

DRAFT FOR CONSULTATION

Regulatory Systems Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus bill. It contains amendments to legislation administered by the Ministry of Business, Innovation, and Employment (the **Ministry**). The policy objective of the Bill is to maintain the effectiveness and efficiency of the regulatory systems established by the Acts amended by this bill (the **principal Acts**) and so reduce the chance of regulatory failure. The amendments will achieve this objective by—

- clarifying and updating statutory provisions in each principal Act to give effect to the purpose of the principal Act and its provisions; and
- addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation; and
- keeping the regulatory system up to date and relevant; and
- removing unnecessary compliance costs and costs of doing business.

The amendments were identified as part of the Ministry’s regulatory systems work programme, which arises from the chief executive’s responsibility to relevant Ministers, under section 32 of the State Sector Act 1988, for the stewardship of the legislation administered by the Ministry.

The Bill responds to the New Zealand Productivity Commission’s July 2014 report, *Regulatory institutions and practices*. The New Zealand Productivity Commission found that it can be difficult to find time on the Parliamentary calendar for “repairs and maintenance” of existing legislation. As a result, regulatory agencies often have to work with legislation that is out of date or not fit for purpose. This creates unnecessary costs for regulators and regulated parties, and means that regimes may not keep up with public or political expectations.

The Regulatory Systems Amendment Bill is a vehicle for these smaller regulatory fixes to be progressed in a timely and cost effective fashion in order to deliver the flow-on benefits to business and the wider economy.

The Bill includes the following amendments:

Building Act 2004 (*see subpart 1 of Part 1*)

The purpose of the Building Act 2004 amendments is to make minor fixes to improve the overall quality of the Act. This will be achieved by fixing cross-referencing errors and removing one redundant provision.

Building Societies Act 1965 (*see subpart 1 of Part 2*)

The Building Societies Act 1965 changes will reduce compliance costs and bring the annual returns process for building societies in alignment with the Companies Act 1993.

Commerce Act 1986 (*see subpart 2 of Part 2*)

The Commerce Act 1986 amendments will improve legal clarity and certainty by clarifying provisions in relation to lay members of the High Court and expenses of the Commerce Commission incurred under multi-year appropriations.

Companies Act 1993 (*see subpart 3 of Part 2*)

The purpose of the Companies Act 1993 changes is to ensure the requirements of that Act can be more efficiently and effectively achieved with minimum necessary compliance costs. The changes will remove unnecessary compliance costs in relation to—

- the provision of information from directors:
- the preparation of financial statements for companies who are subsidiaries of a body corporate that is required to prepare group financial statements:
- notification requirements for listed companies.

The changes will increase the effective and efficient operation of the Act in relation to the—

- registration and removal of overseas companies on the Companies Register:
- maximum dollar employee priority payment for company liquidations.

Energy Efficiency and Conservation Act 2000 (*see subpart 1 of Part 4*)

The amendment to the Energy Efficiency and Conservation Act 2000 will improve the clarity and certainty of the operation of the Act in relation to certain information that can be incorporated by reference.

Fair Trading Act 1986 (*see subpart 4 of Part 2*)

The purpose of the Fair Trading Act 1986 amendments is to ensure consistency between regimes and provide clarity in the split of regulatory responsibilities between the Commerce Commission and the Financial Markets Authority. The Bill aligns the definition of “financial services” with the definition in the Financial Markets Conduct Act 2013.

Financial Advisers Act 2008 (*see subpart 5 of Part 2*)

The purpose of the change to the Financial Advisers Act 2008 is to improve the operation of that Act by providing the Financial Markets Authority with an effective means of collecting fines.

Financial Markets Authority Act 2011 (*see subpart 6 of Part 2*)

The amendment to the Financial Markets Authority Act 2011 facilitates the Financial Markets Authority's investigation and prosecution of contraventions by financial markets participants. The Bill adds the Secret Commissions Act 1910 to the list of financial markets legislation that the Financial Markets Authority is able to enforce.

Financial Markets Conduct Act 2013 (*see subpart 7 of Part 2*)

Minor changes to the Financial Markets Conduct Act 2013 are proposed. The changes have been identified during the implementation of that Act and will help ensure the policy of the Act is efficiently and effectively achieved with minimum compliance costs. The Bill—

- removes a minor inconsistency between the licensing test for applicants and the test for authorising a related body corporate:
- empowers the Financial Markets Authority to make exemptions from subpart 8 of Part 8 of the Act, which contains prohibitions on indemnity and insurance that may not be appropriate in all circumstances:
- allows financial statements for a registered scheme to be filed within 4 months of the scheme's balance date (rather than the scheme manager's balance date):
- clarifies that standard indemnities do not prevent transfers of financial products continuing to be made without the signature from the transferee:
- shifts some matters currently dealt with in regulations to the Act and vice versa, clarifies the relationship between the Act and regulations, and adjusts some regulation-making powers to ensure the policy intent is able to be achieved:
- removes minor inconsistencies between some provisions and clarifies others.

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (*see subpart 8 of Part 2*)

The change to the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ensures the integrity of the register of financial service providers by ensuring that the Registrar of Financial Service Providers has the power to initiate deregistration of a financial service provider where the provider is not, but should be, a member of a dispute resolution scheme.

Friendly Societies and Credit Unions Act 1982 (*see subpart 9 of Part 2*)

The Friendly Societies and Credit Unions Act 1982 amendments are intended to improve the efficiency and effectiveness of that Act. The Bill promotes innovation, efficiency, and accountability and removes unnecessary operating and compliance costs by—

- providing for the incorporation of credit unions:

- enabling credit unions and associations of credit unions to have all the powers of a natural person:
- ensuring legal certainty by vesting the assets, liabilities, undertaking, and business of existing credit unions in the new incorporated entities with a tax base roll over from the old entity to the new, so that the transfer itself does not generate tax:
- reducing the minimum number of credit union members needed for an association of credit unions to be validly constituted from seven to two:
- simplifying the statutory objects of an association:
- removing the “ultra vires rule” insofar as an ultra vires act would otherwise render the relevant transaction invalid or unenforceable and instead including provisions relating to validity of acts similar to those in the Companies Act 1993:
- reducing transaction costs by permitting credit unions to make loans directly to SMEs that are related to members of that credit union:
- reducing compliance costs by allowing friendly societies and credit unions to use electronic and postal voting for general and special resolutions.

Gas Act 1992 (*see subpart 2 of Part 4*)

The purpose of the amendments to the Gas Act 1992 is to provide certainty by addressing a regulatory error in relation to the definition of “gas distributors”. The Bill will give responsibility to the Minister of Consumer Affairs for electricity and gas consumer complaint schemes to align with the approach taken in the Electricity Industry Act 2010.

Insolvency Act 2006 (*see subpart 10 of Part 2*)

The purpose of the Insolvency Act 2006 amendments is to ensure the requirements of that Act can be more efficiently achieved with minimum necessary compliance costs in relation to the functions of the Official Assignee.

New Zealand Superannuation and Retirement Income Act 2001 (*see subpart 11 of Part 2*)

The purpose of the amendment to the New Zealand Superannuation and Retirement Income Act 2001 is to ensure that the Act accurately reflects the work of the Retirement Commissioner in relation to work on financial capability and other functions as directed by the Minister of Commerce under the Crown Entities Act 2004.

Postal Services Act 1998 (*see Part 3*)

The Postal Services Act 1998 amendment changes the definition of a “letter” to ensure that the definition of a letter in that Act is aligned with the increased cost of postage over time.

Takeovers Act 1993 (*see subpart 12 of Part 2*)

The purpose of the Takeovers Act 1993 amendments is to ensure timely and cost-effective decisions are made in relation to takeovers code company takeover expense-related disputes.

Unit Titles Act 2010 (*see subpart 2 of Part 1*)

The purpose of the amendments to the Unit Titles Act 2010 is to reduce unnecessary compliance burden and to clarify matters in relation to unit plans, body corporate operational rules, reassessment of ownership interests and utility interests, the registration of easements and covenants, leases and licences of common property, and extraordinary general meetings of the body corporate.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent, with 1 exception. The exception relates to most of subpart 9 of Part 2 of the Bill, which contains amendments to the Friendly Societies and Credit Unions Act 1982 (*see clause 2(2)*).

Part 1**Building and Housing****Subpart 1—Building Act 2004**

Clause 3 provides that *subpart 1* amends the Building Act 2004.

Clause 4 amends section 12 to cross-refer to a specific clause in Schedule 1, in order to better assist users of the Act.

Clause 5 amends section 96 by repealing a redundant provision.

Clause 6 amends section 177 to correct a cross-reference.

Clause 7 makes consequential changes to section 38 of the Building Amendment Act 2012, which is not yet in force, relating to the redundant provision repealed by *clause 5*.

Subpart 2—Unit Titles Act 2010

Clause 8 provides that *subpart 2* amends the Unit Titles Act 2010.

Clause 9 amends section 4, which sets out an overview of the Unit Titles Act 2010. The amendment alerts users of the Act to the location of transitional, savings, and related provisions in *new Schedule IAA*, which is inserted by *clause 46*.

Clause 10 makes technical and consequential amendments to the definitions of body corporate operational rules, ownership interest, proposed ownership interest, and utility interest.

Clause 11 amends section 6 to standardise terminology. Instead of the body corporate being described alternately as fixing or assigning ownership and utility interests, the term “assign” is used throughout.

Clause 12 amends section 7, to clarify that a principal unit (that meets the other requirements in that section) can be 1 or more carparks.

Clause 13 inserts *new section 9A* into the Act, which cross-refers to *new Schedule IAA* for transitional, savings, and related provisions.

Clause 14 amends section 15, which contains provisions relating to the relationship between the Act and the Public Works Act 1981. Subsection (3) is replaced to clarify when subsection (4) applies; that is, where the acquisition of land for a public work triggers the requirement for a new unit plan or an amendment to a unit plan under the Unit Titles Act 2010. The requirement for the body corporate to request in writing that the authority undertaking the public work prepare and pay for the new unit plan or the amendment to the unit plan is removed from subsection (4). Subsection (5) now provides that the Registrar-General of Land (the **Registrar**) may do anything necessary to give effect to any acquisition under the Public Works Act 1981 that relates to a unit title development, whether that acquisition is by Proclamation or otherwise (for example, by agreement).

Clause 15 repeals section 32(3)(b), consequential to the repeal of section 41(2), and amends section 32(2)(b), consequential to the changed terminology in section 38(2) (*see clauses 20 and 16* respectively).

Clauses 16 and 17 amend sections 38 and 39. These sections relate to the initial process of assessing and assigning ownership interests and utility interests when a unit plan is deposited under various sections of the Act, as well as setting out, on a non-exclusive basis, the range of matters that the ownership interest and utility interest are used to determine. The amendments to these sections include—

- stating who is responsible for assigning ownership and utility interests to the units before the deposit of the plan. This is the role of the registered proprietor or owner. The registered valuer’s role is to assess the original ownership interests for the units. The registered proprietor or owner must assign the ownership interests (as assessed by the valuer) to the units, before the unit plan is deposited. The registered proprietor or owner also assigns the utility interests before deposit of the plan:
- clarifying that, after the unit plan is deposited, ownership interests may be reassessed, and new ownership interests assigned to the units, in accordance with the Act:
- providing that the utility interest assigned to a unit (other than a future development unit) before deposit of the unit plan will be the same as the assessed ownership interest unless some other utility interest is determined by the registered proprietor or owner to be fair and equitable and is shown on the documentation lodged with the plan.

Clause 18 amends section 40, which relates to the process of assessing and assigning a deemed utility interest to a future development unit as soon as that unit is in use. The amendments include stating who is responsible for assigning the deemed utility interest.

Clauses 19 and 20 relate to the reassessment of ownership interests and utility interests. *Clause 19* inserts a new cross-heading above section 41. *Clause 20* makes a number of amendments to section 41. A key change is that the body corporate is no longer required to reassess the ownership interest and utility interest for a principal unit that is subdivided to create a subsidiary unit title development. However, the body corporate may resolve to do so (*see new section 41(3)(b)*).

Clause 21 makes a technical change to section 42(2).

Clause 22 repeals section 48(b), consequential on the repeal of section 32(3)(b) (*see clause 15*).

Clause 23 replaces section 56(7). *New section 56(7)* clarifies that the proceeds received by a body corporate as a result of any sale, lease, or licence of or over the common property must be distributed to unit owners in shares proportional to what was their ownership interest at the date that the payment giving rise to the proceeds fell due.

Clause 24 corrects a minor grammatical error in section 58.

Clause 25 amends section 62, by extending the powers of a body corporate under that section in respect of easements and covenants over the common property.

