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# Incorporated Societies Bill 2021

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*28/05/2021*

## Submission on the Incorporated Societies Bill 2021

### 1. **Introduction**

- 1.1 The New Zealand Law Society / Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Incorporated Societies Bill (**Bill**).
- 1.2 The Law Society broadly endorses the Bill and acknowledges the adjustments made from the Exposure Draft Incorporated Societies Bill (**Exposure Draft**), on which the Law Society made submissions.<sup>1</sup>
- 1.3 In its submissions on the Exposure Draft, the Law Society recorded its view that the Exposure Draft struck a workable balance between providing clear rules and guidance while still maintaining flexibility needed to deal with the number (over 24,000) and range of societies in existence.
- 1.4 The Law Society has the same view of the Bill. However, some provisions could be refined to ensure that, on the one hand, there are clear minimum requirements for all incorporated societies benefiting from the protections afforded by incorporation, and, on the other, that there is flexibility to cater for the wide range of societies which make a significant contribution to their communities.
- 1.5 In particular, the Law Society considers there are some key proposals which require amendment, including:
  - a. the disputes procedures (sections 26(1)(j), 38, 39 and Schedule 2);
  - b. the process for amending the constitution of a society (sections 30, 31, and 33);
  - c. the requirement for committee members to be members of the society (section 40);
  - d. governance and management of the society, including definition of officer (sections 5(1) and 41);
  - e. the process for becoming, and ceasing to become, a member (sections 70 and 73); and
  - f. various other minor amendments, as set out in Appendix 1 to these submissions.

### 2. **Disputes Procedures (sections 26(1)(j), 38, 39 and Schedule 2)**

- 2.1 The Law Society supports the inclusion of the requirement for incorporated societies to have procedures to resolve disputes. However, it considers the provisions setting out these requirements (sections 26(1)(j), 38, 39, 122 and Schedule 2) should be amended, for the following reasons:
  - a. The meaning of the words “complaint”, “grievance”, “disciplinary procedure” and “dispute” are not clear. Applying their ordinary meaning, these terms could be used interchangeably for any concern or problem a person or member has about a member or officer of a society. The distinction made in the Bill between a complaint and a

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<sup>1</sup> Incorporated Societies ExposureDraft Bill, NZLS submission dated 30.6.2016, available at <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/0006-102858-I-MBIE-Incorporated-Societies-ED-Bill-30-6-16.pdf>.

grievance (and the processes for resolving them) is therefore arbitrary and confusing, especially for lay people.

- b. The scope of disputes covered by the Bill (stated in section 26 (1)(j) and Schedule 2, clause 1(1)) is limited to those arising “between members” and “between members and the society”. Disputes between officers, or between members and officers or between officers and the committee are not included.
  - c. Clause 6(1) of Schedule 2 does not recognise that societies which are members of another organisation (for example, a national or international body) may be required to refer a complaint to that body or to deal with the complaint in accordance with that body’s rules.
- 2.2 For these reasons, the Law Society recommends that only two words are used to describe the disputes procedure, namely:
- a. “complaint” means the process of raising, notifying or initiating the procedure to resolve a “dispute” in accordance with the procedure set out in the constitution or by-laws of a society;
  - b. “dispute” means an allegation of misconduct or breach of any rule or obligation in the constitution or by-laws or any other expression of dissatisfaction, made about a member or an officer (in their capacity as a member or officer respectively) or the society.
- 2.3 Adopting that more simplified approach, the Law Society proposes amendments to section 26(1)(j), section 122 and Schedule 2, as set out in Appendix 2.

