.

51 Clauses 33 to 35 of the Bill are broadly consistent with the intent of LCRs 51-56. However the following modifications have been made:

A. They are called "standard provisions for a constitution", not "a model constitution".
B. The Bill provides for the use of the standard provisions matter-by-matter, rather than as a package.
C. The standard provisions will be issued by the responsible Minister on the recommendation of the Registrar, not through regulations.

Difference A: "standard provisions", not "model constitution"

52 There are two reasons for using "standard provisions" rather than "model constitution".

53 First, "model constitution" promises more than we think can be delivered. It implies that it is possible to produce a one-size-fits-all best practice constitution that fits well with every society's needs. Our view is that this goal is unachievable because the sector is so diverse. We consider that the best that can be hoped for are basic provisions that address matters which are common to all societies and are satisfactory enough for any society to get by with.

54 Second, it cannot be a complete constitution. The society's purposes, the number of officers and the titles given to each position, and the rules relating to disposal of surplus assets are inevitably specific to the individual society.

55 We consider that the standard provisions should be supported with practical guidance material on the Registrar's website. We also consider that there is a role for umbrella organisations in the not-for-profit sector to assist individual societies. Many already do so. For example, Bowls New Zealand Inc. has a model club constitution template on its website, along with model club disciplinary regulations.

Difference B: Matter-by-matter, not a package

56 LCRs 51-56 envisage that a society would state whether the model constitution is being adopted as is, or with variations and/or additions. They also envisage that:

- a society would advise the Registrar whether it has adopted the model constitution
- the register would identify whether the model constitution has been adopted
- a society that has adopted the model constitution would be automatically subject to any amendment made to it by the Government.

57 The Bill does not include the procedures listed in the previous paragraph. Clause 33 instead provides for the Minister, on the recommendation of the Registrar, to issue a set of standard provisions addressing 10 of the 13 minimum requirements for constitutions listed in clause 24(1). This approach will leave it to each society to determine whether to adopt none, some or all of the standard provisions in relation to each of those 10 minimum requirements. A society will be deemed under clause 34 to have complied with the new Act in relation to each set of standard provisions that it adopts (i.e. it provides a safe harbour).

58 We consider that this bottom-up approach is more flexible because it will be easier for each society to consider what suits its particular needs. For example, if a society registered under the 1908 Act decides that the provisions in its existing constitution better suit its needs than the standard provisions for some matters but not for others, then it can get the best of both worlds by taking only what it needs from the standard provisions. There is a greater risk under the top-down approach that societies will adopt the whole package simply because it is the easiest thing to do.

Difference C: standard provisions issued by Minister

59 LCR 51 states that the model constitution should be made in regulations. This would mean that they would be made by the Governor General by Order in Council after they have been approved by Cabinet. We consider that it is unnecessary to go through this process, given the subject matter. Being issued by the Minister on the recommendation of the Registrar is sufficient. Clause 33(2) takes this approach.

Standard provisions will be disallowable

60 Clause 35 provides what we think is an appropriate constraint on the use of this power. It states that the standard provisions issued by the Minister would be a disallowable instrument. It means that Parliament's Regulations Review Committee would check whether the power to issue the standard provisions has been used appropriately. The Committee can report to the House on any issues it identifies. If necessary, the House can "disallow" what has been issued, meaning that the regulations would no longer have force.

Clause 36 – Definition of officer

61 The Law Commission recommended adopting the definition of "office holder" in section 82 of the Associations Incorporation Reform Act 2012 (Victoria). Clause 36(1) is largely consistent with that proposal. However, clause 36(2) and (3) are more closely aligned to the meaning of 'director' in section 126(1)(b) and (4) of the Companies Act 1993. We consider that the Companies Act approach is clearer about who, other than members of a society's committee, will be deemed to be an officer of a society.

Clause 39 – Qualifications of officers

Clause 39(1) – Qualifications

62 Clause 39(1) states that a natural person who is not disqualified by clause 39(2) may be appointed as an officer of a society.

Clause 39(2) – Disqualifications

63 LCR 23 proposes five disqualifications from being an officer of a society. Clause 39(2) lists all of those disqualifications, and several others. For example the disqualifications appearing in section 16(2) of the Charities Act 2005 have been included. These additions have been made because we consider that those other forms of conduct indicate that an individual is unsuitable to hold a position of responsibility in an incorporated society.

Clause 39(2)(a) – Age limit

64 LCR 24 states that in addition to fulfilling the qualifications for a committee member, the [contact officer] must be at least 18 years of age (see the discussion of clauses 41-43 below, which describes the role of the contact officer). This exclusion is concerned primarily with a person's legal capacity to enter into agreements on behalf of the society. We have adopted a different approach because it is not just the contact officer who might seek to enter into an agreement on behalf of the society. Any officer might do so.

65 Our view is that it is unnecessary to exclude all persons under 18 from being officers. We propose instead that the minimum age be 16. This is consistent with section 21(1)(i) of the Human Rights Act 1993.

Clause 40 – Registrar may waive disqualifying factors

66 Clause 40(1) empowers the Registrar to waive one or more of the disqualifying factors listed in clause 39(2) in relation to a particular person and a society. Clause 40(3) states that the waiver may be subject to such terms and conditions as the Registrar may think fit.

67 Clause 40 is modelled on section 16(4)-(8) of the Charities Act 2005. The purpose is to recognise that one or more of the disqualifications may occasionally not fit with a society's circumstances. An example of the possible use of this power appears after the clause.

68 We expect that there will only be a small number of waiver applications. Charities Services, which is part of the Department of Internal Affairs, has advised us that 10 applications were made under the Charities Act in the three years to 30 June 2015. Five were approved.

69 There may be a one-off larger number of applications under the new Incorporated Societies Act around the time of the first transition date.

Clauses 41 to 43 – Contact officer

70 LCR 21 states that every incorporated society must have a "statutory officer". The draft Bill adopts this proposal in substance, but instead uses the term "contact officer". We think that contact officer more accurately describes the role, i.e. to provide for every society to have an officer whom MBIE registry staff can contact when needed.

71 The draft Bill does not impose any extra duties on the contact officer. Nor does it include offence provisions that are specific to the contact officer.

Clause 45 – Officer ceasing to hold office

72 Clause 45 identifies the ways in which an officer ceases to hold office. It is consistent with the list in LCR 25.

73 LCR 25 also states that the officer "must retire" if he or she becomes disqualified. Clause 45(1) instead states that the office is "vacated", which is the word used in section 157 of the Companies Act. We consider that "vacated" is better because it is clear that the person no longer holds the office from the moment he or she becomes disqualified.

Clauses 48 to 55 – Officers' duties

74 As noted in LCP 6.31, the 1908 Act is silent on officers' duties, but case law imposes obligations on those governing or running incorporated societies. Consequently, officers of incorporated societies probably owe similar duties to their societies as company directors do to their companies.

75 Consistent with LCRs 27-28, clauses 48-53 codify officers' duties as they might be described if a court were to comprehensively list them. They are conceptually the same as directors' duties in sections 131-137 of the Companies Act 1993. However, they have been modified to take account of the prohibition on a society from operating for the financial gain of any of its members (clause 21) and that members have no right to property of the society (clause 68).