Clause 26 amends section 63, which sets out the ability of the owner of a unit in respect of easements and covenants. Existing section 63 permits the owner of a unit, with the consent of the body corporate, to grant an easement or enter into a covenant over the unit, but is limited to easements and covenants for the benefit of other land. The amendments remove this limitation. As such, the ability of an owner to deal with a unit under that section (for example, by granting an easement in gross over the unit) is expanded. Any dealings with a unit under the amended section will remain subject to body corporate consent under existing section 63(4).

Clause 27 replaces section 65(1), which sets out the type of redevelopment that requires an amendment to (but not the deposit of a new) unit plan. Section 65 applies, in certain circumstances, to redevelopments that consist solely of a boundary adjustment between 1 or more units. The effect of *new section 65(1)* is to clarify and tighten the circumstances that must be met in order for a redevelopment to fall under this section.

Clause 28 makes a technical change to section 67.

Clause 29 amends section 69, which sets out the requirements for new unit plans in relation to certain redevelopments. The amendment to section 69(4) reflects the role of the valuer in assessing, rather than assigning, ownership interests. Other amendments are technical and for consistency with other amendments made by this subpart.

Clause 30 amends section 84, which sets out powers and duties of body corporates. Aside from a consequential update to a cross-reference, the amendments remove a

reference to sections 38 and 39. This is a technical change: except to the extent those sections set out matters that the ownership interest and utility interest are used to determine and highlight the ability to change the ownership interest in accordance with the Act, sections 38 and 39 relate to things done before a unit plan is deposited and the body corporate comes into being.

Clauses 31 and 32 respectively insert *new section 89A* and consequentially amend section 90. The amendments relate to the situation of a written request, signed by or for the unit owners of not less than 25% of the principal units, for an extraordinary general meeting to consider and decide motions proposed in the notice. The amendments specify the time frames for calling and holding that meeting, which are by 5 working days and within 3 weeks after the chairperson receives the notice, respectively.

Clause 33 replaces section 105, which relates to body corporate operational rules. The key change is to clarify that the original owner may lodge, for deposit with the unit plan, body corporate operational rules that are different to those prescribed by regulation.

Clauses 34 and 35 update cross-references in section 107 and 108, consequential on the changes made to section 105 by *clause 33*.

Clause 36 makes a technical change to section 163(4), for consistency with the rest of that subsection. There is no substantive effect.

Clause 37 amends section 165, which relates to leasehold land, and includes provisions as to when and how a lessor or licensor may apply for the cancellation of the unit plan. The amendment is consequential on changes made to section 189 by *clause 44*. The 6-month period for the lessor or licensor to apply to the Registrar for the cancellation of the plan (following a declaration of the High Court) is retained.

Clause 38 replaces section 167, which also relates to leasehold land. The key change is a new provision that permits the body corporate, by special resolution, to vary the lease. A resolution for this purpose will be a designated resolution for the purposes of subpart 3 of Part 5 of the Act, which means that the objection process set out in sections 213 to 216 of the Act will apply. *New section 167(2)* also—

- clarifies that the other special resolutions provided for in section 167 (which relate to exercising and approving the terms for a renewal or expiry of the lease, or exercising an option to purchase the reversionary estate in the base land and approving the terms of the purchase) are also designated resolutions;
- states that none of the matters contemplated by *new section 167(1)* (for example, varying the lease) have the effect of terminating the unit title development, merging any estate, or discontinuing any easement, covenant, or other registered interest.

Clause 39 amends section 169 which sets out provisions relating to leasehold land and merger, where the lessor has purchased or acquired the stratum estates in leasehold in all the units in the unit plan or where the owners of all the units have purchased or acquired the reversionary estate in the base land. The amendments—

- state that no merger can occur unless and until the base land is free from all registered interests other than easements or covenants and there are no caveats or notices of claim entered on the register over the whole or any part of the base land (*see new section 169(2)(a) and (3)(b)*):
- set out the effect of a merger on the lease, and on registered interests, caveats, and notices of claim (*see new section 169(4)(c) to (e), (6) and (7)*):
- require the Registrar, if satisfied that the merger has occurred, to make additional entries (*see new section 169(5)(b) and (d)*) and to cancel the computer register for the base land (*see new section 169(5)(e)*). The requirement to note the effect of section 169 on the lease and any computer register created for it (*see existing section 169(5)(c) of the Act*) is not replaced because it is redundant.

Clause 40 amends section 177, by removing the requirement for a body corporate to reassess the ownership interests and any proposed ownership interests of the units in the unit title development before applying to the Register to cancel the unit plan. The body corporate may reassess those interests or, by special resolution setting out the reason for the decision, may decide not to reassess those interests. A special resolution for this purpose is a designated resolution to which the objection process in sections 213 to 216 of the Act will apply. (*See also clause 44, new subsection 189(5)(aa)*: the requirement to reassess the ownership interests and any proposed ownership interests of the units in the unit title development is retained in relation to the cancellation of unit plans following a decision of the High Court, subject to the direction of the Court.)

Clause 41 corrects a minor style matter in section 180.

Clauses 42 and 43 amend sections 182 and 183 respectively. The amendments are consequential on the amendments made to section 177 by *clause 40*.

Clause 44 amends section 189, which relates to the cancellation of a unit plan following a decision of the High Court. *Clause 44(1)* removes the 6-month time limit imposed for applying to the Registrar for cancellation once all conditions and directions imposed or given by the High Court have been met. An application for cancellation will need to be accompanied by a certificate certifying that all conditions and directions imposed or given by the High Court have been complied with (*see new section 189(3)(c)*).

Clause 45 amends section 212, by adding to the list of designated resolutions for the purposes of subpart 3 of Part 5 of the Act and updating a cross-reference, in both cases consequential on changes made by this subpart.

Clause 46 inserts *new Schedule 1AA* into the Act (*see Schedule 1*), which provides for transitional, savings, and related matters.

Clause 47 amends Schedule 2, which contains modifications to the Act applicable to timeshare resorts. The amendments—

- repeal a redundant provision:

- are consequential on *new section 89A* and the amendments to section 90 made by *clauses 31 and 32*. These sections relate to extraordinary general meetings.

Part 2

Commerce and Consumer Affairs

Subpart 1—Building Societies Act 1965

Clause 48 provides that *subpart 1* amends the Building Societies Act 1965.

Clause 49 amends section 103, which requires building societies to make annual returns. The amendments provide for an annual return to be signed by the manager or secretary of the building society and 1 other person who is authorised by its directors and who is a director, a qualified statutory accountant, or a lawyer.

Clause 50 repeals section 104, which currently requires certain information about loans or other investments to certain officers or companies to be included in a building society's annual return.

Subpart 2—Commerce Act 1986

Clause 51 provides that *subpart 2* amends the Commerce Act 1986.

Clause 52 repeals section 6C, which is spent.

Clause 53 amends section 53ZE, which relates to levies that are imposed on suppliers of regulated goods and services to cover the Commerce Commission's costs of performing its functions under Part 4 of the Act. The amendments permit a levy to be set, in relation to costs covered by a multi-year appropriation, for the financial years to which the multi-year appropriation applies.

Clause 54 amends section 77, which relates to the appointment of lay members of the High Court for the purposes of the High Court's jurisdiction under the Act. The amendment clarifies the purposes for which lay members must be appointed.

Subpart 3—Companies Act 1993

Clause 55 provides that *subpart 3* amends the Companies Act 1993.

Clause 56 makes an amendment to section 3 that is related to the amendment made by *clause 61*.

Clause 57 amends section 12, which sets out requirements for an application for registration of a company. The amendments clarify the information that must be provided in cases where none of the directors of the proposed company lives in New Zealand.

Clause 58 amends section 80, which sets out requirements in relation to the giving by a company of financial assistance to a person for the purposes of the purchase of shares issued by the company. The amendments modify the requirement that the company give notice of the financial assistance to its shareholders for cases where the

company's shares are quoted on a licensed market. The notice must be given to the licensed market instead.

Clause 59 amends section 200, which places requirements on certain companies to prepare financial statements. The amendment clarifies how these requirements apply to a company that is a subsidiary of another company.

Clause 60 replaces section 231 to clarify that any variation of a compromise approved under Part 14 of the Act must be notified to the Registrar.

Clause 61 amends section 341 to enable the Registrar to remove an overseas company from the overseas register if satisfied that the company has ceased to carry on business in New Zealand.

Clauses 62 and 63 make amendments to section 395 and Schedule 4 that relate to the amendments made by *clause 57*.

Clause 64 amends Schedule 7 to make a minor amendment in relation to the Governor-General's power by order to adjust the sum set out in clause 3(1) of that schedule.

Subpart 4—Fair Trading Act 1986

Clause 65 provides that *subpart 4* amends the Fair Trading Act 1986.

Clause 66 amends section 15, which relates to the limited application of sections 9 to 14 to the news media. The amendment replaces references to the Broadcasting Act 1976 with references to the Broadcasting Act 1989.

Clause 67 amends section 48P, which relates to proceedings concerning financial products or financial services under the Fair Trading Act 1986. The provision requires the Commerce Commission, before commencing those proceedings, to obtain the consent of the Financial Markets Authority (the **FMA**). The amendment aligns the definition of financial service in section 48P with the definition in the Financial Markets Conduct Act 2013.

Subpart 5—Financial Advisers Act 2008

Clause 68 provides that *subpart 5* amends the Financial Advisers Act 2008.

Clause 69 amends section 101 to clarify that a fine imposed on a financial adviser under that section by a disciplinary committee is recoverable as a debt due to the Financial Markets Authority.

Subpart 6—Financial Markets Authority Act 2011

Clause 70 provides that *subpart 6* amends the Financial Markets Authority Act 2011.

Clause 71 amends Part 2 of Schedule 1 to bring the Secret Commissions Act 1910 within the jurisdiction of the Financial Markets Authority.

Subpart 7—Financial Markets Conduct Act 2013

Clause 72 provides that *subpart 7* amends the Financial Markets Conduct Act 2013.

Clause 73 amends various definitions in section 6(1) as a consequence of other changes made by this subpart.

Clause 74 amends section 13(1) to ensure that it applies to both the Act and regulations made under the Act. Section 13(1) is an interpretation provision relating to references to information that is false, misleading, deceptive, or confusing.

Clause 75 amends section 95, which requires an issuer to notify certain changes within 5 working days of becoming aware of the change. The amendment allows regulations to prescribe a different period within which the change must be notified.

Clause 76 amends section 96, which requires an issuer to disclose prescribed information to prescribed persons (for example, investors). The amendment changes the heading of the section to reflect the fact that a prescribed person could be the Registrar or the Financial Markets Authority (the **FMA**). *Clause 110* amends the associated regulation-making power in section 543 to also refer to the Registrar or the FMA.

Clause 77 amends section 97, which requires an issuer to make information publicly available. The amendment provides for an infringement offence where the information is to be made publicly available by lodging the information with the Registrar.

Clause 78 amends section 101 (which specifies Part 3 offer provisions for the purposes of establishing civil liability). Currently, all contraventions of the limited disclosure and other requirements under clause 26 of Schedule 1 may result in the higher level of civil liability under section 101(3). Section 101 is amended to provide more flexibility to allow regulations to specify which provisions of the regulations made for the purposes of clause 26 of Schedule 1 are Part 3 offer provisions and, if a provision is so specified, whether it may result in the higher level of civil liability under section 101(3) or the lower level of civil liability under section 101(4).

Clause 79 amends section 131 (which relates to additional ongoing registration requirements for restricted schemes) to correct a minor error.

Clause 80 amends section 134 (which relates to changes to the registration of a registered scheme). Currently, the provision refers to a certificate from the supervisor or the trustees of a restricted scheme. Restricted schemes are only one situation in which there may not be a supervisor (another example could be where the FMA has granted an exemption from supervisor requirements). The provision has been amended to provide more flexibility to cover other cases where the scheme does not have a supervisor. Similar changes have been made to sections 147, 149, 165, 173, 195, 212, and 213 (see *clauses 81 to 83, 85, and 87 to 89*).

Clause 84 adjusts the meaning of a pricing error in section 168 so that it refers to the price at which managed investment products are issued (rather than transferred).

Clause 86 amends section 178 (which relates to the application of scheme participant transfer rules) to correct a minor error.

Clause 90 amends section 217, which specifies the required content of registers of regulated products. The amendment allows information to be excluded in circumstances that are prescribed in the regulations. *Clause 111* amends the associated regulation-making power in section 544. *Clause 112* amends section 550 to ensure that the

procedural requirements specified in that section for regulations relating to exemptions apply to this new power.

Clause 91 amends section 228 (which lists the provisions of Part 4 that give rise to civil liability) to include a reference to section 219. Section 219 requires an auditor to advise the FMA and product holders if the auditor considers that requirements relating to registers of products are not being complied with. The amendment means that a breach of this duty by an auditor can give rise to civil liability.