### **3. Amendments to Constitutions (sections 30, 31 and 33)**

- 3.1 The Law Society has several concerns with the procedure for amending a constitution set out in section 30 (and related provisions).
- a. It is unclear whether a constitution can be amended by written resolution passed in lieu of a general meeting. Section 30(2)(b) states that the amendment must be “approved at a general meeting”. (Section 33(1) uses the same wording.) The word “at” implies that an amendment can only be done at a meeting held with members present in person but not by resolution. Section 83 states that a written resolution is permissible and is valid “as if it had been passed at a general meeting if it is signed by no less than 75% (or a higher percentage required by the constitution) ...”. Many societies had difficulty holding annual general meetings and making other important decisions due to the various restrictions imposed during the COVID-19 pandemic. Although meetings using technology (permitted under section 81(1)) may assist, the Law Society considers that societies should also be permitted to amend their constitutions by written resolution, if passed in accordance with section 83.
  - b. Section 30(2)(c) requires an amendment to be signed by two members of the society. The Law Society considers this imposes an unnecessary administrative burden on a society when the certificate accompanying such amendment (required under section 33) must also be authorised by an officer. The Law Society suggests that only one of these steps should be required. A solution may be to provide in section 30(2)(c) that

the section 33 certificate can be signed either by an authorised officer or 2 members who were present at the meeting. If the members are not present at the general meeting they should not be able to certify the amendment, as this may allow an abuse of the process by a disgruntled member.

- c. Section 30(3)(a) refers to voting on “the question”. It is unclear what the word “question” means. The Law Society considers it should refer to voting on the “resolution” to align with the wording used in section 26(k)(v) and elsewhere in the Bill.
- d. The Law Society is concerned at the potential for abuse which could arise if minor or technical amendments to the constitution (under section 31(1)) can be made outside of a general meeting, for the following reasons:
  - i. It is unclear who, within the society, may amend the constitution for minor or technical amendments. Subsection (2) of section 31 implies it is the “committee” but this should be expressly stated in subsection (1).
  - ii. There are no definitions of “minor” or “error”, which leaves the scope of any amendments open to abuse.
  - iii. Subsection (4) does not state who can make an objection to such an amendment, although subsection (2) implies it is the members. It does not say how many members are required to make an objection nor the consequences if there is one. Does it mean the amendment must be approved under section 30 if there is an objection?
  - iv. Given these concerns, the Law Society considers that section 31 should only permit the committee to make amendments if permitted by the constitution and where the amendments correct typographical or grammatical errors (as the words “minor” and “error” are too broad).
- e. Having regard to these points, the Law Society recommends that sections 30, 31 and 33 should be amended as follows (the altered and additional words are struck through or underlined):

**30 Society may amend constitution**

- (1) ...
- (2) Every amendment to a society’s constitution must be—
  - (a) in writing; and
  - (b) by resolution passed by the relevant majority at a general meeting of the society or by written resolution in accordance with section 83 ~~by a resolution passed by the relevant majority;~~ and
  - ~~(c) signed by at least 2 members of the society; and~~
  - (c) otherwise made in the accordance with its constitution.
- (3) A **relevant majority** is—
  - (a) a simple majority of the votes of those members entitled to vote and voting on the resolution; or

- (b) if a higher majority is required by the constitution, that higher majority of the votes of those members entitled to vote and voting on the resolution.

(4) ...

### **31 Minor or technical amendments**

- (1) The committee of the society may amend the society's constitution under this section if the amendment –

- (a) corrects typographical or grammatical errors; and
- (b) is expressly permitted in the constitution.

...

- (4) If no objection is received from any member within 20 working days after the date on which the notice is served (or any longer period specified in the society's constitution), the committee of the society may make the amendment.
- (5) If an objection is received under subsection (4), the amendment must be proposed for approval in accordance with section 30.

### **33 Society must give Registrar copy of amendment and amended constitution**

(1) ...

- (2) The copy of the amendment and copy of the constitution as amended must be accompanied by the information prescribed by the regulations (if any), and a certificate from an officer or two members of the society who were present at the general meeting at which the under section 30, certifying that –

- (a) the officer is authorised by the society to give the certificate or the two members of the society were present at the general meeting at which the amendment to the constitution was approved;

(b) ...

## **4. Committee Members (section 40)**

4.1 Section 40(2) of the Bill provides that -

“The committee must comprise 3 or more officers who are –

- (a) members of the society;
- (b) qualified to be appointed under section 42.