76 Clause 54 states that an officer may rely on specified types of information prepared by other persons when exercising powers or performing duties as an officer. This provision is similar to section 138 of the Companies Act.

77 Clause 55 states that officers' duties are owed to the society. This clause is important for public awareness reasons. Although it is clear from case law that officers owe their duties to the society, there is a widespread misunderstanding about this matter. It is often mistakenly believed that duties are owed to the members of the society.

Clauses 56 to 65 – Conflict of interest disclosure rules

78 Clauses 56-65 relate to a situation where an officer's duties of loyalty to a society come into conflict with a competing personal interest that he or she may have in a proposed transaction. These provisions are consistent with LCRs 34-40.

79 Clause 56(2)(a)-(e) identifies five situations when a person is considered to have an interest. Four of them are related to financial interests (see clauses 56(2)(a)-(d)).

80 Clause 56(2)(e) states that a person may be interested in a matter because the society's constitution so provides. The main purpose of this provision is to deal with non-financial interests. We agree with the Law Commission that rules relating to non-financial interests should be left to individual societies because they often relate to matters that are specific to the society. For example, the constitution of a sporting club or federation might address the situation where a selector of an overseas touring team is related to a person who is eligible for selection.

81 Clause 56(3) lists three situations where a person is deemed to be disinterested. The purpose is to increase legal certainty.

82 Clause 57 outlines the duty of the officer to disclose an interest. It is linked to clause 74(1)(c), which requires the committee to disclose certain information about conflicts of interest at the society's annual general meeting.

83 Clause 58 states what an interested officer may do and must not do.

84 Clause 59 requires the society's committee to notify members of a failure by a conflicted officer to comply with clauses 57 or 58. It states that the notification must take place as soon as practicable after the committee becomes aware of the failure, including disclosing information about any transactions affected.

85 Clause 60(1) states that the society can avoid the transaction within three months of the transaction being disclosed to the members. However, clause 60(2) states that the society cannot avoid a transaction if it receives fair value. The same approach is used in sections 140 to 141 of the Companies Act 1993.

86 Clauses 61-65 address other matters that are needed to make the conflict of interest rules fully effective. They are based on sections 141(3)-(5), 142, 143, 189(1)(c) and 216(1)(d) of the Companies Act.

Clause 66 – Requirement to have at least 10 members

87 As proposed by LCR 6, clause 66(1) states that a society must continue to have at least 10 members. This is a new requirement. Under the 1908 Act, the minimum member requirement only applies to the society at the time it applies for registration.

88 Clause 66(2) states that the transfer of property to or by a society is not invalid merely because a society does not have at least 10 members. It means that a society that has fallen below the 10 member requirement can continue to operate while it is seeking new members. It also protects the interests of parties who transact with the society.

89 Clause 66(3)-(4) provides the society with a minimum of six months to return to complying with the minimum membership rule. The Registrar has the discretion to apply to the High Court for the society to be liquidated if it does not comply. The High Court already has similar liquidation powers under section 25(b) of the 1908 Act.

Clause 67 – Consent to become a member

90 Clause 67 states that a person must consent to become a member of society. This provision codifies case law. The purpose of including it in the Bill is to increase public awareness.

Clause 68 – Members have no right to property of society

91 Clause 68 states that membership of a society does not confer any right, title or interest in the property of the society. It is the same as section 14 of the 1908 Act. It is also consistent with the principle that societies should not operate for the benefit of individual members.

92 Clause 68 has links to clause 24(2), which states that a society's constitution must not purport to confer on any member any right, title or legal interest in the property of a society.

Clause 69 – Liability of members

93 Clause 69(1) states that a member is not liable for an obligation of the society by reason only of being a member. It is crucial to the scheme of the Bill because legal personality (see clause 15) and limited liability are the two major benefits of incorporation.

94 Clause 69(2) retains the status quo in relation to members' liability. It states that the extent of a member's liability is:

- Unpaid membership fees; and
- Any liability expressly imposed on members through the society's constitution.

95 It is unusual for societies to impose liability other than for unpaid membership fees. However there can be reasons for doing so. For example, a society that runs competitions might provide for fines to be imposed on members who breach the competition rules.

Clause 71 – Information for members

96 Clause 71 describes the rules and processes for a member to request information from a society. It is consistent with the commentary in LCP 7.112-7.118. The aim is to promote a society's accountability to its members by providing them with a right to information relating to the society's governance.

97 Clause 71(4) states that members are not entitled to obtain all the information held by a society:

- Clause 71(4)(a) states that a society can withhold information for personal privacy reasons. However, a member will be able to obtain information about him or herself under clause 71(6).

- Clause 71(4)(b)-(c) permits a society to withhold information that has commercial value. These provisions provide more protection for commercial information than a South Australian Court provided in the *Alpaca* case[1] – see LCP 7.114.

- Clause 71(4)(d) states that a society can decline frivolous or vexatious requests.

Clauses 73 to 76 – General meetings

98 Clauses 73, 74 and 76 outline basic requirements in relation to general meetings. It is left to individual societies to prescribe more detailed rules as they see fit through their constitutions and bylaws.

99 Clause 75 enables societies to hold general meetings using modern technology.

Clauses 77 to 80 – Indemnities or insurance for officers, members or employees

100 Clauses 77-80 provide societies with some scope to indemnify officers, members and employees, or arrange insurance. They are included mainly for the benefit of officers, members and employees of large societies. However, any society can take advantage of them.

101 These provisions have the following aims:

- For officers, the aim is to protect them from exposure to financial risk while retaining strong incentives to comply with officers' duties.

- For members and employees, the aim is to protect them from financial risk, but only in relation to actions carried out in good faith.

Clauses 83 to 84 – Financial reporting

Preparation and lodgement

102 Under the 1908 Act, incorporated societies must lodge annual financial statements with the Registrar in their annual returns. There are no accounting standards to govern this reporting. Hence, it is largely left to each society to decide when and how to recognise transactions, how to measure them, and what to disclose. This means that a wide variety of practices are used, some of which are inconsistent with generally accepted accounting practice.

103 Clause 83 is aimed at promoting higher quality and more consistent reporting by requiring all societies to prepare financial statements in accordance with accounting standards issued by the External Reporting Board. There will also be a requirement to lodge them with the Registrar within six months of the end of the society's financial year. This means that incorporated societies will have the same preparation obligations as registered charities:

- Societies with annual operating expenditure $2 million or less in one or both of the two preceding financial years will be able to prepare in accordance with the XRB's simple format reporting standards for not-for-profit entities (tiers 3 or 4)

- Societies that do not qualify for tier 3 or 4 reporting will be required to prepare in accordance with the more extensive tier 1 or 2 not-for-profit entity accounting standards.

104 Further information about the accounting standards for not-for-profit entities can be found on the External Reporting Board's website in Section D of XRB A1.

105 As is currently the case, incorporated societies that are also registered charities will only be required to lodge their financial statements once, under the Charities Act. This is provided for under clause 84(b).

[1] *McKay v Australian Alpaca Association* [1997] 69 SASR 218.