Clause 93 amends section 314 (which relates to general obligations in respect of licensed markets). The amendment extends the obligation relating to the notification of disclosures to include various disclosures made under the Act or the regulations.

Clause 94 amends section 351, which provides for regulations to modify requirements for licensed markets. The section already provides that regulations can provide that a financial product market must not be treated as a licensed market. The power is extended to allow regulations to provide that issuers of a specified class must not be treated as listed issuers and financial products in specified circumstances must not be treated as quoted.

Clause 95 amends section 372, which provides for the transfer of financial products by a products transfer. The section currently does not apply if the products impose a liability to the issuer on the transferee. This requirement has been amended to clarify that the liability referred to does not include an indemnity.

Clause 96 amends section 397, which imposes procedural requirements relating to the issue of market services licences. The amendment adds a requirement for the FMA to make the licensing decision in the prescribed manner.

Clause 97 amends section 400, which provides for a market service licence to cover a related body corporate of the licensee if the FMA is satisfied of certain matters. The amendment aligns the wording of this test with the wording in section 396 (the test for when the licence must be issued).

Clauses 98 to 100 extend the requirements in section 427 (which relates to defective disclosure). Section 427 currently relates only to initial disclosure statements under Part 6. The amendments extend this provision to cover defective ongoing disclosure under *new section 426A*. In addition, *clause 108* amends section 511 to extend the offence in that section relating to defective disclosure to cover defective ongoing disclosure under *new section 426A*. A consequential change has been made in *clause 102*.

Clause 101 amends section 448, which provides for regulations concerning the holding and application of investor funds and property by derivatives issuers. The amendment ensures that the regulations can relate to money or property received on account of investors (as well as money or property received directly from investors).

Clauses 103 and 104 amend sections 461A and 461H, which relate to the financial statements of registered schemes. The amendments ensure that the time frames for compliance refer to the balance date of the scheme rather than the balance date of the manager.

Clause 105 amends section 461K (which relates to FMC reporting entities that are considered to have a higher level of public accountability) to correct a minor error.

Clause 107 inserts, in *new section 501A*, a new defence in respect of civil liability proceedings. The defence applies where an authorised body contravenes a market services licensee obligation and the licensee is treated as being in contravention under section 400(3). In this case, the licensee has a defence if it proves that it took all reasonable and proper steps to ensure that the authorised body complied with the obligation.

Clause 110 amends section 543 (which is the regulation-making power for the purposes of Part 3 of the Act). The amendments are mainly as a consequence of other changes made by this subpart (for example, in relation to clause 26 of Schedule 1 of the Act). In addition, *new section 543(3)* clarifies that disclosure under section 96 or 97 can be required at any time after an offer is first made (regardless of whether or not the products have been issued).

Clause 111 amends section 544 (which is the regulation-making power for the purposes of Part 4 of the Act). The amendments are as a consequence of other changes made by this subpart (for example, in relation to section 217).

Clause 113 amends section 556 to extend the FMA's exemption-granting power under that section to cover subpart 8 of Part 8 (in addition to Parts 2 to 7, the schedules, and the regulations). Subpart 8 of Part 8 contains restrictions on indemnities or insurance for directors, employees, and auditors of issuers, offerors, and licensees.

Clause 114 amends Schedule 1 (which relates to when disclosure is required and exclusions for offers). The changes include—

- amending clause 8 of Schedule 1 (which contains an exclusion for employee share purchase schemes). The amendment clarifies how a calculation for the purposes of the exclusion is carried out:
- amending clause 19 of Schedule 1 (which contains an exclusion for quoted financial products). The amendment extends the exclusion to cover options to acquire quoted financial products:
- amending clause 26 of Schedule 1 (which requires offerors that rely on an exclusion to comply with limited disclosure and other prescribed requirements). The amendments clarify that requirements may include—
 - a requirement to provide prescribed information to the investor or another prescribed person:
 - a requirement to ensure that all prescribed limits or restrictions (if any) applying to the offer, the financial products, or the investors are met:
- amending clause 26 of Schedule 1 to refer to a limited disclosure document or LDD. This ensures consistency with the terminology used in the Financial Markets Conduct Regulations 2014 (*see also* consequential changes in *clauses 73, 92, 106, and 109*):

- amending clause 26 of Schedule 1 to provide for requirements to be imposed on an issuer (where the offeror is not the issuer under an offer by way of sale):
- extending clauses 27 and 28 to cover the register entry as well as the limited disclosure document. Clause 27 relates to false or misleading statements in, or omissions from, disclosure that is made available to investors. Clause 28 requires certain persons to inform the offeror of defects in that disclosure:
- inserting a new offence in *new clause 28A* relating to a failure to lodge or give information to the Registrar or the FMA when required to do so under clause 26.

Clause 115 amends clause 13 of Schedule 2 (which provides for the lodging of documents with the Registrar) to confirm that it applies whether the requirement to lodge the document is specified in the Act or the regulations.

Clause 116 amends Schedule 4 (which contains transitional and savings provisions). The amendments relate to certain transitional and savings provisions in the Financial Markets Conduct Regulations 2014. Under section 547(4), those provisions would be automatically revoked on the date that is 5 years after the commencement of section 547 (14 September 2018). However, the effect of some of those provisions needs to continue after that date. The effect of the amendments to Schedule 4 is to preserve the ongoing effect of those provisions.

Clause 117 amends the Financial Markets (Repeals and Amendments) Act 2013 to correct a minor error in a consequential amendment.

Subpart 8—Financial Service Providers (Registration and Dispute Resolution) Act 2008

Clause 118 provides that *subpart 8* amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Clause 119 amends section 18 to require the Registrar of Financial Service Providers to deregister a financial service provider if the provider is not a member of an approved dispute resolution scheme as required.

Subpart 9—Friendly Societies and Credit Unions Act 1982

Clause 120 provides that *subpart 9* amends the Friendly Societies and Credit Unions Act 1982.

Clause 121 makes amendments to section 2 that are consequential on other amendments made by *subpart 9* relating to credit unions. Section 2 is the interpretation provision.

Clause 122 inserts *new section 2A* to give effect to *new Schedule IAA* inserted by *clause 174*. *New Schedule IAA* contains transitional, savings, and related provisions (see notes below on *clause 174*).

Clause 123 makes an amendment to section 5 that is consequential on other amendments made by *subpart 9* relating to credit unions.

Clauses 124 to 127 make amendments to sections 28, 49, 50, and 82 to clarify that members of societies registered under Part 2 of the Act do not necessarily have to be present at a meeting for the purpose of voting on matters considered at the meeting. These amendments relate to the amendment made by *clause 167*.

Clause 128 replaces the cross-heading above section 98 in consequence of the amendment made by *clause 131*.

Clause 129 amends section 98, which sets out the circumstances in which a society must register as a credit union under Part 3 of the Act. The amendments made by *clause 129(1), (2), (4), and (5)* relate to the amendment made by *clause 131*. The amendments made by *clause 129(3) and (6)* extend the scope of section 98 to cover cases where a society is making loans for the purposes of small businesses related to members of the society (for example, a small business carried on by a body corporate that is controlled by a member).

Clause 130 makes amendments to section 99 that relate to the amendment made by *clause 131*.

Clause 131 replaces section 100 with *new sections 100, 100A, and 100B*. These new sections provide for the incorporation of credit unions. *New section 100B* is broadly based on sections 8 to 10 of the Incorporated Societies Act 1908 and sections 13 to 15 of the Companies Act 1993. Credit unions are currently unincorporated societies.

Clause 132 repeals section 101(2). Section 101(2) provides that a credit union has no power to do anything unless it is within its objects and authorised by its rules or the Act. The repeal relates to the amendment made by *clause 141*.

Clause 133 makes an amendment to section 102 that relates to the amendment made by *clause 131*.

Clause 134 amends section 103 to reformulate, with some modifications, the provisions of the Act relating to a credit union's name.

Clause 135 repeals section 104 in consequence of the amendments made by *clauses 131 and 138*.

Clause 136 replaces section 105(1), which relates to the binding effect of a credit union's rules. *New section 105(1)* is based on section 31(2) of the Companies Act 1993 and relates to the amendment made by *clause 131*.

Clause 137 makes amendments to section 106 that relate to the amendment made by *clause 131*.

Clause 138 inserts *new sections 106A, 106B, and 106C*. *New section 106A*, which is based on section 97(1) of the Companies Act 1993, provides that a member of a credit union is not liable for an obligation of the credit union by reason only of being a member. *New section 106A* relates to the amendment made by *clause 131*. *New sections 106B and 106C* reformulate provisions of the Act relating to a credit union's rules.

Clause 139 replaces the cross-heading above section 107 and *clause 140* amends section 107A. These amendments relate to the amendments made by *clauses 131 and 141*.

Clause 141 inserts *new sections 107B, 107C, 107D, and 107E*. These new sections, which are based on Part 3 of the Companies Act 1993, provide for the following:

- a credit union has full capacity to do any act, subject to any enactment, the general law, and the credit union's rules:
- an act of a credit union is not invalid merely because the credit union did not have the capacity to do the act:
- generally, a credit union may not assert against a person dealing with the credit union that the Act or the credit union's rules have not been complied with or that there has been some other irregularity in the credit union's processes.

Clauses 142 to 154 repeal provisions of, and make other amendments to, the Act in consequence of the amendments made by *clauses 131 and 141*. In particular, *clause 153* inserts *new sections 133A and 133B*, which are based on sections 180 and 181 of the Companies Act 1993. These new sections set out how a credit union may enter into contracts and appoint attorneys.

Clause 155 replaces section 135, which relates to how credit unions may amalgamate with each other. The new amalgamation provisions contained in *new sections 135 to 135G* are based on Part 13 of the Companies Act 1993. The new amalgamation provisions do not apply to associations of credit unions (*see notes below on clause 163*).

Clause 156 repeals section 136 in consequence of the amendment made by *clause 155*.

Clause 157 amends the cross-heading above section 137 in consequence of the amendments made by *clauses 160 and 161*.

Clause 158 inserts *new section 137A* to give members of a credit union the power to resolve to put the credit union into liquidation under Part 16 of the Companies Act 1993.

Clause 159 amends section 138. Section 138 gives the Registrar of Friendly Societies and Credit Unions the power to apply to the High Court to put a credit union into liquidation under Part 16 of the Companies Act 1993. The amendments expand the grounds on which an application may be made and also permit an application to be made by the credit union itself or a member or creditor of the credit union.

Clause 160 repeals section 139, which gives the Registrar of Friendly Societies and Credit Unions power to suspend certain activities of a credit union.

Clause 161 replaces section 140, which currently gives the Registrar of Friendly Societies and Credit Unions power to suspend or cancel a credit union's registration under Part 3 of the Act. *New sections 140 to 140M*, which are broadly based on Part 17 of the Companies Act 1993, give the Registrar a more limited power to remove a credit union from the register and make provision for a credit union to be restored to the register in certain circumstances. A credit union that is incorporated under the

new provision inserted by *clause 131* ceases to exist if it is removed from the register (subject to the powers to restore a credit union to the register).

Clause 162 makes amendments to section 141 that are consequential on the amendments made by *clauses 138 and 158*.

Clause 163 amends section 143. Section 143 requires associations of credit unions to be registered under Part 3 of the Act. The amendment made by *clause 163(3)* reduces the minimum number of members of an association of credit unions from 7 to 2 and expands the scope of the objects that an association may have, including objects that relate to co-operative or mutual bodies that are not credit unions. *Clause 163(1) and (2)*, together with *clauses 165 and 166* that amend sections 145 and 146, make amendments for associations of credit unions that correspond to the amendment made by *clause 131*. Except as set out in *new section 146(8)* (inserted by *clause 166*), the Act applies to associations of credit unions in the same way as it applies to credit unions.

Clause 164 makes an amendment to section 144 that relates to the amendment made by *clause 155*.

Clause 167 inserts *new sections 147A and 147B*. *New section 147A* clarifies that the rules of a society registered under Part 2 of the Act or the rules of a credit union may provide for meetings to be held using audio, audio and visual, or electronic communication. *New section 147B* clarifies that the rules of a society registered under Part 2 of the Act or the rules of a credit union may permit voting by its members by post or electronic means or by proxy.

Clause 168 amends section 151 in consequence of the amendments made by *clauses 160 and 161*.

Clause 169 amends section 152 in consequence of the amendments made by *clauses 155 and 161*.

Clauses 170 to 173 make amendments to sections 154 to 157 in consequence of the amendment made by *clause 131*.