4.2 The Law Society submits that it should not be mandatory for all members of a society's committee, or other officers, to be members of the society. It is increasingly important, and consistent with good governance principles, for at least some members of boards or committees to be independent of the society to bring skills, expertise and diversity to the

Board.<sup>2</sup> Further, it may be a conflict of interest for an officer, such as a Chief Executive, to be a member of the society.

- 4.3 The Law Society therefore suggests the removal of subsection (a) of section 40(2). In addition, to ensure that officers (who are not members) are bound by the constitution and by-laws of a society, section 29 should be amended to state that the constitution of a society must provide that officers (as well as members) are bound by it. (See also Appendix 2).

## 5. **Management of a society (sections 5(1) and 41)**

- 5.1 The role of the committee of a society is unclear in the Bill. To “govern” is usually understood to mean to set policies and strategies, while to “manage” is usually understood to put those policies and strategies into effect and to deal with day-to-day issues.
- 5.2 The definition of “committee” in section 5(1) is “the governing body of the society however described.” This is consistent with one of the purposes of the Bill to “promote high quality governance.” However, section 41(1) refers to the “operations and affairs of a society” being “managed by, or under the direction or supervision of, its committee.” The Law Society considers section 5 and 41 are inconsistent with each other. While in smaller societies the committee usually both governs and manages the society between AGMs, in larger societies, especially those with employees, the committee or board (as it is often referred to) will only have a governance role.
- 5.3 To accommodate the differing roles a committee might have, the Law Society recommends the following amendments to sections 5(1) and 41:

### **5 Interpretation**

- (1) In this Act, unless the context otherwise requires –  
“**committee**, in relation to a society, means the governing body of the society, however described, comprising three or more persons who together govern and/or manage the society on a day-to-day basis”

### **41 Management of Society**

- (1) The operation and affairs of a society must be governed and/or managed by, or under the direction or supervision of, its committee.
- 5.4 For the same reason, the definition of “officer” should include persons who have significant influence over the governance, management or administration of the society”. The Law Society recommends the following amendment to this term:

### **Officer –**

- (a) means, in relation to a society –  
(i) a natural person who is a member of the committee; and

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<sup>2</sup> See “The Four Pillars of Governance Best Practice for New Zealand Directors” (2021), published by the Institute of Directors of New Zealand at chapter 2.4, and comments on Not for Profit Boards in chapter 1.7. Also see, “What is the Future of NGO Governance”, Research Report, August 2019, published by the Centre for Social Impact at pages 138 to 143.

(ii) a person occupying a position in the society that allows the person to exercise significant influence over the governance, management or administration of the society) ...”

## **6. Consent to become (and cease to be) a member (sections 70 and 73)**

6.1 As drafted, section 70 does not specify how “A person must consent to become a member of a society.” To avoid or reduce possible disputes about whether or not a member has in fact consented to become a member (disputes which are not uncommon), the Law Society suggests that consent in writing be obtained and that sections 70(1) and 73(1) be amended as follows:

### **70 Consent to become member**

- (1) A person must consent in writing to become a member of a society, and that consent must include an acknowledgement that the person, if admitted to membership by the society, is bound by the society’s constitution, any bylaws.
- (2) The consent of a body corporate (A) to become a member of a society may be given on A’s behalf by 2 directors of A, or, if A has only 1 director, by that director (and, for this purpose, director has the same meaning as in section 5(1) of the Financial Reporting Act 2013).
- (3) In addition to giving consent under subsection (1), a society may, if specified in its constitution, require a person to satisfy specific requirements to become and remain a member of the society.
- (4) For the purposes of subsection (1,) consent in writing may be given by any digital or electronic means specified in the constitution.

### **73 Register of members**

- (1) .....
- (2) The register must contain—
  - (a) the name of each member; and
  - (b) a record of the written consent of each member to become a member of the society; and
  - (c) ...