Auditing or review

106 The Bill does not include any requirements for societies to have their financial statements independently assured (i.e. audited or reviewed). We intend to make recommendations to the Government on assurance-related matters following this consultation process.

107 Societies that are registered under the Charities Act 2005 and meet or exceed the size criteria in section 42D of the Charities Act 2005 (annual revenue of $500,000 in both of the last two financial years) do have independent assurance requirements. The rationale is that all registered charities are accountable to wider society because of the tax exemptions associated with being a registered charity.

108 This reasoning does not apply to many societies that are not registered charities, so there is no reason to impose the same assurance requirements at $500,000. We consider that those societies should instead be treated the same for assurance purposes as other entities that are not publicly accountable. The relevant criteria appear section 45 of the Financial Reporting Act 2013 (i.e. total assets of $60 million or annual revenue of $30 million, or both for each of the two preceding accounting periods).

109 This will mean that the great bulk of societies that are not registered charities would be left to decide whether to obtain assurance. We expect that societies' decisions on this matter will take into consideration the costs of engaging a qualified accountant, the benefits (e.g. improved accountability to members), and whether assurance is needed to obtain funding from philanthropic organisations and government agencies.

Clause 85 – Annual returns

110 Clause 85 has different annual return requirements depending on whether the incorporated society is or is not also a registered charity. If it is, it will only be required to submit a single annual return under the Charities Act. If it is not, it will be required to lodge an annual return with the Registrar of Incorporated Societies.

111 The detailed annual return requirements will be prescribed by regulations made under clause 192(1)(a). At this stage we expect that the following requirements will be prescribed:

- Confirmation that the annual general meeting was held, the date of the meeting, and the number of members who participated
- The number of members at the end of the latest financial year
- The name and contact details of the contact officer
- The names of all other officers
- The society's registered office.

112 The annual return has two main purposes. First, it provides information about whether specific legal requirements have been complied with. Second, it ensures that information on the register is reasonably up to date.

113 Failure to lodge an annual return can also provide an indication to the Registrar that a society may no longer be operating. The Registrar can then do any necessary checking and apply to remove the society from the register if it is confirmed that it is no longer operating.

Part 4 – Enforcement

Outline of Part 4

114 Part 4 is divided into the following subparts:

- Subpart 1 (clauses 95-97) relates to enforcing a society's constitution or bylaws.
- Subpart 2 (clauses 98-103) relates to enforcing officers' duties.
- Subpart 3 (clauses 104-105) provides remedies in relation to oppressive, unfairly discriminatory or unfairly prejudicial conduct against a member or former member.

- Subpart 4 (clauses 106-108) provides means for recovering a financial gain from a member or former member.
- Subpart 5 (clauses 109-112) includes rules for the application of some or all of subparts 1-4 and 7.
- Subpart 6 (clauses 113-124) relates to offences.
- Subpart 7 (clauses 125-127) provides powers to make banning orders.

115 Part 4 is largely consistent with LCRs 76-88. In addition, we have aimed to give effect to the following principle as stated in LCP 9.1:

> It is a fundamental characteristic of incorporated societies that they are accountable to their members. By and large it is far better if accountability issues are determined using internal processes without reference to the courts. This is why we recommend in chapter 8 that all societies must either develop or adopt procedures in their constitutions for resolving disputes. However, if those processes fail to resolve the issue, it is important that members have other tools to enforce the constitution and any bylaws. In some cases it may also be appropriate for members to have powers to enforce statutory obligations on societies and officers.

Clause 95 – Court orders (to enforce the constitution)

116 LCP 9.22 states that any compensation awarded to members should, in the normal course of events, be restricted to compensation for economic losses that flow from the deprivation of a member's rights under the constitution. It also states that societies should not be burdened, except perhaps in exceptional cases, with emotional or distress damages.

117 Clause 95(d) does not include this distinction because it would be inconsistent with other enactments. We consider that a court should have the discretion to award emotional or distress damages if it considers that it would be just. That said, we think it would be very unusual for a court to conclude that damages should be awarded against an incorporated society for emotion and distress-related reasons.

Clause 97 – Who may apply (to enforce a society's constitution)

118 Clause 97(1) provides powers for a society, a member of a society, a former member of a society and the Registrar to apply to a court to enforce a society's constitution.

119 LCR 77 states that the new Act should provide for the Registrar to apply to a court for orders to enforce the constitution if it is in the society's interest and the public interest to do so. We consider that the actions of the Registrar should only be driven by the public interest. Hence, clause 97(2) does not refer to the society's interest.

Clause 109 – Limit on the Registrar's powers to apply

120 Clause 109(1) only permits the Registrar to apply for court orders in relation to the enforcement matters in subparts 1-4 and 7 of Part 4 if she considers that it is in the public interest to so.

121 Clause 109(2) lists seven criteria that the Registrar must have regard to in determining whether the public interest test is met. These criteria have been designed with the intention of ensuring that the Registrar rarely intervenes.

Clause 110 – Court may refuse to consider application

122 Clause 110 provides various grounds for a court to refuse to make an order under subparts 1 to 4 of Part 4. The reasons for refusal are derived from the lists in LCPs 9.23 and 9.51 and expanded on.

Clauses 113 to 127 – Offences

Clauses 113 to 119 – the main offences

123 Clauses 113-119 are offence provisions. They supplement offences in the Crimes Act 1961 such as dishonestly taking or using a document (section 228), crimes of deceit (sections 240 and 241), forgery (sections 256, 258 and 259) and false accounting (section 260).

124 The offences appearing in clauses 113-117 and 119 were all proposed in LCR 86.

Clause 118 – Improper use of "Incorporated" or "Manatōpū"

125 Clause 118 provides an offence for improper use of "Incorporated" or "Manatōpū" or any contraction or imitation of either of those words. This provision is linked to clause 10(1)(b), which states that the Registrar must not approve a proposed name for a society if the name does not include Incorporated, Manatōpū, or both as the last word or words of the name.

126 Clause 118 differs from the existing offence provision in section 3 of the Incorporated Societies Amendment Act 1953 in the following ways:

- The offence in the 1953 Act does not include the misuse of "Manatōpū".
- The offence in the 1953 Act only allows societies incorporated under the 1908 Act to use "Incorporated". Clause 118(2) will also permit entities incorporated under other Acts to use "Incorporated".

Clauses 120 to 124 and 192(1)(c) – infringement offences

127 Infringement offences are usually simple offences of comparatively minor concern involving straightforward issues of fact. They are usually proceeded against by serving an infringement notice on a defendant, and, if the fine remains unpaid, by subsequently serving a reminder notice. No conviction is entered.

128 Clause 120(1) lists seven infringement offences. It includes all but one of the proposals in LCR 88. We have not included the Law Commission's proposal to include an infringement offence for having a constitution that does not comply with the Bill. We consider that there should not be an infringement offence in relation to this matter because the 'straightforward issues of fact' test will not always be met. For example it may not always be clear whether a society's rules about how it will control or manage its finances fully comply.