Clause 174 inserts *new Schedule 1AA*, which is set out in *Schedule 2* of the Bill. *New Schedule 1AA* contains transitional, savings, and related provisions that apply to credit unions (including associations of credit unions) that are registered under Part 3 of the Act immediately before the amendments made by *clauses 121, 123, 128 to 166, 168 to 173, and 175 to 177* come into force. All these amendments are connected (directly or indirectly) with the incorporation of credit unions (*see notes above on clause 131*). In general terms, the following rules apply to existing credit unions:

- the amendments in question do not apply immediately to existing credit unions:
- existing credit unions have 6 months to apply for incorporation under the new provision:
- the amendments in question apply to an existing credit union after it has been incorporated following its application for incorporation under the new provision:

- an existing credit union that fails to apply for incorporation under the new provision within the 6-month period, or whose application is refused where the refusal is not overruled on appeal, loses its registration.

New Schedule 1AA also contains provision for the undertaking of an existing credit union to be transferred to the new body corporate when the credit union is incorporated.

Clause 175 makes consequential amendments to Schedule 4.

Clause 176 makes a consequential amendment to the Insurance (Prudential Supervision) Act 2010.

Clause 177 makes a consequential amendment to the Financial Reporting Act 2013.

Subpart 10—Insolvency Act 2006

Clause 178 provides that *subpart 10* amends the Insolvency Act 2006.

Clause 179 amends section 228, which requires the Assignee to prepare a final statement of receipts and payments at the completion of the bankruptcy process. The amendment removes the requirement for the statement to be published and makes other minor adjustments.

Clause 180 replaces section 348 to extend the circumstances in which the Assignee may terminate the appointment of the supervisor of a summary instalment order.

Clause 181 makes amendments to section 350 that are related to the amendment made by *clause 182*.

Clause 182 inserts *new section 350A* to give the Assignee a new power to cancel a summary instalment order in certain circumstances. *Clauses 183 and 184* make related amendments to sections 352 and 355.

Clause 185 repeals section 365, which requires the Assignee to send a summary of a debtor's assets and liabilities to each known creditor if the debtor applies for entry to the no asset procedure. *Clause 186* makes a related amendment to section 367.

Clause 187 amends section 408 to clarify that the Assignee is not obliged to apply to the court for a release order at the end of the bankruptcy process.

Clause 188 amends Schedule 1 to clarify that the Assignee has the power to challenge the existence or terms of a trust, even if the bankrupt could not have done so and even if the bankrupt is a settlor, trustee, or beneficiary of the trust.

Clause 189 amends the Insolvency (Personal Insolvency) Regulations 2007 in consequence of the amendment made by *clause 179*.

Subpart 11—New Zealand Superannuation and Retirement Income Act 2001

Clause 190 provides that *subpart 11* amends the New Zealand Superannuation and Retirement Income Act 2001.

Clause 191 amends section 83 to confer additional functions on the Retirement Commissioner.

Subpart 12—Takeovers Act 1993

Clause 192 provides that *subpart 12* amends the Takeovers Act 1993. Currently, under the takeovers code, a director of a target company or a target company itself may recover expenses that the director or target company incurs in connection with a takeover offer. The amendments made by *clauses 193 to 195* move this entitlement into the Act and give the Takeovers Panel the function of determining the amount of expenses that are recoverable if the parties in question cannot agree the expenses.

Clause 196 amends the Takeovers Code Approval Order 2000 to remove from the takeovers code the entitlement to recover expenses referred to above.

Part 3

Communications

Clause 197 provides that *Part 3* amends the Postal Services Act 1998.

Clause 198 replaces the definition of letter in section 2. The new definition includes dimensions and weight. A letter is no longer defined by reference to a maximum charge that is made for carrying, taking charge of, or sending it.

Part 4

Energy and Resources

Subpart 1—Energy Efficiency and Conservation Act 2000

Clause 199 provides that *subpart 1* amends the Energy Efficiency and Conservation Act 2000.

Clause 200 repeals section 37, which relates to incorporation of material by reference.

Subpart 2—Gas Act 1992

Clause 201 provides that *subpart 2* amends the Gas Act 1992.

Clause 202 replaces the definition of gas distributor. The amendments made by the Gas Amendment Act 2012 linked the definition to line function services supplied by means of a distribution system. The replaced definition in this Bill ensures that line function services supplied by any other means (eg, by gas transmission pipelines) are also covered by the definition.

Clause 203 enables the Minister of Consumer Affairs, rather than the Minister of Energy and Resources, to recommend regulations exempting any class of industry participants from the need to be a member of the dispute resolution scheme. Currently, the Gas Act 1992 contains powers for the Minister of Consumer Affairs to issue individual exemption notices.

Clause 204 relates to the previous amendment. Regulations exempting any class of industry participants from the need to be a member of the dispute resolution scheme will cease to be gas governance regulations made under section 43S of the Gas Act 1992.

Hon Steven Joyce

Regulatory Systems Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Regulatory Systems Amendment Act **2015**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, with the following exception.
- (2) **Subpart 9 of Part 2** comes into force as follows:
 - (a) **sections 120, 124 to 127, and 167** come into force on the day after the date on which this Act receives the Royal assent:
 - (b) the rest of the **subpart** comes into force on the earlier of the following days:
 - (i) a date appointed by the Governor-General by Order in Council:

- (ii) the date immediately after the expiry of the period of 18 months that commences on the date on which this Act receives the Royal assent.

Part 1

Building and Housing

Subpart 1—Building Act 2004

3 Principal Act

This subpart amends the Building Act 2004 (the **principal Act**).

4 Section 12 amended (Role of building consent authority and territorial authority)

In section 12(2)(c), replace “Schedule 1” with “clause 2 of Schedule 1”.

5 Section 96 amended (Territorial authority may issue certificate of acceptance in certain circumstances)

- (1) In section 96(1)(c), replace “; or” with “.”
- (2) Repeal section 96(1)(d).

6 Section 177 amended (Application for determination)

In section 177(3)(c), replace “paragraph (k) of Schedule 1” with “clause 2 of Schedule 1”.

7 Consequential amendments to Building Amendment Act 2012

- (1) This section amends the Building Amendment Act 2012.
- (2) In section 38(1),—
 - (a) replace “and (d)(iii) are” with “is”; and
 - (b) delete “in each case”.
- (3) After section 38(1), insert:
- (1A) In section 96(1)(c), replace “.” with “; or”.
- (4) Repeal section 38(2).
- (5) In section 38(3), replace “(e)” with “(d)”.

Subpart 2—Unit Titles Act 2010

8 Principal Act

This subpart amends the Unit Titles Act 2010 (the **principal Act**).

9 Section 4 amended (Overview)

In section 4(1)(l), after “transitional provisions” insert “(see also **Schedule 1AA** for further transitional provisions)”.

10 Section 5 amended (Interpretation)

- (1) In section 5(1), replace the definition of **body corporate operational rules** with:

body corporate operational rules, in relation to a particular body corporate, means the rules that apply to that body corporate under **section 105(2)** as altered from time to time by the body corporate under **section 105(3)**

- (2) In section 5(1), replace the definition of **ownership interest** and **proposed ownership interest** with:

ownership interest, in relation to a particular unit, means the ownership interest assigned to that unit (*see*, for example, section 38)

- (3) In section 5(1), replace the definition of **proposed ownership interest** with:

proposed ownership interest, in relation to a particular proposed principal unit or proposed accessory unit, means the proposed ownership interest assigned to that unit (*see*, for example, section 38)

- (4) In section 5(1), replace the definition of **utility interest** with:

utility interest, in relation to a particular unit, means the utility interest assigned to that unit (*see*, for example, section 39)

11 Section 6 amended (Meaning of control period)

In section 6(2)(a)(ii), replace “fixed” with “assigned”.

12 Section 7 amended (Meaning of principal unit)

Replace section 7(1) with:

- (1) In this Act, **principal unit** means a unit—
- (a) that is designed for use (whether in conjunction with any accessory unit or not) as a place of residence or business or for any other use of any nature, and that is shown on a unit plan as a principal unit; and
 - (b) that—
 - (i) contains a building or part of a building or is contained in a building (although the unit may or may not be bounded by the physical dimensions of the building); or
 - (ii) is 1 or more car parks.

13 New section 9A inserted (Transitional, savings, and related provisions)

After section 9, insert:

9A Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1AA** have effect according to their terms.

14 Section 15 amended (Relationship with Public Works Act 1981)

- (1) In section 15(2), replace “proclamation” with “Proclamation”.
- (2) Replace section 15(3) with:
- (3) Subsection (4) applies if—
 - (a) an estate or interest in land in a unit title development is acquired under the Public Works Act 1981 (whether by Proclamation or otherwise); and
 - (b) in respect of the transfer of that estate or interest, this Act requires a new unit plan, or an amendment to a unit plan, to be deposited.
- (3) In section 15(4), replace “If the body corporate requests in writing, the authority” with “The authority”.
- (4) In section 15(5), replace “a proclamation under the Public Works Act 1981” with “an acquisition under the Public Works Act 1981, whether by Proclamation or otherwise.”

15 Section 32 amended (Restrictions on deposit of unit plans)

- (1) In section 32(2)(b), replace “fixed under section 38” with “assessed under **section 38(2)**”.
- (2) Repeal section 32(3)(b).

16 Section 38 amended (Ownership interest)

- (1) Replace section 38(1) and (2) with:
 - (1) Before a unit plan is deposited under section 17(1), 21(1), or 24(2)(a), the registered proprietor or owner (as the case may be) must assign—
 - (a) an ownership interest to every principal unit and every accessory unit; and
 - (b) a proposed ownership interest to every proposed principal unit and every proposed accessory unit.
 - (2) The ownership interest or proposed ownership interest assigned to a unit is that assessed by a registered valuer on the basis of the value of the unit relative to each other unit and shown on the documentation required to be lodged—
 - (a) with the unit plan (in the case of a unit plan deposited under section 17(1) or 21(1)); or
 - (b) with the proposed unit development plan (in the case of a stage unit plan or complete unit plan deposited under section 24(2)).
- (2) Replace section 38(6) with:

- (6) After a unit plan is deposited, the ownership interest or proposed ownership interest of a unit may be reassessed, and the new interest assigned to the unit, as set out in this Act.

17 Section 39 amended (Utility interest (other than for future development units))

Replace section 39(1) and (2) with:

- (1) Before a unit plan is deposited under section 17(1), 21(1), or 24(2)(a), the registered proprietor or owner (as the case may be) must assign a utility interest to every principal unit and every accessory unit.
- (2) The utility interest assigned to a unit is the same as the ownership interest assessed for the unit under **section 38(2)**.
- (2A) Alternatively, the registered proprietor or owner may assign to a unit a different utility interest if that different utility interest is—
- (a) fair and equitable, in the view of the registered proprietor or owner, having regard to the relevant benefits and the costs to units; and
 - (b) shown on the documentation lodged with the unit plan.

18 Section 40 amended (Utility interest for future development unit)

Replace section 40(1) and (2) with:

- (1) As soon as a future development unit is in use as a place of residence or business or otherwise, the registered proprietor, owner, or body corporate (as the case may be) must assign a deemed utility interest to that unit.
- (2) The deemed utility interest assigned to the future development unit is the total of all the proposed ownership interests assigned to the proposed principal units and proposed accessory units in the future development unit under section 38.
- (2A) Alternatively, the body corporate (if any) may assess and assign the first deemed utility interest for a future development unit by special resolution at a general meeting under section 41 (with all necessary modifications).

19 New cross-heading above section 41 inserted

After section 40, insert:

Reassessment

20 Section 41 amended (Reassessment of ownership interest and utility interest)

- (1) Replace section 41(1) with:
- (1) A body corporate may, by special resolution at a general meeting, decide to reassess the ownership interest or utility interest, or both, for each unit and assign to each unit the new interest or interests.
- (2) Repeal section 41(2).

- (3) Replace section 41(3) to (6) with:
- (3) However, a decision by the body corporate under **subsection (1)** may only be made if—
- (a) at least 36 months have passed—
 - (i) since the date of deposit of the unit plan; and
 - (ii) since the effective date of the last reassessment (if any) of the relevant interest or interests; or
 - (b) the reassessment is for the purpose of the deposit of a unit plan to subdivide a unit in the unit title development to create a subsidiary unit title development.
- (3A) **Subsections (1) and (3)** do not prevent an assessment or a reassessment contemplated under another section of this Act (*see*, for example, section 177).
- (4) A reassessment under **subsection (1)** takes effect, and the new interest or interests are assigned to each unit, on the earlier of—
- (a) the date (if any) determined as part of the special resolution under **subsection (1)**; or
 - (b) the date of the valuer’s assessment.
- (5) Any reassessment of the ownership interest of a unit must be made by a registered valuer assessing the value of each of the units relative to each other.
- (5A) A reassessment of the utility interest may be made by the body corporate on a fair and equitable basis, having regard to the relevant benefits and the costs to units.
- (6) If, as a result of a reassessment, a utility interest is to be assigned other than on the basis of the value of the unit relative to each other unit, the body corporate must, by special resolution, approve the method of apportionment of the utility interest.