6.2 For the same reasons of certainty regarding who is a member of a society, the Law Society considers a member should be required to give written notice of their resignation from membership, unless the constitution provides another manner in which membership ceases. (For example, the failure to pay a membership fee by a specified date may result in cessation of membership by the committee or the members at a general meeting.) To incorporate this requirement, the Law Society recommends a new section 71 is inserted (and the numbering of the subsequent sections adjusted), as follows:

### **71 Ceasing to be a member**

- (1) A member must give notice in writing to the society to resign from membership of the society, unless the constitution of the society provides another other ground or manner for ceasing membership.

(2) For the purposes of subsection (1), notice in writing may be given by any digital or electronic means specified in the society's constitution.

6.3 Section 26 (1)(d) should be amended to align with this insertion as follows:

(d) how a person ceases to be a member of a society (see section 71); and

## **7. Other comments**

7.1 Some further minor recommended amendments, intended to clarify or make minor adjustments to the Bill, are set out in Appendix 1.

7.2 In all other respects the Law Society supports the Bill. In particular, the Law Society's previous submissions on the Exposure Draft noted with concern the impact of certain obligations on smaller societies. The Law Society welcomes the inclusion of the definition of a "small society" in section 96(2) of the Bill and the adjusted requirements for small societies in relation to financial reporting. We expect these provisions will be well received by smaller societies.

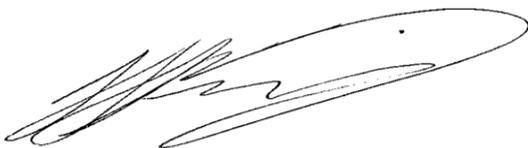
7.3 It is noted that similar adjustments have not been made for small societies related to annual reporting or the provision of information to members, which the Law Society previously noted may be burdensome. While it may have been preferable to reduce these obligations for smaller societies, the Law Society acknowledges that a line has to be drawn and there must be some minimum obligations in place for all societies if they are to receive the benefit of protection of liability by incorporation. For this reason, the Law Society accepts that smaller societies will only receive allowance for their size in terms of the financial reporting obligations.

7.4 The transition provisions, in Schedule 1, will also be welcomed. In the Law Society's view they provide sufficient time (the later of 2 years and 6 months or by 1 December 2025) for societies to amend their constitutions and reregister under the proposed Act.

## **8. Conclusion**

8.1 As noted at the outset, the Law Society is generally in support of the Bill.

8.2 The Law Society recommends that the Bill, subject to the amendments proposed, be enacted as soon as possible. It has been 10 years since the Law Commission issued its *Issues Paper Reforming the Incorporated Societies Act 1908, Issues Paper 24, June 2011*, so societies (and their lawyers) should be ready for its implementation.



Herman Visagie  
**Vice President**  
28 May 2021

Appendix 1: Recommended additional minor amendments to the Bill

Appendix 2: Recommended amendments concerning the complaints, grievance, disciplinary and disputes procedures

**INCORPORATED SOCIETIES BILL –**

**APPENDIX 1: PROPOSED ADDITIONAL AMENDMENTS**

Section	Subject	Issue	Recommended Change
11	Name of Society	The Registrar has no discretion to allow a name, by consent, which may be “almost identical” which is permitted under section 11(1) of the existing Incorporated Societies Act. For example, a society may also have interests in a trust or other corporate entity, which may have a very similar name; thus the “ABC Society” may form the “ABC Trust” or the “ABC company”. This is common with larger societies which may have social enterprises or trusts operating as separate entities.	The Registrar should be given explicit power to allow an almost identical name by consent given by the entity, which has an almost identical name.
16(2) 167	Removal	It is not entirely clear, if “removal from the register” means the removed society is no longer an incorporated society and no longer a body corporate, or whether they continue as such but are unregistered. In other words, it is unclear if registration and incorporation are one and the same thing. Elsewhere in the Bill it distinguishes between registration and incorporation. See for example , section 17(1)(b) of the Bill which provides that “on and from the date of incorporation stated in the certificate, the society is registered <u>and</u> incorporated under the Act” .	Add a new subsection to s167, as follows:  <u>“If a Society is removed from the register, then upon the notice being signed by the Registrar stating the society is removed from the register, it is no longer an incorporated society under the Act and no longer a body corporate”</u>
21 29	Constitution + Members	Section 21 provides that a person is not deemed to have knowledge of the constitution. Yes section 29 states that members are bound by the constitution. This inconsistency should be resolved.	Section 21 should be made <u>“subject to section 29”</u>  <b>21 No notice or knowledge of constitution merely because it is registered or available for inspection</b> <u>Subject to section 29, no person, other than a member and officer of a society, is affected by, or deemed to have notice or knowledge of, the contents of, the constitution of a society or</u>