129 Clause 120(2) proposes that the Registrar could apply to a court to impose a fine of up to $5,000 in relation to each of the infringement offences listed in clause 120(1). Alternatively the Registrar could, under clause 192(1)(c), issue an infringement notice which would provide for a maximum infringement fee of $1,000.

Clauses 125 to 127 – Banning orders

130 Consistent with LCR 87, clause 125(1) proposes empowering a court to impose a banning order against a person for one or more of three specified reasons, such as being convicted of certain serious offences involving dishonesty. A banning order can prohibit a person from being an officer of a society, taking part in the management of a society or both. The aim is to protect societies from mismanagement and dishonesty, including potential fraud.

131 Clause 127 provides for personal liability against a person who contravenes a banning order in relation to debts incurred by the society while the person was acting in contravention of the order.

132 These provisions are similar to banning order provisions found in other enactments such as sections 382 to 384 of the Companies Act 1993.

Part 5 – Removal from register, amalgamation, liquidation & other processes

Clauses 128 to 142 – Removal from and restoration to register

Clauses 128 to 136 – Removal from register

133 As proposed by LCRs 90-92, clauses 128-136 fill a gap in the 1908 Act by providing a simple system for removing societies from the register and restoring societies to the register. These provisions have been derived from various sections in the Companies Act, but several have been simplified.

134 Clause 129 is the main provision relating to removing a society from the register. It provides four grounds for removing a society from the register: amalgamation, ceasing operations, insolvency and liquidation.

135 Clauses 130-136 describe the procedures for removing or restoring a society to the register. These provisions are aimed at protecting members and other interested parties from unjust or inequitable outcomes. Clause 131 describes the grounds that a person can object to the removal of a society from the register.

Clauses 137 to 142 – Restoration to register

136 Clause 137 allows a member, creditor, liquidator or receiver to apply for a society to be restored to the register on certain grounds.

137 Clause 141(3) clarifies what happens if a society was solvent when it was deregistered, had its surplus assets transferred to one or more other entities, but was subsequently restored to the register. It states that an order or a direction made by a court may not require any surplus assets that have been properly transferred to one or more other not-for-profit entities to be returned to the restored society.

138 This approach will provide certainty that the receiving entity owns the assets and can use them for lawful purposes. It also means that a court could order the return of surplus assets to the restored society if the receiving entity was not a “not-for-profit entity”, as defined in clause 24(4).

Clauses 143 to 154 – Amalgamations

139 There are no amalgamation provisions in the 1908 Act. This means that most amalgamations are implemented by one or more societies going into liquidation or being dissolved and transferring their assets to the new or recipient society. The purpose of clauses 143-154 is to provide a simple one-step system for amalgamations of two or more societies to form one new society, or one or more societies to become part of an existing society. These provisions are largely consistent with LCR 96.

Transferring membership

140 The only significant departure from LCR 96 relates to the process for transferring membership to the amalgamated society. LCR 96 states that all members of the former societies should automatically be members of the amalgamated society. Clause 145 instead provides 20 working days for a member to opt out. This approach will provide a member with the opportunity to make an active decision to not join.

Simple majority versus 75 percent

141 Consistent with LCP 96, clause 146(3) states that a simple majority of members voting will be sufficient for an amalgamation resolution to be passed. This approach contrasts with the Companies Act, which requires amalgamation resolutions to be approved by 75% of the votes of those shareholders entitled to vote and voting on the question or such higher percentage required by the constitution. We agree with the Law Commission that a simple majority is appropriate for incorporated societies because they operate on one-member-one-vote principles.

Other matters prescribed by regulations

142 Clauses 144 and 145 provide for other amalgamation-related procedures to be prescribed by regulation. At this stage we expect that the regulations would prescribe that the following information will need to be made available to members:

- The proposed name, registered office and names of the officers of the amalgamated society
- A statement of any material interests of the proposed officers
- The amalgamation proposal
- The arrangements for transferring membership to the amalgamated society
- The arrangements for completing the amalgamation and the subsequent operation of the amalgamated society
- A summary of the proposed main provisions in the constitution of the amalgamated society
- Any additional information needed for a reasonable member to understand the nature and implications of the proposed amalgamation.

Clause 155 – Compromises

143 Sections 23A and 23B of the 1908 Act include a system for an insolvent society to continue to operate by agreeing a compromise arrangement with its creditors. LCP 11.45 notes that compromises remain relatively unpopular, probably because secured or major creditors can take recovery and enforcement action before a compromise can be agreed to.

144 LCP 11.45 also notes that the compromise system in Part 14 of the Companies Act 1993 is better than the system in the 1908 Act. Hence, the Law Commission has recommended that Part 14 be incorporated into the Bill by reference, with any necessary modifications. Clause 155 is in accordance with this proposal.

Voluntary administration

145 Voluntary administration (VA) is a form of entity rehabilitation that is available to companies but not incorporated societies. VA provides a moratorium of approximately five weeks during which creditors are prevented from taking any action against the company to recover debts, enforce charges or put the company into liquidation. Owners of property that is being used by the company and lessors of property to the company are also prevented from seizing or reclaiming property without consent.

146 An administrator is appointed at the commencement of the moratorium to take control of the company, determine its financial position and recommend to creditors to either liquidate the company or enter into a deed of arrangement that would allow the company to continue to operate. Creditors then vote on the proposal.

147 LCR 97 states that the Bill should provide that financially distressed incorporated societies may be placed into VA in accordance with Part 15A of the Companies Act, modified as required.

148 The Bill does not include provisions to that effect because we think that VA is not suited to incorporated societies' circumstances. We hold this view because:

- It will be rare for a society to be able to meet the costs of engaging a turnaround specialist to act as the administrator for the period of the moratorium. The total cost is usually several tens of thousands of dollars.

- Creditors are only likely to agree to a deed of arrangement if the society controls assets that can generate substantial future cash flows. We think that this would be highly unusual in relation to incorporated societies.

- For companies, a proposed deed of arrangement will often only be sufficiently attractive to creditors if shareholders are prepared to contribute an amount that will provide creditors with a higher dividend than if the company was liquidated. We doubt whether this would happen with incorporated societies, given that members are prohibited from holding any form of ownership interest in a society.

Clauses 156 to 160 – Liquidations

149 LCP 11.10 states that most submitters have not experienced problems with the liquidation system in sections 24-28 of the 1908 Act. Consistent with LCRs 94-95, clauses 156-160 retain the liquidation system in the 1908 Act, but with one simplification. Section 24(1) of the 1908 Act provides for a resolution appointing a liquidator to be confirmed at a later meeting after 30 days have elapsed. Clause 168(1)(b) of the Bill only imposes the double-meeting procedure if the society's constitution requires it.

Clause 161 – Division of surplus assets on winding up

150 Clause 161(2)(a) requires each society to nominate a not-for-profit entity or class of not-for-profit entity to which any surplus assets of a society shall be distributed on the liquidation of a society, or the removal of a society from a register – also see clause 24(1)(m). Clause 24(4) defines "not-for-profit entity".