21 Section 42 amended (Registrar to be notified of reassessment)

Replace section 42(2) with:

- (2) The Registrar must record the new ownership interest or utility interest, or both, assigned to each unit.

22 Section 48 amended (Noting of subsidiary unit title development)

- (1) In section 48(a), replace “; and” with “.”.
- (2) Repeal section 48(b).

23 Section 56 amended (Sale, lease, or licence of common property)

Replace section 56(7) with:

- (7) Proceeds distributed to the unit owners under subsection (6) must be distributed in shares proportional to their ownership interest (including any proposed

ownership interest) at the date the payment giving rise to the proceeds fell due under the terms of the sale, lease, or licence.

24 Section 58 amended (Additions to common property)

In section 58(1)(c), replace “either—” with “either,—”.

25 Section 62 amended (Powers of body corporate in respect of easements and covenants over or for benefit of common property)

(1) Replace section 62(1) with:

(1) The body corporate may, after a special resolution to do so, grant an easement or enter into a covenant over the whole or any part of the common property.

(2) In section 62(3)(b), delete “for the benefit of any unit or any other land”.

26 Section 63 amended (Ability of owner of unit in respect of easements and covenants)

(1) In section 63(2), delete “, for the benefit of other land,”.

(2) In section 63(3)(b), delete “for the benefit of other land”.

27 Section 65 amended (Redevelopment requiring amendment to unit plan)

Replace section 65(1) with:

(1) This section applies if a redevelopment consists solely of the adjustment of the boundary between 1 or more units shown on a unit plan but the adjustment does not—

(a) affect the common property; or

(b) materially affect the use, enjoyment, or ownership interest of any unit the boundary of which is not being adjusted; or

(c) change the number of units.

28 Section 67 amended (Deposit of amendment to unit plan)

In section 67(1)(b)(i), replace “determining the ownership interest of” with “showing the ownership interest assessed for”.

29 Section 69 amended (Requirements for new unit plan under section 68)

(1) In section 69(3), replace “registered valuer—” with “registered valuer,—”.

(2) In section 69(3)(b), replace “reassessing the ownership interests of” with “showing the ownership interests reassessed for”.

(3) Replace section 69(4) with:

(4) A reassessment of ownership interests for the purpose of subsection (3)(b) must be made by the registered valuer assessing the value of each of the units relative to each other.

(4) In section 69(5), replace “reassess” with “assess”.

30 Section 84 amended (Powers and duties of body corporate)

- (1) Replace section 84(1)(a) with:
 - (a) sections 40 to 42 (which relate to the assignment and reassessment of ownership interests and utility interests):
- (2) In section 84(1)(g), replace “section 105(3)” with “**section 105(4)**”.

31 New section 89A inserted (Requirement for extraordinary general meeting: request by unit owners of not less than 25% of principal units)

After section 89, insert:

89A Requirement for extraordinary general meeting: request by unit owners of not less than 25% of principal units

- (1) This section applies if the chairperson receives a notice that—
 - (a) asks for an extraordinary general meeting to consider and decide motions proposed in the notice; and
 - (b) is signed by or for the unit owners of not less than 25% of the principal units.
- (2) The extraordinary general meeting must be held not later than 3 weeks after the date the notice is received.

32 Section 90 amended (Who may call general meetings)

- (1) In the heading to section 90, replace “**Who may call**” with “**Notice of**”.
- (2) Replace section 90(2) with:
 - (2) An extraordinary general meeting of a body corporate to which **section 89A** applies must be called by the chairperson—
 - (a) by the date that is 5 working days after the date that the chairperson receives the notice; and
 - (b) in accordance with the regulations.
 - (3) An extraordinary general meeting of a body corporate may be called at any other time by the chairperson or the body corporate committee in accordance with the regulations.

33 Section 105 replaced (Body corporate operational rules)

Replace section 105 with:

105 Body corporate operational rules

- (1) Every body corporate must have, at all times, body corporate operational rules.
- (2) The first body corporate operational rules that apply to a particular body corporate are—
 - (a) the rules prescribed by regulations made under section 217(i); or

- (b) if the original owner lodges altered rules for deposit with the unit plan, those altered rules.
- (3) The body corporate may amend, revoke, or make additions to the body corporate operational rules at any time after the date that the unit plan is deposited (*see* section 106).
- (4) The body corporate operational rules are binding on—
 - (a) the body corporate; and
 - (b) the owners of principal units; and
 - (c) any person who occupies a principal unit; and
 - (d) any mortgagee who is in possession of a principal unit.
- (5) For the purpose of **subsection (4)**, **principal unit** includes a future development unit.

34 Section 107 amended (Conflict between body corporate operational rules)

In section 107(2), replace “in accordance with section 105” with “in accordance with **section 105(3)**”.

35 Section 108 amended (Delegation of duties and powers)

In section 108(2)(c), replace “section 105(3)” with “**section 105(4)**”.

36 Section 163 amended (Implied guarantee by unit owners)

In section 163(4)(b), replace “; and” with “; or”.

37 Section 165 amended (Lessor may apply for appointment of administrator or cancellation of unit plan)

In section 165(3)(b), after “section 189” insert “(other than subsection (2))”.

38 Section 167 replaced (Renewal or expiry of lease and purchase of reversionary interest)

Replace section 167 with:

167 Variation of lease, renewal or expiry of lease, or purchase of reversionary interest

- (1) The body corporate may, by special resolution,—
 - (a) agree to vary the lease (and agree the terms of the variation):
 - (b) in the case of a lease that gives the lessee a right of renewal or extension of the lease, exercise the renewal or extension (and agree the terms applying):
 - (c) in the case of a lease that gives the lessee an option to purchase the reversionary estate in the base land, exercise the option (and agree the terms of the purchase).

- (2) Sections 212 to 216 (which provide for an objection process) apply to a resolution under **subsection (1)(a) or (c)**.
- (3) None of the following has the effect of terminating the unit title development, merging any estate, or discontinuing any easement, covenant, or other registered interest:
 - (a) a variation of lease by agreement:
 - (b) the exercise of a right of renewal or extension of lease:
 - (c) the exercise of an option to purchase the reversionary estate in the base land.

39 Section 169 amended (Merger)

Replace section 169(2) to (5) with:

- (2) If the lessor has purchased or acquired the stratum estates in leasehold in all the units shown on the plan, those estates do not merge with the lessor's reversionary estate in the base land unless and until—
 - (a) the base land is free from all registered interests other than easements or covenants and there are no caveats or notices of claim entered on the register over the whole or any part of the base land; and
 - (b) the lessor deposits with the Registrar a declaration that it is his or her intention that such a merger should occur.
- (3) If all the owners of all the units shown on the plan have purchased or acquired the reversionary estate in the whole of the base land, that estate does not merge with the stratum estates in leasehold in these units unless and until—
 - (a) that reversionary estate is purchased or acquired by those owners in shares proportional to the ownership interest of their respective units; and
 - (b) the base land is free from all registered interests other than easements or covenants and there are no caveats or notices of claim entered on the register over the whole or any part of the base land; and
 - (c) the registered owners deposit with the Registrar a declaration that it is their intention that a merger should occur.
- (4) The effect of a merger is as follows:
 - (a) if the lessor has purchased or acquired the stratum estates in leasehold in all of the units shown on the plan, the stratum estate in freehold in each of the units vests in the lessor:
 - (b) if all the registered owners of the stratum estates in leasehold in all of the units shown on the plan have purchased or acquired the reversionary estate in the base land, the stratum estate in freehold in each of the units vests in the person who immediately before the merger was the owner of that unit:

- (c) the lease is extinguished;
 - (d) any easement or covenant of a kind to which section 62 applies continues, and any sublease of the common property continues as a lease, over the whole or part of the common property of the freehold unit title development;
 - (e) any registered interest, and any caveat or notice of claim existing on a computer register for the stratum estate in leasehold in a unit, continues over the whole or part of the stratum estate in freehold in the unit.
- (5) On the deposit of any declaration under **subsection (2)(b) or (3)(c)**, the Registrar, if satisfied that the stratum estates in leasehold in all of the units shown on the plan have merged under the provisions of this section with the reversionary estate in the base land, must—
- (a) note on the supplementary record sheet a memorial of the merger; and
 - (b) enter on the existing computer register for the base land a memorial of the merger; and
 - (c) cancel the existing computer register in respect of the stratum estate in leasehold in each of the units and create a computer register in respect of the stratum estate in freehold in each of the units to the person entitled to it in accordance with **subsection (4)(a) or (b)**; and
 - (d) in the case of any registered interest, caveat, or notice of claim existing on a computer register for the stratum estate in leasehold in a unit immediately before cancellation, enter that registered interest, caveat, or notice of claim on the new computer register for the stratum estate in freehold for that unit; and
 - (e) cancel the existing computer register for the base land.
- (6) The merger has no effect on any easement or covenant to which the base land is subject or on any easement or covenant that is appurtenant to the base land.
- (7) Sections 60 and 61 apply to any easements and covenants referred to in **subsection (6)** (with all necessary modifications).

40 Section 177 amended (Application by body corporate for cancellation of unit plan)

- (1) Replace section 177(3) with:
- (3) Before making an application under subsection (1), the body corporate—
 - (a) must agree by special resolution to the cancellation; and
 - (b) must—
 - (i) arrange for an assessment of the ownership interests and proposed ownership interests (if any) of all the units in the unit title development by a registered valuer; or

- (ii) decide, by special resolution setting out the reason for the decision, not to reassess the ownership interests and proposed ownership interests (if any).

Example

The special resolution records that a body corporate has decided not to reassess the ownership interests and proposed ownership interests on the basis that these were recently reassessed for all units.

- (2) In section 177(5)(b), replace “resolution” with “resolution under **subsection (3)(a)**”.
- (3) In section 177(6), replace “In addition” with “In relation to the resolution under **subsection (3)(a)**, in addition”.
- (4) Replace section 177(7) with:
- (7) The application for cancellation of the unit plan must be accompanied by—
 - (a) a certificate from a registered valuer showing the ownership interests and proposed ownership interests (if any) reassessed for all the units in the unit title development; or
 - (b) the certificate required under section 216 in relation to the resolution under **subsection (3)(b)(ii)**.

41 Section 180 amended (Effect of cancellation of unit plan—standard unit title development or head unit title development)

In the heading to section 180, replace “—” with “: ”.

42 Section 182 amended (Effect of cancellation of stage unit plan)

In section 182(4), replace “, assessed as required by section 177(7),” with “(as reassessed if **section 177(7)(a)** applies)”.

43 Section 183 amended (Extinguishment of registered interests, etc)

Replace section 183(1) with:

- (1) This section applies if an application is made under section 177 and the Registrar has received a certificate or certificates from the body corporate that comply with the requirements of sections 177(6) **and (7)** and 216.

44 Section 189 amended (Cancellation of plan following decision of High Court)

- (1) In section 189(2), delete “, within 6 months after the date of the declaration,”.
- (2) Replace section 189(3) with:
- (3) The application—
 - (a) must be in the prescribed form; and

- (b) must be accompanied by or have lodged in support of it a copy of every declaration or order made by the High Court under section 188 in relation to the body corporate or unit plan; and
 - (c) must be accompanied by a certificate given by the applicant or the applicant's successor in title certifying that all conditions and directions imposed or given by the High Court have been complied with.
- (3) After section 189(5)(a), insert:
- (aa) the application must be accompanied by a certificate from a registered valuer showing the ownership interests and proposed ownership interests (if any) reassessed for all the units in the unit title development, unless the High Court directs otherwise:
- (4) In section 189(5)(b), replace “sections 177(7), 180,” with “sections 180,”.

45 Section 212 amended (Designated resolutions)

- (1) After section 212(i), insert:
- (ia) variations of leases under **section 167(1)(a)**:
- (2) In section 212(j), replace “section 167(3)” with “**section 167(1)(c)**”.
- (3) After section 212(k), insert:
- (l) not reassessing the ownership interests and proposed ownership interests (if any) before applying, under section 177, for cancellation of a unit plan.