			<p>any other document relating to a society merely because the constitution or document is –</p> <p>(a) registered on the register; or</p> <p>(b) available for inspection at an office of the society.</p> <p><b>29 Effect of constitution</b></p> <p>(1) The constitution of a society has no effect to the extent that it contravenes, or is inconsistent with, this Act or any other Act.</p> <p>(2) Every applicant to become a member of a society shall be deemed to have notice or knowledge of the contents of, the constitution of a society at the time of applying for membership.</p> <p>(3) The constitution of a society is binding <u>at all times</u>, in accordance with its terms, as between—</p> <p>a. the society and each member; and</p> <p>b. each member.</p> <p>(4) The constitution of a society is binding <u>at all times, in accordance with its terms, on all officers.</u></p> <p>(5) Subsection (3) is subject to the rest of this Act.</p>
26 / 81	Proxies	The word “proxy” appears only twice in the Bill - in section 26(1)(k)(vii) and section 219(3)(d). There can often be uncertainty about the right of members to appoint proxies and, if proxies are permitted, whether or not a member present by proxy is or is not counted in the quorum for a meeting. These issues could helpfully be resolved by amending section 26 and 81, noting that the subsections of section 81 are expressed as being “subject to the society’s constitution.”	<p>Amend section 26(1)(k)(vii)</p> <p>(vii) the quorum and procedure for general meetings, including voting procedures and procedures for proxies (if any) <u>and if so, whether the quorum includes members present by proxy;</u> and</p>

			<p>Add a new subsection (2) to section 81 as follows:</p> <p><u>(2) At a general meeting of a society—</u></p> <p><u>(a) a member may be represented by a proxy (who may but need not be another member of the society) appointed in writing;</u></p> <p><u>(b) a member represented by a proxy shall be counted as being present when establishing whether any required quorum is present at the meeting.</u></p>
26(1)(k)	Arrangements for general meetings	<p>This section refers to “arrangements and requirements for general meetings” which includes both annual and special general meetings.</p> <p>Yet section 26(1)(k)(viii) expressly refers to “arrangements and requirements for <u>special</u> general meetings” as a separate provision.</p> <p>Subsections (iii) to (vii) should apply to all general meetings. However subsection (i), which requires the intervals between “general meetings” to be stated in a societies constitution, should refer only to <u>annual</u> general meetings.</p> <p>This aligns with section 78(1) which refers to the period within which “<u>annual</u> general meetings must be held. However, there should be no such provision for general meetings (which includes special meetings) given the very nature of special general meetings is that they are not regular.</p>	<p>Section 26(1)(k):</p> <p>“arrangements and requirements for general meetings (see sections 78 to 86), including –</p> <p>(i) the intervals between <u>annual</u> general meetings (see section 78(1) ...</p> <p>(viii) <u>any additional or alternative</u> arrangements and requirements <u>from those listed in subsections (ii) to (vii)”</u></p>
28	Bylaws	<p>The term “bylaw” is outdated and increasingly societies refer to rules, regulations or policies.</p>	<p>The term “bylaw” should be defined to <u>“include bylaws, regulations, rules and policies, or other such documents formally adopted at a general meeting of the society or by the committee of the society, in accordance with the constitution”</u></p>