151 Clause 161(2)(c) provides a society with the discretion to change the entity or class of entity to which the surplus assets shall be distributed at a later date. It is needed because circumstances can change. To illustrate, assume a society is liquidated in 2050, but the surplus asset distribution rules were written in 2020. The following could have happened:

- a nominated entity no longer operates for the purposes it had in 2020;
- the nominated entity or the entire nominated class of entity no longer exists; or
- the number of entities in a nominated class is so large in 2050 that it would be impractical to divide the surplus assets among all of them.

152 Clause 161(2)(d) provides a back-up power for the Registrar to issue a direction to distribute any surplus assets. It is only intended to be used if the society cannot or has not used its powers under clause 161(2)(c).

153 Clause 161(3) states that a society must be disregarded if it is no longer a not-for-profit entity, or is unable or unwilling to receive the surplus assets.

Part 6 – Register, regulations, amendments & other miscellaneous provisions

Clauses 170 to 189 – Register of Incorporated Societies

154 Most of the provisions relating to the register of incorporated societies are reasonably standard provisions used in modern Acts that provide for a Registrar, a register, and various matters relating to the operation of the register.

Clause 172 – Contents of register

155 Clause 172(1)(d) proposes that the register would list the names of all officers of the society and all persons who have been officers since the society was first registered. Societies would be required to list all current officers when they submit their annual return to the Registrar (or to Charities Services if they are registered under the Charities Act). This approach is largely consistent with the equivalent requirements for company directors under the Companies Act.

156 This proposal, which we call *Option A*, is provisional. We have identified two alternatives:

- *Option B*: Requiring the society to provide the names of all officers in annual returns. However, only the contact officer would be listed on the public register; and

- *Option C*: Requiring the society:
  - to only provide the Registrar the name and contact details of the contact officer
  - to keep a full list of other officers (past and present), and empowering the Registrar to request that information from the society.

157 Our preliminary view is that options A and B are better than option C. The main risk with option C is that some societies may not comply. This may lead to evidential problems in relation to dispute resolution or enforcement issues that arise at a later date.

158 We also note that *clause 173* enables the Registrar to omit information from the register in the public interest. This means, for example, that any personal privacy issues that might arise under option (a) could be addressed under clause 173.

Clauses 182 to 183 – Registrar's powers of inspection

159 With one exception, the draft Bill is consistent with the Law Commission's recommendations insofar as they relate to the register and the Registrar. The draft Bill does not adopt LCR 89, which states that the Bill should provide for information gathering, search and inspection powers similar to those contained in Parts 1 and 2 of the Corporations (Investigation and Management) Act 1989 (CIMA).

160 CIMA can only be used where intervention is needed in relation to very serious conduct, for example where an entity is being operated in a fraudulent or reckless manner. These powers are consequentially stronger than the powers that are generally made available to other regulators. We think it would be excessive for CIMA-type powers to be included in the Bill. The inspection and direction-making powers in sections 365 and 366 of the Companies Act are more appropriate. Clauses 182 and 183 are modelled on the Companies Act provisions.

Clause 189 – Sharing information relating to registered charities

161 Approximately 8,200 of the 23,500 societies registered under the 1908 Act are also registered under the Charities Act 2005. This means that the regulators under the Charities Act and the new Incorporated Societies Act should have statutory powers to coordinate, cooperate, and share information where it is proper to do so. The following provisions in the Bill aim to facilitate this:

- Clause 189, which allows the Registrar of Incorporated Societies:
  - to provide information and copies of documents to the Chief Executive of the Department of Internal Affairs ("the Charities Chief Executive")
  - to receive information and copies of documents from the Charities Chief Executive.

- Clause 125(4), which provides for information about banning orders made against officers of incorporated societies to be provided to the Charities Chief Executive.

- Schedule 3, which amends the Charities Act 2005 by permitting the Charities Chief Executive to provide information and documents to or receive information or documents from the Registrar of Incorporated Societies.

Clauses 194 to 211 – Amendments to the Charitable Trusts Act 1957

162 Clauses 194 to 211 give effect to LCR 2, which states that charitable societies should no longer be able to incorporate under the Charitable Trusts Act. These provisions are linked to:

- clause 2(1), which means that new charitable societies will not be able to register under the Charitable Trusts Act from the day after the date that the Bill receives the Royal Assent

- part 1 of Schedule 1, which provides for charitable societies registered under the Charitable Trusts Act to be subject to the same transition processes as incorporated societies registered under the 1908 Act.

Schedule 1 – Transitional, savings, and related provisions

163 Part 1 of Schedule 1 describes the processes for existing societies to become societies under the new Incorporated Societies Act. The way that we expect that the transition process will work in practice is described in the discussion of clause 2 above.

164 Part 2 of Schedule 1 describes the process for branches and groups of branches registered under the Incorporated Societies Amendment Act 1920 to be incorporated under the new Incorporated Societies Act. It gives effect to LCRs 8-11.

Schedule 2 – Complaints and grievances procedures

165 Schedule 2 describes the minimum requirements for a society's grievances and complaints procedures to comply with clause 24(1)(j) of the Bill, as required by clause 31(1)(b). It gives effect to LCRs 66-75.

Schedule 3 – Amendments to other Acts

Consequential amendments in the Bill

166 Schedule 3 comprises consequential amendments to 22 Public Acts. Most of the changes are reasonably straightforward, such as replacing "Incorporated Societies Act 1908" with "Incorporated Societies Act 2016" (This should not be taken as an indication that we expect the Bill to be enacted in 2016).

167 The only amendments that do not fit with this pattern are the amendments to the:

- Bylaws Act 1910 – This amendment gives effect to LCR 47, which states that bylaws made or continued under the new Act should no longer be subject to the Bylaws Act.
- Charities Act 2005 – As noted in the discussion of clause 189 above, these changes will facilitate information sharing between the regulators of registered charities and incorporated societies.
- Summary Proceedings Act 1957 – This change is needed to give effect to the infringement offence system.

Further consequential amendments to be added

168 At least one other Public Act (the New Zealand Library Association Act 1939) and several Private Acts will also need to be consequentially amended. We will consult with the relevant stakeholders while the draft Bill is being exposed for public comment.

Agricultural and Pastoral Societies

Background

169 Agricultural and Pastoral (A&P) societies make a major contribution to New Zealand society by holding country shows and exhibitions as community events. We understand that:

- about 95 shows are held in New Zealand each year and about one million people attend.
- about a quarter of a million hours of time is volunteered each year to plan, organise and run the shows. The largest ten or so shows are run more on a commercial basis.
- societies own about 900 hectares of land (which is valued at about $32 million) and buildings valued at about $40 million.
- the land and buildings are used for other purposes during the course of the year.

170 The Royal Agricultural Society of New Zealand (RAS) is the peak body for A&P societies. It has guidance material for A&P societies on its website. The RAS head office administers aspects of all facets of the organisation and provides advice when required. The RAS also coordinates with other organisations such as breeding societies, and dog trial and equestrian societies. Six district RAS councils coordinate the show dates among the societies within their districts.

The Agricultural and Pastoral Societies Act 1908

171 The Agricultural and Pastoral Societies Act 1908 (A&P Act) provides for the incorporation of A&P societies. Three A&P Societies Amendment Acts (passed in 1912, 1920 and 1933) contain stand-alone provisions that need to be read together with specific provisions in the A&P Act.