46 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

47 Schedule 2 amended

- (1) In Schedule 2, repeal the item relating to section 65(1)(b).
- (2) In Schedule 2, after the item relating to new section 84A, insert:

Section 89A

Replace this section with:

89A When extraordinary general meeting is required

- (1) This section applies if the chairperson receives a notice that—
- (a) asks for an extraordinary general meeting to consider and decide motions proposed in the notice; and
 - (b) in the case of—
 - (i) a timeshare resort comprising both timeshare units and principal units that are not timeshare units, is signed by or for not less than

Section 89A—continued

- 20% of the timeshare owners and by or for the unit owners of not less than 20% of the non-timeshare units; or
- (ii) a timeshare resort comprising timeshare units only, is signed by or for the timeshare unit owners of not less than 20% of the timeshare units.
- (2) The extraordinary general meeting must be held not later than 3 weeks after the date the notice is received.
- (3) In Schedule 2, repeal the item relating to section 90.

Part 2**Commerce and Consumer Affairs****Subpart 1—Building Societies Act 1965****48 Principal Act**

This subpart amends the Building Societies Act 1965 (the **principal Act**).

49 Section 103 amended (Duty to make annual return)

- (1) In section 103(2), delete “, and must be signed by 2 of the directors and by the manager or secretary of the society”.
- (2) After section 103(2), insert:
- (2A) The annual return must be signed by—
- (a) the manager or secretary of the society; and
- (b) a second person who is authorised to sign by the directors of the society and who is any of the following:
- (i) a director of the society;
- (ii) a qualified statutory accountant (as defined in section 5(1) of the Financial Reporting Act 2013);
- (iii) a lawyer (as defined in section 6 of the Lawyers and Conveyancers Act 2006).

50 Section 104 repealed (Annual return to disclose loans or other investments to certain officers or companies)

Repeal section 104.

Subpart 2—Commerce Act 1986**51 Principal Act**

This subpart amends the Commerce Act 1986 (the **principal Act**).

52 Section 6C repealed (Application of Evidence Amendment Act 1980)

Repeal section 6C.

53 Section 53ZE amended (Levies)

- (1) In section 53ZE(2)(a), after “costs”, insert “for an appropriation period”.
- (2) In section 53ZE(2)(e), replace “financial year” with “appropriation period” in each place.
- (3) In section 53ZE(2)(g), replace “financial year” with “appropriation period”.
- (4) In section 53ZE(2)(g)(i), replace “year” with “period”.
- (5) In section 53ZE(2)(h), replace “a financial year or part financial year” with “an appropriation period or a part appropriation period”.
- (6) In section 53ZE(2)(h), replace “that financial year” with “that appropriation period”.
- (7) After section 53ZE(2), insert:
 - (2A) In subsection (2), **appropriation period**, in relation to any estimated costs, means—
 - (a) a financial year; or
 - (b) if the estimated costs will be incurred under the authority of a multi-year appropriation or of a multi-year appropriation proposed in any Estimates, the financial years to which the multi-year appropriation applies.
 - (2B) In **subsection (2A)(b)**,—

Estimates—

 - (a) has the meaning given in section 2(1) of the Public Finance Act 1989; and
 - (b) includes Supplementary Estimates as defined in section 2(1) of that Act

multi-year appropriation means an appropriation authorised to apply for more than 1 financial year (*see* section 10 of the Public Finance Act 1989).

54 Section 77 amended (Additional lay members of High Court for purposes of appellate jurisdiction in respect of Commission determinations)

Replace section 77(1) with:

- (1) This section applies for the purposes of the exercise by the court of its jurisdiction and powers under sections 91 to 97.
- (1A) There are to be lay members of the court appointed from time to time by the Governor-General.

Subpart 3—Companies Act 1993

55 Principal Act

This subpart amends the Companies Act 1993 (the **principal Act**).

56 Section 3 amended (Public notice)

In section 3(3), after “328(3)(a),”, insert “**341(4)(b)**,”.

57 Section 12 amended (Application for registration)

- (1) Repeal section 12(2)(b)(iii).
- (2) After section 12(2), insert:
- (3) If no directors of the proposed company live in New Zealand, the application must, in relation to at least 1 director who lives in an enforcement country,—
 - (a) confirm that the director is a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country; and
 - (b) include the prescribed information in respect of that company.

58 Section 80 amended (Financial assistance not exceeding 5% of shareholders’ funds)

- (1) Replace section 80(1)(b) with:
 - (b) within 10 working days of providing the financial assistance, the company sends a notice containing the particulars set out in **subsection (1B)** to—
 - (i) each licensed market on which the shares of the company are quoted; or
 - (ii) each shareholder of the company, if the shares of the company are not quoted on any licensed market.
- (2) After section 80(1A), insert:
- (1B) The particulars referred to in **subsection (1)(b)** are as follows:
 - (a) the class and number of shares in respect of which the financial assistance has been provided;
 - (b) the consideration paid or payable for the shares in respect of which the financial assistance has been provided;
 - (c) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner;
 - (d) the nature and, if quantifiable, the amount of the financial assistance.

59 Section 200 amended (Application of preparation provisions)

After section 200(2), insert:

- (3) Further, section 201 does not apply to a company or an overseas company (A) in relation to a balance date if,—

- (a) on the balance date, A has no subsidiaries but is a subsidiary of a body corporate that is incorporated in New Zealand (**B**); and
- (b) group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed in relation to the balance date under this Act or any other enactment.

60 Section 231 replaced (Variation of compromise)

Replace section 231 with:

231 Variation of compromise

- (1) A compromise approved under section 230 may include a procedure for its variation.
- (2) If it does, any variation made in accordance with the procedure must be notified to the Registrar and can have no effect before that happens.
- (3) A compromise approved under section 230 may also be varied by the approval of a variation in accordance with this Part which, for that purpose, applies with any necessary modifications as if the proposed variation were a proposed compromise.
- (4) The provisions of this Part apply to any compromise that is varied in accordance with a procedure for its variation permitted by **subsection (1)** or that is varied in accordance with **subsection (3)**.

61 Section 341 amended (Overseas company ceasing to carry on business in New Zealand)

After section 341(2), insert:

- (3) The Registrar may (in any event) remove an overseas company from the overseas register if satisfied that it has ceased to carry on business in New Zealand.
- (4) Before an overseas company can be removed from the overseas register under **subsection (3)**, the Registrar must—
 - (a) give notice to the overseas company—
 - (i) that the Registrar intends to remove the overseas company from the overseas register under **subsection (3)**; and
 - (ii) that the overseas company may, within 20 working days after the date of the notice, deliver to the Registrar an objection to its removal on the ground that it is still carrying on business in New Zealand; and
 - (b) give public notice—
 - (i) that the Registrar intends to remove the overseas company from the overseas register under **subsection (3)**; and

- (ii) that any person may, within 20 working days after the date of the public notice, deliver to the Registrar an objection to the overseas company's removal on the ground that the overseas company is still carrying on business in New Zealand.
- (5) If any person objects to the removal of the overseas company as referred to in **subsection (4)(a)(ii) or (b)(ii)**, the Registrar must not proceed with the removal unless the Registrar is satisfied that—
- (a) the objection has been withdrawn; or
 - (b) the facts on which the objection is based are not, or are no longer, correct; or
 - (c) the objection is frivolous or vexatious.

62 Section 395 amended (Regulations)

In section 395(1)(bb), replace “12(2)(b)(iii)” with “**12(3)(b)**”.

63 Schedule 4 amended

In Schedule 4, replace paragraph (ga) with:

- (ga) in relation to at least 1 director of the company who lives in an enforcement country, the prescribed information in respect of 1 company that is registered (except as the equivalent of an overseas company) in that enforcement country and of which the director is a director (but this paragraph applies only if no directors of the company live in New Zealand):

64 Schedule 7 amended

In Schedule 7, clause 3(2)(b), replace “3” with “4”.

Subpart 4—Fair Trading Act 1986

65 Principal Act

This subpart amends the Fair Trading Act 1986 (the **principal Act**).

66 Section 15 amended (Limited application of sections 9 to 14 to news media)

- (1) In section 15(2), replace “broadcasting body” with “broadcaster” in each place.
- (2) Replace section 15(3)(a) with:
 - (a) **broadcasting** and **broadcaster** have the same meanings as in section 2(1) of the Broadcasting Act 1989

67 Section 48P amended (Proceedings relating to financial products or financial services)

In section 48P(6), replace the definition of **financial service** with:

financial service—

- (a) has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and
- (b) includes a market service within the meaning of section 6(1) of the Financial Markets Conduct Act 2013; but
- (c) does not include, in relation to any provision of sections 9 to 13, any class or classes of services declared by regulations made under section 548(1)(d)(ii) of the Financial Markets Conduct Act 2013 not to be financial services for the purposes of the provision of Part 2 of that Act that corresponds to that provision of this Act

Subpart 5—Financial Advisers Act 2008

68 Principal Act

This subpart amends the Financial Advisers Act 2008 (the **principal Act**).

69 Section 101 amended (Disciplinary committee may discipline authorised financial adviser for breach of code)

After section 101(4), insert:

- (4A) A fine imposed under subsection (3)(g) is recoverable in any court as a debt due to the FMA.

Subpart 6—Financial Markets Authority Act 2011

70 Principal Act

This subpart amends the Financial Markets Authority Act 2011 (the **principal Act**).

71 Schedule 1 amended

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Secret Commissions Act 1910

Subpart 7—Financial Markets Conduct Act 2013

72 Principal Act

This subpart amends the Financial Markets Conduct Act 2013 (the **principal Act**).

73 Section 6 amended (Interpretation)

- (1) In section 6(1), definition of **disclosure document**, paragraph (b), replace “a disclosure document” with “a limited disclosure document”.
- (2) In section 6(1), insert in its appropriate alphabetical order:

limited disclosure document or **LDD**, in relation to an offer referred to in clause 26(1) of Schedule 1, means a limited disclosure document for the offer required by regulations made for the purposes of that clause

- (3) In section 6(1), replace the definition of **register entry** with:

register entry,—

- (a) in relation to a regulated offer, means the entry for the offer in the register of offers of financial products:
- (b) in relation to an offer referred to in clause 26(1) of Schedule 1, means the entry for the offer in the register of offers of financial products that is required by regulations made for the purposes of that clause

74 Section 13 amended (Miscellaneous interpretation provisions relating to statements and information)

In section 13(1), after “In this Act”, insert “and the regulations”.

75 Section 95 amended (Duty to notify changes to Registrar)

Replace section 95(1) and (2) with:

- (1) An issuer of regulated products must notify the Registrar of a prescribed change within the prescribed period.

- (2) In this section,—

prescribed change, in respect of regulated products,—

- (a) means a prescribed change that relates to the issuer, any offeror of those products, the regulated products, or any registered scheme to which those products relate; but
- (b) does not include a change in respect of which the FMA is required to notify the Registrar (for example, an order made under subpart 1 of Part 8)

prescribed period, in respect of a prescribed change, means—

- (a) the period (if any) that is prescribed in respect of the change; or
- (b) 5 working days after the issuer becomes aware of the change (if **paragraph (a)** does not apply).

76 Section 96 amended (Information to be made available to investors or other prescribed persons)

In the heading to section 96, after “investors”, insert “, FMA, Registrar,”.

77 Section 97 amended (Information to be made publicly available)

In section 97, insert as subsections (2) and (3):

- (2) An issuer commits an offence and is liable on conviction to a fine not exceeding \$50,000 if—

- (a) the regulations made for the purposes of this section require the issuer to make information publicly available by lodging that information with the Registrar; and
 - (b) the issuer contravenes this section by failing to lodge that information with the Registrar in accordance with **subsection (1)**.
- (3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

78 Section 101 amended (Part 3 offer provisions)

- (1) Replace section 101(3)(l) with:
- (l) any provision of regulations made for the purposes of clause 26 of Schedule 1 that is prescribed by the regulations to be a Part 3 offer provision and stated to give rise to civil liability under this subsection:
- (2) After section 101(4)(g), insert:
- (ga) any provision of regulations made for the purposes of clause 26 of Schedule 1 that is prescribed by the regulations to be a Part 3 offer provision and stated to give rise to civil liability under this subsection:
- (3) In section 101(4)(h), replace “deficiencies in disclosure document under clause 26” with “disclosure deficiencies”.

79 Section 131 amended (Additional ongoing registration requirements for restricted schemes)

In section 131(1)(a)(ii), replace “workplace scheme” with “workplace savings scheme”.

80 Section 134 amended (Changes to registration as particular type of registered scheme)

In section 134(1)(b), replace “if the supervisor certifies, or the trustees of a restricted scheme certify,” with “if the supervisor certifies or, if there is no supervisor, the manager certifies”.

81 Section 147 amended (Duty of manager to provide reports to supervisor or FMA)

In section 147, replace “in the case of a restricted scheme” with “if there is no supervisor”.

82 Section 149 amended (Duty of manager to report contravention or possible contravention of issuer obligations)

In section 149(a) and (b), replace “in the case of a restricted scheme” with “if there is no supervisor”.