33 34	Society must give Registrar copy of amendment / Registration of amendment	<p>The section does not state the consequences of failing to give the Registrar a copy of the amendment within 20 working days.</p> <p>It is noted this may result in the Registrar issuing an infringement notice for an infringement offence under section 153(2)(a). However if a society gives a copy of the amendment to the Registrar after 20 working days, can the Registrar still register it?</p> <p>Section 34 states the amendment takes effect from the date of registration but only if the amendment is given under section 33 (which refers to it being given within 20 working days).</p> <p>The section should be adjusted to allow an amendment to be registered if given after 20 working days. The penalty for doing so is the possibility of an infringement notice.</p>	Amend section 33 or section 34 to permit an amendment given after 20 working days to be registered by the Registrar, and to take effect from date of registration (under section 32(2)).
35	Court may amend constitution	This section allows the Court to amend the constitution but not to <u>revoke</u> an amendment made to a constitution. In the event an application to the Court is made due to an amendment being by the society made contrary to the Act or the constitution, then the Court may also need the power to declare that amendment invalid or to modify it. This sub-clause does not currently permit either of these courses of action.	<p>Amend sub-clause (1) as follows:</p> <p>“A court may, on the application of a society or a member of a society, make an order amending <u>or revoking an amendment to</u> the constitution of the society, if it is satisfied that–“</p>

45(2) and (3)	Officer ceasing to hold office	<p>Subsection 45(2)(b) provides a default process for an officer resigning to provide written notice “to the Society”. As an “officer” is either a member of the committee or some other person who exercises significant influence over the management of the society, this notice should be given to the committee (which is responsible for the management of the society) and not to the “society” generally.</p> <p>Further, subsection (3) refers to “<u>the</u> notice of resignation”. However if the constitution permits a resignation to be given other than by written notice, subsection 3 would not apply. As such subsection (3) should only apply to subsection (2)(b) or if written notice is required in the constitution (under subsection (2)(a)).</p>	<p>Amend subsection 45(2)(b) as follows:</p> <p>(b) if the constitution does not provide for a manner, by signing a written notice of resignation and giving it to the <u>committee</u>”</p> <p>Amend subsection 45(3) as follows:</p> <p><u>Any</u> notice of resignation is effective when it is received by the <u>committee</u> or at a later time specified in the notice.</p>
73 (2)	Register of Members	<p>The register should include a record of each members’ consent to become a member and the date on which the member ceased to be a member. The Law Society does not consider a member’s signature is needed, especially as there are other means of acceptance, especially digitally. (See also section 83 and 84 below)</p>	<p>Amend subsection (2) as follows:</p> <p>(a) the name of each member; and  <b>(b) the written consent of the member under section 70(1); and</b>  (c) the last known contact details of each member; and  (d) the date on which each person became a member;  <b>(e) the date on which each person ceased to be a member;</b>  (f) all other information ...</p>
77(1) and (2)	Court orders relating to information	<p>Section 77(2) is unnecessary and the drafting of the section would be improved if subsection (2) was merged into subsection (1)</p>	<p>Section 77(1)</p> <p>A court may, on the application of a member who has made a request for information under section 74, make an order <u>requiring the society to supply the information to that member</u></p>

			<u>within such time and on payment of such charge as the court thinks fit if it is satisfied that— ...</u>
75	Grounds for refusing a request	The Law Society is concerned that subsection 75(2) could be used by some societies to deny reasonable requests for information by providing allowing a society to provide some other reason. The Law Society submits that subsection 75(1)(e) adequately addresses what might be classified as unreasonable information i.e. those which are frivolous or vexatious subsection (2) should be removed.	Remove subsection 2 of section 75
78	Annual general meetings	Subsection 4 of section 78 allows a society which is “a union or is of a kind prescribed by regulations” to provide in its constitution that the right to attend an annual meeting applies only to delegates or representatives. The right to attend as a delegate or representative should apply to any member that is an entity, since an entity cannot attend such meeting. As many societies have members that are entities, this should be expressly stated in this subsection, rather than left to the discretion of them being included in the regulations.	Amend subsection (4) as follows:  (4) If a society is a union, <u>or has members which are body corporates</u> or is of a kind prescribed by the regulations, ...”
81	Methods of holding meetings	The term “electronic communication” in subsection (1)(b) of section 81 is not defined. As a minimum, it should state that the participants must be able to “hear each other simultaneously”, otherwise it is not a “meeting” and could permit meetings to be held under this section using communication by email, text or other similar means which is not a meeting.	Amend subsection 81(1)(b) as follows:  (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication <u>in which the persons can effectively hear each other simultaneously”</u>