172 In 1908, Parliament issued a revision of all Public and Local Acts in force at that time. This consolidation of legislation involved repealing the existing Acts and then re-passing them. The Act that was replaced was the Agricultural and Pastoral Societies Act 1877, so A&P legislation has nearly a 140 year history.

173 Section 10, which lists nine objects of A&P societies, provides insights into the way that A&P societies have changed since the 19th Century. Those objects demonstrate that the main purpose of the early A&P societies was to contribute to the advancement of farming in New Zealand by facilitating and funding scientific research. The objectives include the following:

> *(c) To pay to any occupier of land or other person who undertakes, at the request of the society, to ascertain by experiment how far such information leads to useful results in practice, compensation for any loss he incurs in doing so.*
>
> *(d) To encourage men of science in their attention to the improvement of agricultural implements, the application of chemistry to the general purposes of agriculture, the destruction of insects injurious to vegetable life, and the eradication of weeds.*
>
> *(e) To promote the discovery of new varieties of grain and other vegetables useful to man or as food for domestic animals.*
>
> *(g) To take measures for improving the veterinary art as applied to horses, cattle, sheep, and pigs.*

174 The only object listed in section 10 that appears to describe the contribution that A&P societies make to contemporary New Zealand society is as follows:

> *(i) To encourage enterprise and industry by the holding of meetings for the exhibition of implements and produce, the granting of prizes thereat for the best exhibits, and by competitions for prizes for inventions or improvements, or for skill or excellence in agricultural or pastoral acts.*

Comments on the Agricultural and Pastoral Societies Act 1908

175 The A&P Act has similarities to the Incorporated Societies Act 1908 in that it is silent on several essential matters relating to governance, rights, obligations and dispute resolution. There are also some significant differences:

- A society can only be incorporated under the A&P Act if it has at least 50 members at the time it applies for incorporation. The equivalent is 15 under the IS Act 1908.
- An association can only become incorporated as an A&P society by petitioning the Governor-General to make an Order in Council.
- The A&P Act does not provide for the Ministry for Primary Industries or any other agency to establish and operate a register of A&P societies.
- Sections 7 to 9 (including additions made to section 7 by the 1912 and 1920 Amendment Acts) impose restrictions on selling, buying and mortgaging land and the use of money obtained from selling land.
- Section 12(q)(ii) requires A&P societies to have their financial statements audited.
- Section 6 of the 1933 Amendment Act states that members, officers, agents and servants of A&P societies have police-like powers to remove persons from society premises for breaching certain bylaws made by the society.

Other Agricultural and Pastoral Society legislation

176 Seven Private Acts[2], one Local Act[3] and an Otago Provincial Ordinance[4] relate to specific A&P societies. It appears that most of these Acts were needed to allow societies to enter into arrangements that were not provided for (e.g. joint ventures) or were prohibited by the A&P Act (e.g. in relation to selling land). Three of these Acts are discussed below.

The Auckland Agricultural Pastoral and Industrial Shows Board Act 1972

177 The Auckland A&P Association (which is incorporated under the A&P Act) and the Auckland Manufacturers' Association (which is registered under the Incorporated Societies Act 1908) have jointly held the annual Easter Show at the Showgrounds in Greenlane since 1953. The Auckland Agricultural Pastoral and Industrial Shows Board Act 1972 changed the nature of the joint venture by creating the Auckland Agricultural Pastoral and Industrial Shows Board as a body corporate. Neither the A&P Act nor the Incorporated Societies Act 1908 provided for this type of arrangement.

The Waikato Show Trust Act 1965

178 The Waikato Show Trust Act 1965 was enacted to permit the establishment of a joint venture Board of Control between two A&P societies. One society owned land and the other wanted to erect buildings on the land. The Preamble to this Act notes that "there is no power in the [A&P Act] to give effect to the intentions and desires of the two… associations".

The Southland Agricultural and Pastoral Association Empowering Act 2006

179 The Southland Agricultural and Pastoral Association Empowering Act 2006 permitted the Association to sell 16 hectares of land in Invercargill.

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[2] Auckland Agricultural and Pastoral and Industrial Shows Board Act 1972, Canterbury Agricultural and Pastoral Association Empowering Act 1982, Clevedon Agricultural and Pastoral Association Empowering Act 1994, Kumeu District Agricultural and Horticultural Society Act 1991, Marlborough Agricultural and Pastoral Association Empowering Act 1974, Southland Agricultural and Pastoral Association Empowering Act 2006, Tokoroa Agricultural and Pastoral Association Empowering Act 1968 and Waikato Show Trust Act 1965.

[3] Taranaki Agricultural Society Empowering Act 1909.

[4] Northern Agricultural and Pastoral Reserve Management Ordinance 1871 (O).

Agricultural and Pastoral Societies registered under the IS Act 1908

180 To our knowledge, 22 A&P societies are registered under the Incorporated Societies Act 1908 (see table 2).

Table 2: A&P societies registered under the Incorporated Societies Act 1908

Name of society	Year of registration under the IS Act 1908
Towai Agricultural Association	2011
North Kaipara Agricultural Association	2010
Morrinsville A&P Society	2009
Strath Taieri A&P Society	2009
The Dannevirke District A&P Association	2009
Golden Bay A&P Association	2008
Lake County A&P Society	2007
The Amuri A&P Association	2007
Cambridge A&P Association	2006
The Kaitaia & Districts A&P Association	2005
The Taumarunui & District A&P Association	2005
Waikato A&P Association	2005
Taihape and Districts A&P Association	2004
South Island Agricultural Field Days Society	2002
Horowhenua AP&I Association	2001
Waitemata A&P Show Association	1995
Palmerston & Waihemo A&P Association	1994
Rai Valley A&P Association	1981
Temuka & Geraldine A&P Association	1981
The Te Kuiti and District A&P Association	1958
Wanganui A&P Association	1917
Duvauchelle A&P Association	1913

181 It has been suggested to us that many of these societies may have registered as incorporated societies because some funding agencies' forms require applicants to provide a registration number. Societies incorporated under the A&P Act do not have registration numbers because there is no registration system under the A&P Act.

182 Registering under the Incorporated Societies Act does not, in itself, free an A&P society from the requirements of the A&P Act. This can only be achieved by petitioning the Governor-General to make an Order-in-Council taking away the society's status as a body corporate under the A&P Act. If such Orders have not been made, then those A&P societies have two legal personalities and are required to comply with both Acts.

The Law Commission's consideration of the issues

183 The Law Commission's 2011 issues paper asked submitters whether there was merit in moving to a generic not-for-profit statute which might include bodies currently incorporated under the A&P Act. A proportionately large number of submissions were made by A&P societies. They generally opposed such a move.

184 The Law Commission stated that it did not recommend that A&P societies be automatically folded within the new Incorporated Societies Act given the level of opposition from A&P societies. Instead it recommended that the new Act should provide for an easy and efficient mechanism for A&P societies to transfer incorporation voluntarily from the A&P Act to the new Incorporated Societies Act – see LCR 3.