- 83 Section 165 amended (Changes to statement of investment policy and objectives)**
In section 165(2), replace “to a restricted scheme” with “if the scheme does not have a supervisor”.
- 84 Section 168 amended (Action that must be taken on pricing errors and failure to comply with pricing methodologies)**
In section 168(1)(b)(i), replace “transferred” with “issued”.
- 85 Section 173 amended (General prohibition on transactions giving related party benefits)**
In section 173(4), replace “in the case of a restricted scheme” with “if the registered scheme does not have a supervisor”.
- 86 Section 178 amended (Application of scheme participant transfer rules)**
In section 178(1)(c), replace “only” with “only if”.
- 87 Section 195 amended (Cancellation of registration)**
In section 195(1)(c), replace “if the supervisor certifies, or the trustees of a restricted scheme certify,” with “if the supervisor certifies or, if there is no supervisor, the manager certifies”.
- 88 Section 212 amended (Initial steps in winding up of registered scheme)**
- (1) In section 212(1), replace “the supervisor or (in the case of a restricted scheme) the trustees” with “the supervisor or (if there is no supervisor) the manager”.
 - (2) In section 212(3), replace “trustee” with “manager”.
- 89 Section 213 amended (Winding-up report)**
In section 213(1), replace “or, in the case of a restricted scheme, the persons who were the trustees” with “or, if there was no supervisor, the person who was the manager of the relevant registered scheme”.
- 90 Section 217 amended (Contents of registers)**
After section 217(1), insert:
- (1A) However, a register is not required to contain the information specified in a paragraph in subsection (1) if the circumstances prescribed in respect of that paragraph apply.
- 91 Section 228 amended (Part 4 governance provisions)**
After section 228(4)(w) insert:
- (wa) section 219 (auditor must advise if auditor considers that subpart is not being complied with):

92 Section 247 amended (Exception for disclosure in connection with preparing PDS or disclosure document)

- (1) In the heading to section 247, replace “**disclosure document**” with “**limited disclosure document**”.
- (2) In section 247, replace “disclosure document under clause 26 of Schedule 1” with “limited disclosure document”.

93 Section 314 amended (General obligations in respect of licensed markets)

- (1) Replace section 314(b)(i) with:
 - (i) for notifying disclosures made to it under a disclosure obligation and for continuing to make those disclosures available; and
- (2) In section 314, insert as subsection (2):
 - (2) In **subsection (1)(b)(i), disclosure obligation** means—
 - (a) any provision of subpart 4, 5, or 6 that requires information to be notified or disclosed to a licensed market operator;
 - (b) an alternative disclosure obligation;
 - (c) a provision of this Act or the regulations that requires information to be notified or disclosed to a licensed market operator for the purpose of the information being made available to participants in a licensed market.

94 Section 351 amended (Regulations modifying this Part or Part 7 for licensed markets)

- (1) After section 351(1)(d), insert:
 - (e) providing that issuers of a specified class must not be treated as listed issuers for the purposes of any provision or provisions of this Act or any other specified enactment;
 - (f) providing that, in specified circumstances, financial products must not be treated as quoted financial products for the purposes of any provision or provisions of this Act or any other specified enactment.
- (2) In section 351(3)(b), replace, “.” with “; and”.
- (3) After section 351(3)(b), insert:
 - (c) be satisfied, in relation to any recommendation relating to **subsection (1)(e) or (f)**, that the extent to which the regulations disapply any enactment to issuers or financial products is not broader than is reasonably necessary to address the matters that gave rise to the regulations.

95 Section 372 amended (Transfer of specified financial products by products transfer)

After section 372(2) insert:

- (2A) An indemnity given by the product holder of a financial product to the issuer in respect of any liability of the issuer for the acts, omissions, or obligations of the holder is not a liability for the purpose of subsection (2).

96 Section 397 amended (Procedural requirements)

After section 397(1), insert:

- (1A) The FMA must make a decision under section 396 in the prescribed manner (if any).

97 Section 400 amended (Licence may cover related bodies corporate as authorised bodies)

Replace section 400(1)(c) with:

- (c) there is no reason to believe that the related body corporate is likely to contravene the market services licensee obligations; and

98 New section 426A inserted (Further prescribed information to be made available)

After section 426, insert:

426A Further prescribed information to be made available

- (1) A licensee or an authorised body that provides the service must,—
- (a) at the request of a prescribed person or at the prescribed times or on the occurrence of the prescribed events, make available to the prescribed person the information that is required to be made available under this section by the regulations; and
 - (b) at the prescribed times or on the occurrence of the prescribed events, make publicly available the information that is required to be made publicly available by the regulations.
- (2) The information must be made available in the prescribed manner.

99 Section 427 amended (False or misleading statements and omissions)

- (1) In section 427(1), replace “subsection (5)” with “**subsection (2)**”.
- (2) Replace section 427(2) to (6) with:
- (2) The licensee or authorised body may provide the service to the person if a new disclosure statement is provided to the person that is not defective in terms of subsection (1)(a) and (b).
- (3) A person must not make available to any person or the public any information under **section 426A** (the **further disclosure**) if—
- (a) there is—
 - (i) a statement in the further disclosure that is false or misleading or is likely to mislead; or

- (ii) an omission from the further disclosure of information that is required to be contained in the further disclosure by this Act or the regulations; and
 - (b) the statement or omission is materially adverse from the point of view of a retail investor.
- (4) *See* section 511 (offence to knowingly or recklessly contravene this section).

100 Section 428 replaced (Further prescribed information to be made available)

Replace section 428 with:

428 Miscellaneous provisions relating to false or misleading statements and omissions

- (1) For the purposes of section 427, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.
- (2) **Subsection (1)** does not limit the meaning of a reference to a misleading statement.
- (3) Section 427 does not limit sections 423 to **426A**.

101 Section 448 amended (Regulations regulating holding and application of investor funds and property by derivatives issuers)

In section 448(1)(a), after “receipt of money and property from”, insert “, or on account of,”.

102 Section 449 amended (Part 6 services provisions)

In section 449(4)(g), replace “428” with “**426A**”.

103 Section 461A amended (Financial statements for registered schemes and funds)

In section 461A(2) and (3), replace “balance date of the manager” with “balance date of the scheme”.

104 Section 461H amended (Lodgement of financial statements)

- (1) In section 461H(1), replace “this subpart” with “any of sections 460, 461, and 461B”.
- (2) After section 461H(1), insert:
 - (1A) Every manager of a registered scheme must ensure that, within 4 months after the balance date of the scheme, copies of the financial statements that are required to be prepared under section 461A, together with a copy of the auditor’s report on those statements, are delivered to the Registrar for lodgement.

105 Section 461K amended (FMA reporting entities considered to have higher level of public accountability)

In the heading to section 461K, replace “FMA” with “FMC”.

106 Section 462 amended (When FMA may make stop orders)

In section 462(1)(a), replace “disclosure document under clause 26 of Schedule 1” with “limited disclosure document”.

107 New section 501A inserted (Additional defence for licensees who are treated as contravening)

After section 501, insert:

501A Additional defence for licensees who are treated as contravening

- (1) This section applies if—
 - (a) an authorised body (**A**) contravenes any market services licensee obligation; and
 - (b) a person (**B**) is the licensee who is treated as being in contravention under section 400(3).
- (2) In any proceeding under this subpart against B, it is a defence if B proves that B took all reasonable and proper steps to ensure that A complied with the market services licensee obligation.
- (3) **Subsection (2)** does not limit any defence that B may have under section 499 or 500 (as a person who is treated as contravening a market services licensee obligation).

108 Section 511 amended (Offence of knowingly or recklessly contravening other provisions relating to defective disclosure)

- (1) In section 511(1)(a) and (2)(b)(i), replace “427(1)(a)(i)” with “427(1)(a)(i) or **(3)(a)(i)**”.
- (2) In section 511(1)(b) and (2)(b)(ii), replace “427(1)(a)(ii)” with “427(1)(a)(ii) or **(3)(a)(ii)**”.
- (3) Replace section 511(4)(b) and (c) with:
 - (b) in relation to section 427(1), the act of providing the disclosure statement to a person or supplying the service to a person who was required to be provided, or has been provided, with the disclosure statement:
 - (c) in relation to **section 427(3)**, the act of providing or making available the further disclosure:
 - (d) in relation to clause 27 of Schedule 1, the act of providing the limited disclosure document to a person.

109 Section 534 amended (Directors treated as having contravened in case of defective disclosure or financial reporting contravention)

Replace section 534(1)(d) with:

- (d) an entity that provided a limited disclosure document under clause 26 of Schedule 1 has contravened clause 27 of that schedule (defective disclosure).

110 Section 543 amended (Regulations for purposes of Part 3 (Disclosure of offers of financial products))

- (1) In section 543(1)(c)(i) to (iii), replace “disclosure document” with “limited disclosure document” in each place.
- (2) After section 543(1)(c)(iii), insert:
 - (iiia) requirements relating to an entry for the offer in the register of offers of financial products:
 - (iiib) information that must be provided, the person or persons to whom it must be provided, and other matters relating to the manner in which it is provided:
 - (iiic) limits or restrictions that apply in connection with an offer, financial products, or investors:
- (3) In section 543(1)(c)(vi), replace “(iv) and (v)” with “**(iiia)** to (v)”.
- (4) After section 543(1)(c)(vi), insert:
 - (vii) matters for the purposes of **clause 26(6)** of Schedule 1 (including requirements, conditions, or other matters that an issuer must comply with or ensure are met):
 - (viii) which provisions of the regulations made for the purposes of clause 26 of Schedule 1 (if any) are Part 3 offer provisions for the purposes of this Act and, if a provision is so prescribed, stating whether the provision gives rise to civil liability under section 101(3) or (4) (*see* Part 8, in which Part 3 offer provisions are specified to be civil liability provisions):
- (5) After section 543(1)(c), insert:
 - (ca) providing for matters referred to in **clause 26A** of Schedule 1, including prescribing—
 - (i) provisions of Parts 3 and 4 that apply in connection with an offer of financial products:
 - (ii) the circumstances in which those provisions apply:
 - (iii) modifications, additions, or variations relating to the application of those provisions:
- (6) In section 543(1)(d), after “section 95”, insert “and a period or periods within which those changes must be notified”.

- (7) In section 543(1)(e), delete “the persons who may make a request under section 96, the persons to whom information must be made available under section 96,”.
- (8) After section 543(1)(e), insert:
- (ea) prescribing the persons who may make a request under section 96 and the persons to whom information must be made available under section 96 (for example, investors, a supervisor, the FMA, or the Registrar):
- (9) After section 543(2), insert:
- (3) A time or an event prescribed under subsection (1)(e) in respect of regulated products may be any time, or any event that occurs, on or after the time at which the products are first offered under a regulated offer or otherwise become regulated products (regardless of whether or not the products have been issued).

111 Section 544 amended (Regulations for purposes of Part 4 (governance of financial products))

- (1) After section 544(1)(v)(vi), insert:
- (via) circumstances in which information specified in a paragraph in section 217(1) is not required to be contained in a register:
- (2) In section 544(3), after “(iv),”, insert “**(via)**,”.

112 Section 550 amended (Procedural requirements for regulations relating to exemptions, exclusions, and definitions)

In section 550(2)(b), after “(iv),”, insert “**(via)**,”.

113 Section 556 amended (FMA may grant exemptions)

In section 556(1)(a), after “Parts 2 to 7”, insert “, subpart 8 of Part 8,”.