83 / 84	Resolution in lieu of meeting	<p>Subsection (2) of section 83 states that the resolution is valid if it is “signed”. Although a signature could presumably include a digital signature, this will create an unreasonable administrative burden as the society will then need to collect a signature upon the member joining and then identify such signature. It should be sufficient for the person to “approve” the resolution “in writing”.</p> <p>Section 84(1) should also list the manner, date and time by which the resolution must be voted on by the person entitled to vote.</p>	<p>Amend subsection 83(2) (and consequential amendments to the relevant provisions in section 84) as follows:</p> <p>(2) “ ...if it is <u>approved</u> by no less than 75% ...”</p> <p>Amend subsection 84(1) by adding subsection (e) as follows:</p> <p><u>(e) that the manner, date and time by which the person must vote on the resolution for it to be a valid vote.</u></p>
93(2)	Balance date	<p>Subsection (2)(c) of section 93 enables the society to change its balance date. To protect the members, this should only be done if the constitution permits it, and if so, such change should be done in accordance with the constitution.</p>	<p>Amend subsection 93(2)(c) as follows:</p> <p>(c) the society may, if <u>permitted under its constitution</u>, change its balance date (<u>in accordance with its constitution</u>), without the approval of the Registrar: ... “</p>
102	Annual return	<p>The nature and content of an “annual return” is not defined and is left entirely to regulations. The Law Society does not consider it appropriate to leave this to regulations, as they do not have the same scrutiny before being promulgated. As a minimum, a description of an annual return should be included either as a definition in section 5 or in section 102.</p>	
168	Grounds for removal from register	<p>There is no ability for a member, to notify the Registrar (with a view to removal of a society) where a society is still operating but is in breach of its obligations under the Act For example if the society. has failed to have an AGM, or fails to call general meetings etc. in circumstances where</p>	<p>Insert a new sub-clause, in subsection(1) permitting a member to make a request to remove the society on the basis of repeated breaches by the society of the Act or the constitution.</p>

		there are insufficient members to obtain a quorum to call a general meeting to pass a resolution (under s168(1)(a)).	
187	Amalgamation	Given the significance of an amalgamation, the approval by the members should be given at a general meeting of the members or a resolution in lieu of one (under section 83). However, this is not expressly stated in section 187(2). To ensure this, and other requirements, to protect the members are met, a resolution to amalgamate should be added to section 218 as one of the certain resolutions which require additional measures.	
196	Effect of certificate of amalgamation	Section 196(d) and (e) state that the amalgamated society takes on “all” the property and liabilities of the pre-amalgamated societies. However it may be that it is agreed in the proposal that some assets or liabilities are not taken into the new entity (for instance, some might be transferred to another entity). This sub-section should refer to the property and liabilities stated in the proposal or if the reference to “all” is retained, then make that subject to any terms of the amalgamated proposal.	Amend s196(d) and (e) so that it is subject to the terms of the amalgamation proposal.

## APPENDIX 2 – Recommended amendments concerning the complaints, grievance, disciplinary and disputes procedures

### Section 5 Interpretation

Add the following definitions:

**complaint** means the process of raising, notifying, or initiating a procedure to resolve, a **dispute** in accordance with the procedure set out in the constitution or by-laws of a society;

**dispute** means an allegation made by a member, officer or person of misconduct, or breach of any rule or obligation in the constitution or by-laws, or any other expression of dissatisfaction, by a member or an officer (in their capacity as a member or officer respectively) or the society.