MBIE's preliminary views on the Law Commission's proposal

Advantages of the Law Commission's proposal

185 The Law Commission's proposal would reduce some of the problems with the A&P Act. In particular:

- It would provide A&P societies registered under the Incorporated Societies Act 1908 with the means to deal with any legal issues arising from their dual personality.
- Many A&P societies would no longer be required to have their financial statements audited. The A&P societies that migrate to the new Incorporated Societies Act would only need to obtain independent assurance if their annual revenue was $500,000 or more, assuming that they are registered under the Charities Act 2005 (the great majority are).
- It would remove the need to use scarce Parliamentary time enacting Private Bills.

Disadvantages of the Law Commission proposal

186 MBIE and the Ministry for Primary Industries consider that the Law Commission's proposal does not respond to the major issue. The A&P Act is outdated and inadequate for the same reasons as the Incorporated Societies Act 1908. It does not provide anything like a comprehensive or modern framework for the governance and administration of A&P societies and it contains no provisions relating to the resolution of internal disputes. We do not support the Law Commission's proposal for that reason alone.

187 In addition, the Law Commission's proposal would not deal with the outdated list of objects in section 10 or the inappropriate police-like powers in section 6 of the 1933 Amendment Act.

Our preliminary view

188 Our preliminary view is that A&P societies should be required to re-register under the new Incorporated Societies Act. The A&P Act would be repealed and whatever changes are needed to the Private Acts, Local Act, and Otago Provincial Ordinance to give full effect to the changes would also be made.

189 This option could include adding provisions to reflect A&P-specific issues. For example, the provisions relating to the sale or mortgage of land in the A&P Act could be transferred to the new Incorporated Societies Act if it was concluded that retaining these restrictions in legislation was better than leaving it to individual societies to decide whether to add some or all of those restrictions to their constitutions.

Questions relating to Agricultural and Pastoral Societies

I. Why have some A&P societies registered under the Incorporated Societies Act 1908?

II. Are there any reasons that the Exposure Draft of the Incorporated Societies Bill does not fit with A&P societies' circumstances?

III. What are your views on the Law Commission's recommendation (see paragraph 184)?

IV. What are your views on our preliminary view (see paragraphs 188 to 189)?

V. Are there any potential difficulties in connection with transitioning societies from the A&P Act to the new Act?

VI. Are there any difficult issues in connection with transitioning individual societies that are also subject to one of the Private Acts, the Local Act or the Otago Provincial Ordinance?

VII. Do you have any other comments?

Annex: Standard provisions for constitutions (clauses 33 and 34)

Purpose of the standard provisions for constitutions

A1. The draft standard constitutions appearing in this Annex are indicative only. They are provided to give context to the Bill, particularly clauses 24 and 33 to 35. At this stage we expect that a revised set of standard provisions will be released for consultation at around about the same time as the Bill is introduced into Parliament.

A2. Clause 24(1) of the Exposure Draft of the Bill comprises a list of 13 matters that every society will need to have rules on in order to be eligible to be registered as an incorporated society. The following three matters are inevitably specific to each society and cannot be standardised:

- Clause 24(1)(a) – the name of the society
- Clause 24(1)(b) – the purposes of the society
- Clause 24(1)(m) – the nomination of a not-for-profit entity, or class or description of not-for-profit entities, to which any surplus assets of the society should be distributed on liquidation of the society or the removal of the society from the register.

A3. The standard provisions appearing below relate to each of the other 10 matters, as listed in subclauses (c) to (l) of clause 24(1). Clause 34(1) states that a standard provision in relation to any of those 10 matters must be treated as complying with the new Act.

A4. The standard provisions are no more than is sufficient for any society to get by with. This is not because we are trying to be unhelpful. They simply reflect our view that it is not possible to produce a comprehensive set of standard rules that fit every society's needs equally well. We do not think it is possible to produce a single set of high quality rules that would, for example, fit equally well with the needs of a health services provider, a Christian fellowship, a citizens advice bureau, a child care centre, a residents association, a taekwan-do club and a political party.

A5. The standard constitutional provisions do not address obligations in the Bill other than those listed in clause 24(1). For example, there are no standard provisions relating to:

- The requirement that a society not be carried out for the financial gain of any of its members (see clause 21)
- The requirement to have a registered office (see clause 86).

A6. We expect that many societies will wish to repeat provisions like clause 21 or include rules relating to requirements like the one in clause 86 within their constitutions. This approach will mean that it will be easier for officers to manage the day-to-day operations of the society without needing to refer to the Act.

Standard provisions for constitutions (draft only)

Standard provision 1: How a person becomes a member of the society (24(1)(c))	
1.1	A person must consent to become a member of the society.
1.2	To become a member, the applicant must: a) complete an application form (if there is one), and b) supply any other information the committee requires.
1.3	The committee may interview the applicant when it considers the application.
1.4	The committee has total discretion whether or not to admit the applicant.
1.5	The committee must advise the applicant of its decision, but is not required to provide reasons for that decision.

Standard provision 2: How a person ceases to be a member of the society (24(1)(d))	
2.1	A member may cease to be a member by giving written notice to the Secretary.
2.2	The committee or Chair may terminate a member's membership if the member has not paid fees by the due date.
2.3	The committee may terminate a member's membership if, after a grievance or complaints procedure under rule 8 has been undertaken, the committee considers that termination is appropriate. The termination takes immediate effect.
2.4	A person who ceases to be a member must return to the society all society property as soon as possible, and no later than 28 days from when their membership ceased.

Standard provision 3: Arrangements for keeping the Society's register of membership up to date (24(1)(e))	
3.1	The Secretary must keep a register of members, recording: a) each member's: i. name, ii. postal address, or email address, or both, iii. telephone number, and b) the date the person became a member.
3.2	If a member's name, address details, or telephone number changes, then the member must give the Secretary the updated information. The Secretary must then update the register as soon as practicable.

Standard provision 4: Whether, and if so how, the society will provide access for members to the register of members (24(1)(f))	
4.1	An officer of the society may access the register of members, if access is necessary for the performance of the officer's functions, or the exercise of the officer's powers.
4.2	A member of the society may make a request to the Secretary for access to the register of members. The Secretary will provide access to the extent that members have consented to access being granted to information about themselves on the register.

Standard provision 5: the composition, roles, and functions of the committee of the society (24(1)(g))	
	The committee
5.1	The society must have a committee of at least three members.
5.2	Only a member of the society that is a natural person can be a committee member. **Note:** a "natural person' is a human being, as opposed to a "legal person" which is an organisation with its own legal identity (e.g. another incorporated society).
5.3	The following positions must be held by a committee member: a) the Chair, b) the Secretary, c) the Treasurer, d) the Contact Officer.
5.4	Society members must decide by majority vote at a meeting: a) how many committee members there will be, b) who is appointed to the committee, c) which committee member will hold which position or positions, except for the Contact Officer, d) how long each person will be a committee member.
5.5	The committee will appoint a committee member as the Contact Officer.
	Election or appointment of committee members
5.6	Nominations for members of the committee must be called for by the Secretary at least 28 days before an annual general meeting, or a special meeting at which nominations will be considered.
5.7	In response, each candidate must be proposed and seconded by members in writing to the Secretary at least five days before the meeting. **Note:** see rule 9.15 about providing members a list of nominees.
5.8	If a committee member leaves the committee between annual general meetings, the committee may appoint a person to replace them until the next annual general meeting, or hold a special meeting at which nominations will be considered.
5.9	If a position on the committee becomes vacant between annual general meetings, the committee must appoint another committee member to fill that vacant positon until the next annual general meeting, or a special meeting at which nominations will be considered.
	Functions and powers of the committee
5.10	The committee's functions are to manage, direct, or supervise the operation and affairs of the society, including: a) carrying out the purposes of the society, and using money or other assets to do that, b) controlling and managing the society's financial affairs, including meeting the committee's record keeping and reporting obligations under the Act, c) delegating powers and duties of the committee, where necessary or desirable, d) ensuring that the rules of the society are available to members, e) deciding the time and location of meetings, f) setting the agenda for meetings, and g) setting membership fees.
5.11	The committee has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of the society.
5.12	All decisions of the committee shall be by a majority vote. In the event of an equal vote, the Chair shall have a casting vote, that is, a second vote.

	Grounds for removal
5.13	If any committee member is absent from three consecutive meetings without leave of absence the Chair may declare that the person is no longer a committee member.
5.14	The Chair must declare that an officer of the society (including a committee member) is no longer an officer if: a) the officer is disqualified under section 39 of the Incorporated Societies Act 2016, and b) the disqualifying factor has not be waived by the Registrar under section 40 of the Incorporated Societies Act 2016.

Standard provision 6: how the society will control and manage its finances (24(1)(h))	
6.1	The funds of the society must be used to further the purpose of the society: a) as the committee decides, or b) as the society decides by a resolution passed at a meeting.
6.2	All payments must be approved by two committee members or employees of the society, being members or employees authorised to do so by the committee.

Standard provision 7: the control and use of the society's common seal (24(1)(i)) *[Insert only if the society has, or intends to have, a common seal]*	
7.1	The Secretary will have control of the common seal.
7.2	The common seal must only be used if the committee decides to do so.

Standard provision 8: procedures for resolving disputes between members (in their capacity as members) and between members and the society (24(1)(j))	
	Complaints about a member
8.1	The committee must consider a complaint, or institute a disciplinary procedure, regarding alleged misconduct of a member.
8.2	An oral hearing of a complaint will be held if the committee decides that an oral hearing is needed to ensure an adequate hearing, or is otherwise desirable.
8.3	The member has a right to be heard before the complaint or procedure is resolved or any outcome is determined.
8.4	The member will be fairly advised of all allegations concerning the member, with sufficient details and time given to enable the member to prepare a response.
8.5	The member will be given a reasonable opportunity to be heard in writing or at an oral hearing (if one is held).
8.6	The member's written statement or submissions will be considered by the committee.

	A member's grievance against the society or another member
8.7	A member can raise with the committee an allegation of damage (caused by the society, or a member) to a member's rights or interests (as a member) or to members' rights or interests generally.
8.8	An oral hearing of the grievance will be held if the committee decides that an oral hearing is needed to ensure an adequate hearing, or is otherwise desirable.
8.9	The member will be heard before the grievance is resolved or any outcome is determined.
	Investigating and determining complaint or grievance
8.10	The committee must, as soon as is reasonably practicable after receiving a complaint or grievance, investigate and determine the complaint or grievance.
	Committee may decide not to progress complaint or grievance
8.11	Despite rule 8.10, the committee may decide not to proceed with a matter further if the committee determines that: a) the matter is trivial, or b) the complaint or grievance 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.
	Committee may refer complaint to subcommittee or other investigator
8.12	The committee 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.
	Decision makers
8.13	A person may not act as a decision maker in relation to a complaint or grievance if two 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.

Standard provision 9: arrangements and requirements for general meetings (24(1)(k))	
9.1	A meeting of the society is either an annual general meeting or a special general meeting.
	Annual General Meetings
9.2	The annual general meeting must be held no later than six months after the balance date of the society and no later than 15 months after the previous annual general meeting.
9.3	The committee must determine when the annual general meeting will be held.
9.4	The committee must ensure that minutes of the annual general meeting are taken.

9.5	The business of the annual general meeting must include: a) receiving the minutes of the society's previous meeting(s), b) the presentation of: i. the annual report on the affairs of the society during the most recently completed accounting period, ii. the financial statements of the society for that period, iii. a summary of any disclosures or the types of disclosures made by committee members of an interest in matters being considered by or affecting the society, recorded since the previous annual general meeting, c) election of committee members, if there are vacancies on the committee, d) election of a committee member to any vacant position on the committee, e) motions to be considered, and f) any general business.
	Special general meetings
9.6	The committee may call a special general meeting at any time. The committee must call a special general meeting if the Secretary receives a written request signed by at least 10 percent of members.
	Meetings generally
9.7	A meeting may only be held if at least 10 percent of members attend or participate by means of audio, audio and visual, or electronic communication. This will constitute the quorum.
9.8	The Chair must determine when and how a meeting will be held.
9.9	A meeting can be held by a quorum of the members: a) meeting together at the appoint time and place, 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).
	Motions
9.10	The committee may put forward a motion to be voted on at a meeting.
9.11	A member may request a motion be voted on at a meeting, by giving the Secretary at least 28 days' notice before that meeting. The committee must decide whether or not the Society will vote on the motion. However, if the Member's motion is signed by at least 10 percent of members it must be voted on at the meeting chosen by the member.
	Notice
9.12	The Secretary must provide the following required information to all members at least seven days before a meeting.
9.13	For all meetings, the Secretary must: a) notify all members of the business to be conducted at the committee, b) provide: i. notice of any motions, ii. any information provided by a member is support of the member's motion, and iii. the committee's recommendation about any motions.
9.14	For an Annual General Meeting, the Secretary must provide: a) the 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.

9.15	For a meeting at which a member or members will be elected to the committee, or to a position on the committee (e.g. Chair), the Secretary must provide a list of nominees and the information about them that has been provided.
9.16	If the Secretary in good faith has made reasonable efforts to send all members written notice, the meeting and its business will not be invalidated simply because one or more members do not receive the notice.
9.17	If the Chair is present at a meeting, the meeting will be chaired by the Chair. If the Chair is absent, the society shall elect another committee member to chair the meeting.
9.18	Any person chairing a meeting has a casting vote.

Standard provision 10: The method by which the constitution may be amended (24(1)(l))	
10.1	The society may amend the constitution at a society meeting by a resolution passed by a majority of those members present and voting.
	Proposal by committee
10.2	At least 14 days before the society meeting at which any rule change proposed by the committee is to be considered the Secretary shall give to all members written notice of the proposed motion, and the reasons for the proposal.
	Proposal by members
10.3	A proposed motion by members must be given in writing to the Secretary at least 28 days before the society meeting at which the motion is to be considered, and accompanied by a written explanation of the reasons for the proposal.
10.4	At least 14 days before the society meeting at which any rule change proposed by members is to be considered the Secretary shall give to all members written notice of the proposed motion, and the reasons for the proposal, and any recommendation the committee has.