### Section 26 (1)(j)

- (j) “procedures for resolving **disputes** between:
- a. members (in their capacity as members);
  - b. members and the society ~~(see section 38)~~
  - c. members and officers (in their capacity as members and officers respectively)
  - d. officers (in their capacity as officers), and
  - e. officers and the society;

~~including procedures for investigating and dealing with complaints and grievances.~~

### Section 122 Disputes under society’s constitution

- (1) This section applies to a dispute ~~between members (in their capacity as members) or between 1 or more members and the society~~ that has been, or is being investigated or otherwise dealt with under the procedures in the society’s constitution referred to in section 26(1)(j).,

## Schedule 2

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

s 38

#### 1 Overview of this schedule

- (1) Section 38 requires the procedures in a society’s constitution relating to disputes ~~between members and between members and the society (a dispute)~~ to be consistent with the rules of natural justice.
- (2) A society is not required to include the procedures in this schedule in its constitution. However, section 38 provides that if the procedures in the constitution are consistent with the procedures in this schedule, the procedures are presumed to be consistent with the rules of natural justice.

#### 2 ~~Complaints or disciplinary matter:~~ member’s right to be heard

- (1) If a society considers a complaint, ~~or institutes a disciplinary procedure, regarding alleged misconduct of a member,~~ the member or officer against whom the complaint is made

(respondent) has a right to be heard before the complaint ~~or procedure~~ is resolved or any outcome is determined.

- (2) Without limiting the manner in which a ~~member~~ respondent may be given a right to be heard, a ~~member~~ respondent must be taken to have been given the right if—
- (a) the ~~member~~ respondent is fairly advised of all allegations concerning the member, with sufficient details and time given to enable the member to prepare a response; and
  - (b) the ~~member~~ respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  - (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
  - (d) an oral hearing (if any) is held before the decision maker and the ~~member's~~ respondent's written statement or submissions are considered by the decision maker.

### ~~3~~ **Grievances: member's right to be heard**

~~(1) If a society considers a member's grievance alleging damage to the member's rights or interests as a member or to members' rights or interests generally, the member has a right to be heard before the grievance is resolved or any outcome is determined.~~

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

- ~~(a) the member has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and~~
- ~~(b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and~~
- ~~(c) an oral hearing (if any) is held before the decision maker and the member's written statement or submissions are considered by the decision maker.~~

### **34 Investigating and determining dispute**

- (1) A society must, as soon as is reasonably practicable after receiving a complaint made ~~or a grievance brought~~ in accordance with its constitution, investigate and determine the complaint ~~or grievance~~.
- (2) ~~Complaints, grievances, and other~~ Disputes must be dealt with by the society in a fair, efficient, and effective manner.

### **45 Society may decide not to progress matter**

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

- (a) the ~~matter~~ complaint is trivial; or
- (b) the ~~matter~~ complaint does not appear to disclose or involve—
  - ~~(i) in the case of a complaint or disciplinary matter, any material misconduct; or~~ breach of the rules of the constitution or by-laws; or
  - ~~(ii) in the case of grievance, any material damage to a member's rights or interests; or~~
- (c) the complaint, ~~grievance, or disciplinary matter~~ appears to be without foundation or there is no apparent evidence to support it; or
- (d) ~~in the case of a complaint or grievance, the person who makes the complaint or brings the grievance~~ has an insignificant interest in the matter; or

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

**56 Society may refer matter**

- (1) A society may refer a complaint, ~~grievance, or other dispute~~ to—
  - (a) a subcommittee or an external person to investigate and report; or
  - (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
- (2) A society may, with the consent of all parties to a dispute, refer the dispute to mediation.

**67 Decision makers**

A person may not act as a decision maker in relation to a complaint, ~~grievance, or other dispute~~ if 2 or more members of the committee or a ~~complaints~~ complaints subcommittee of the kind described in clause 5(1) of this Schedule consider that there are reasonable grounds to believe that the person may not be—

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