114 Schedule 1 amended

- (1) In Schedule 1, clause 8(1)(c), delete “to eligible persons”.
- (2) In Schedule 1, clause 8(3), delete “to eligible persons”.
- (3) In Schedule 1, replace clause 8(3)(a) with:
- (a) does not require disclosure under Part 3 of this Act for any reason other than as a result of the application of this clause; or
- (4) In Schedule 1, clause 10(1)(b)(iv) and (v), after “issued”, insert “or transferred” in each place.
- (5) In Schedule 1, after clause 19(1), insert:
- (1A) An offer of options to acquire, by way of issue, financial products (and the offer of those option underlyings) does not require disclosure under Part 3 of this Act if—

- (a) the options and option underlyings are equity securities, debt securities, or managed investment products; and
 - (b) the option underlyings are of the same class as quoted financial products that have been quoted on a licensed market at all times during the 3-month period before the time of the offer; and
 - (c) trading in those quoted financial products on the licensed market on which they are quoted was not suspended for more than a total of 5 trading days during the 3-month period referred to in **paragraph (b)**; and
 - (d) it is a term of the offer that the issuer will take any necessary steps to ensure that, immediately after the option underlyings are issued, the option underlyings are quoted; and
 - (e) the market rules of the licensed market on which the option underlyings are quoted contain continuous disclosure provisions.
- (1B) In this clause, **option underlyings**, in relation to an offer of options, means the underlying financial products to which the options relate.
- (6) In Schedule 1, replace clause 26(2)(a) with:
- (a) B or a prescribed person or both are provided with a limited disclosure document (an **LDD**) that complies with subclause (4); and
 - (aa) the prescribed requirements (if any) relating to an entry for the offer in the register of offers of financial products (a **register entry**) are complied with; and
 - (ab) B or a prescribed person or both are provided with any other prescribed information in the prescribed manner; and
 - (ac) all prescribed limits or restrictions (if any) applying in connection with the offer, the financial products, or the investors are met; and
- (7) In Schedule 1, clause 26(4), replace “disclosure document under subclause (2)(a)” with “LDD”.
- (8) In Schedule 1, clause 26(5), replace “a disclosure document” with “an LDD”.
- (9) In Schedule 1, replace clause 26(6) with:
- (6) The following apply for the purposes of a situation where A is not the issuer of the financial products:
- (a) the issuer must, if required by the regulations, ensure that a requirement, condition, or other matter of a kind referred to in any of **paragraphs (a) to (e) of subclause (2)** is complied with (and the issuer must perform that duty in the prescribed manner);
 - (b) the regulations may provide for a requirement, condition, or other matter of a kind referred to in any of **paragraphs (a) to (e) of subclause (2)** to be complied with by A or the issuer (or both).
- (7) A contravention of a requirement prescribed for the purposes of this clause does not prevent the exclusion referred to in subclause (1) from continuing to

apply (but may give rise to consequences under Part 8 of this Act or an offence under **clause 28A**).

- (10) In Schedule 1, replace clause 27(1) with:
- (1) A person must not provide an LDD to a person if—
- (a) there is—
 - (i) a statement in the LDD, any application form that accompanies the LDD, or the register entry that is false or misleading or is likely to mislead; or
 - (ii) an omission from the LDD or the register entry of information that is required to be contained in the LDD or the register entry by this Act or the regulations; and
 - (b) the matter referred to in **paragraph (a)** is materially adverse from the point of view of an investor.
- (11) In Schedule 1, heading to clause 28, replace “**disclosure document under clause 26**” with “**limited disclosure document**”.
- (12) In Schedule 1, replace clause 28(1)(a) and (b) with:
- (a) a material statement in the LDD or the register entry is false or misleading or is likely to mislead; or
 - (b) there is a material omission from the LDD or the register entry of information that is required to be contained in the LDD or the register entry by this Act or the regulations.
- (13) In Schedule 1, replace clause 28(4) with:
- (4) In this clause, **application period** means the period in which applications for financial products under the LDD may be made.
- (14) In Schedule 1, after clause 28, insert:
- 28A Failure to lodge or give information to Registrar or FMA**
- (1) A person who fails to comply with a requirement under clause 26 to lodge or otherwise give any information or other document to the Registrar or the FMA commits an offence and is liable on conviction to a fine not exceeding \$50,000.
 - (2) The offence in this clause is an infringement offence (*see* subpart 5 of Part 8).

115 Schedule 2 amended

In Schedule 2, clause 13(1), replace “If this Act requires a document or notification to be lodged with or given to the Registrar” with “If a document or notification required by or for the purposes of this Act must or may be lodged with or given to the Registrar”.

116 Schedule 4 amended

- (1) In Schedule 4, after clause 10, insert:

10A Banks' regulatory capital

- (1) This clause applies in respect of convertible securities offered and allotted before the close of the 2-year date (unless the issuer makes an election as referred to in clause 7(3)).
 - (2) Despite clauses 7 and 10,—
 - (a) the former enactments apply, as if this Act had not been enacted, to any offer and allotment of the convertible securities and the specified equity securities to which the convertible securities relate; and
 - (b) an allotment of those specified equity securities may be made before, on, or after the 2-year date; and
 - (c) in the case of a specified equity security that is allotted after the 2-year date, clause 20 applies to the security on and after its allotment.
 - (3) In this clause, **convertible security** and **specified equity security** have the same meanings as in the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014.
- (2) In Schedule 4, after clause 62, insert:

*Transitional provisions relating to Financial Markets Conduct Regulations
2014*

63 Definition

In **clauses 64 to 68, Regulations** means the Financial Markets Conduct Regulations 2014.

64 Certification as to eligible investors under Financial Advisers Act 2008

- (1) This clause applies to a certification referred to in clause 3(4) of Schedule 1 of the Regulations that is in effect immediately before that subclause is revoked.
- (2) The certification remains in effect after that revocation (subject to any revocation under section 5F of the Financial Advisers Act 2008).

65 Service disclosure statement and investment proposal for existing DIMS

- (1) This clause applies in relation to a DIMS provided by a person (**A**) to an investor (**B**) if, immediately before the commencement of this clause, clause 6 of Schedule 1 of the Regulations (**clause 6**) applies in relation to the DIMS.
- (2) The following apply after the revocation of clause 6:
 - (a) A is not required to provide an SDS under sections 423 and 424 to B if A, under clause 6, was not required to do so before the revocation:
 - (b) A is not required to provide an investment proposal under regulation 206 of the Regulations to B if A, under clause 6, was not required to do so before the revocation:

- (c) regulation 226(1)(a) of the Regulations does not apply to a client agreement if, under clause 6, that paragraph did not apply to the client agreement before the revocation:
 - (d) section 437(2) to (4) does not apply to an investment authority if, under clause 6, those subsections did not apply to the investment authority before the revocation.
- (3) In this clause,—
- investment proposal** has the same meaning as in regulation 206(2) of the Regulations
- SDS** has the same meaning as in the Regulations.
- 66 Existing licences continue and cover supervision**
- (1) If, immediately before the revocation of clause 8 of Schedule 1 of the Regulations, that clause applies to a licence,—
- (a) the licence continues in effect on and after that revocation; and
 - (b) if the licence is treated as covering certain matters under clause 8(2) of that schedule, the licence must be treated as continuing to cover those matters.
- (2) This clause applies despite clause 8(4) of Schedule 1 of the Regulations, but nothing in this clause affects the duration of the licence under section 12 of the Financial Markets Supervisors Act 2011 or prevents the FMA from exercising any power in relation to the licence.
- 67 Extension of licences to cover substantially similar matters under new law**
- (1) If, immediately before the revocation of clause 9 of Schedule 1 of the Regulations, that clause applies to a licence the following apply on and after that revocation:
- (a) if, immediately before that revocation, the licence is subject to a variation under clause 9(3) of that schedule, the licence continues to be subject to the variation; and
 - (b) if the licence continues to be subject to conditions, limitations, or restrictions under clause 9(4) of that schedule, the licence must be treated as continuing to be subject to the conditions, limitations, or restrictions.
- (2) This clause applies despite clause 9(7) of Schedule 1 of the Regulations, but nothing in this clause prevents the FMA from exercising any power in relation to the licence.
- 68 Governance requirements for PIE call fund units, PIE term fund units, and bank notice products that are specified units**
- (1) This clause applies to a security if, immediately before the commencement of this clause, clause 19 of Schedule 1 of the Regulations applies to the security.

- (2) Clauses 20(1), 21, 22, and 30 of this schedule do not apply to the security if clause 28 of Schedule 8 of the Regulations applies in respect of the managed investment scheme to which the security relates.

117 Amendment to Financial Markets (Repeals and Amendments) Act 2013

- (1) This section amends the Financial Markets (Repeals and Amendments) Act 2013.
- (2) In the Schedule, Part 1, the item relating to section 3(1)(h) to (i) of the Financial Transactions Reporting Act 1996, delete the words “ and substitute:” and repeal the paragraph (h) that was to be substituted.

Subpart 8—Financial Service Providers (Registration and Dispute Resolution) Act 2008

118 Principal Act

This subpart amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **principal Act**).

119 Section 18 amended (Deregistration of financial service provider)

- (1) After section 18(1)(aa), insert:
- (ab) is required by section 48 to be a member of an approved dispute resolution scheme but is not a member of any such scheme as required; or
- (2) After section 18(1), insert:
- (1AA) **Subsection (1)(ab)** does not apply in respect of any time before the end of the period of 10 working days referred to in section 16(1)(ab).

Subpart 9—Friendly Societies and Credit Unions Act 1982

120 Principal Act

This subpart amends the Friendly Societies and Credit Unions Act 1982 (the **principal Act**).

121 Section 2 amended (Interpretation)

- (1) In section 2, definition of **association**, replace “registered as such under Part 3” with “incorporated under Part 3 in accordance with **section 146**”.
- (2) In section 2, definition of **committee** and **committee of management**, after “branch”, insert “or a credit union”.
- (3) In section 2, replace the definition of **credit union** with:
- credit union**—
- (a) means a credit union incorporated under Part 3 in accordance with **section 100B**; and

- (b) subject to **section 146(8)** and with any necessary modifications, includes an association of credit unions incorporated under Part 3 in accordance with **section 146**
- (4) In section 2, insert in its appropriate alphabetical order:
financial product has the meaning given in section 7(1) of the Financial Markets Conduct Act 2013
- (5) In section 2, replace the definition of **officer** with:
officer,—
- (a) in relation to a registered society or branch, includes any trustee, treasurer, secretary, or member of the committee of management of the society or branch, and any person appointed by the society or branch to sue and be sued on its behalf; and
- (b) in relation to a credit union, means a person who—
- (i) is a member of the credit union’s committee of management; or
- (ii) holds any other office provided for in the credit union’s rules

122 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

123 Section 5 amended (Registry Office and registers)

Replace section 5(3)(b) with:

- (b) in respect of any credit union,—
- (i) the rules and any amendments, notices of change of registered office and of the appointment of officers, annual returns, and notices of change of name:
- (ii) if the credit union is removed from the register under **section 140**, the notice of the removal issued by the Registrar:
- (iii) if the credit union is restored to the register under **section 140H**, the notice of the restoration issued by the Registrar.

124 Section 28 amended (Appointment of trustees)

Replace section 28(1) with:

- (1) Every registered society and branch is to have 1 or more trustees to be appointed from time to time by a resolution of a majority of the members of the society or branch entitled to vote and voting on the matter.

125 Section 49 amended (Duties of trustees in relation to investments)

In section 49(1), replace “majority of the members of the society or branch present and entitled to vote in general meeting” with “resolution of a majority of the members of the society or branch entitled to vote and voting on the matter”.

126 Section 50 amended (Trustees of society may make investments for branch, etc)

- (1) In section 50(2), replace “majority” with “resolution of a majority”.
- (2) In section 50(2), replace “present and entitled to vote in general meeting” with “entitled to vote and voting on the matter”.

127 Section 82 amended (Special resolutions)

- (1) In section 82(1)(b), replace “either in person or by proxy at the meeting” with “on the matter”.
- (2) In section 82(1)(b), replace “vote at the meeting” with “vote on the matter”.
- (3) Repeal section 82(2).

128 Cross-heading above section 98 replaced

Replace the cross-heading above section 98 with:

Incorporation

129 Section 98 amended (Credit unions to be registered)

- (1) In the heading to section 98, replace “**registered**” with “**incorporated under this Part**”.
- (2) Replace section 98(1) with:
 - (1) No person, other than a credit union incorporated under this Part in accordance with **section 100B**, may trade or carry on business as a credit union.
- (3) Replace section 98(2)(a) with:
 - (a) administering a fund into which members of a group contribute money that is to be applied wholly or principally—
 - (i) in loans to those members; or
 - (ii) in both of the following:
 - (A) loans to those members:
 - (B) loans to SMEs in cases where the SME is related to a member and the loan is to be used for the purposes of a business being carried on by the SME:
- (4) In section 98(2)(b), delete “, society, or body of persons”.
- (5) In section 98(2)(c), delete “society, or body of persons,”.

- (6) After section 98(2), insert:
- (2A) In this section, **SME** means any of the following that has no more than 19 full-time equivalent employees:
- (a) a body corporate;
 - (b) a firm under the Partnership Act 1908;
 - (c) a limited partnership under the Limited Partnerships Act 2008;
 - (d) the trustee or trustees of a trust.
- (2B) For the purposes of this section, an SME is **related** to a member (**member M**) if—
- (a) the SME is a body corporate and member M has the power, directly or indirectly, to exercise, or to control the exercise of, the rights to vote attaching to 25% or more of the voting products (as defined in section 6(1) of the Financial Markets Conduct Act 2013) of the body corporate; or
 - (b) the SME is a firm under the Partnership Act 1908 in which member M is a partner; or
 - (c) the SME is a limited partnership under the Limited Partnerships Act 2008 in which member M is a partner; or
 - (d) the SME is the trustee or trustees of a trust and member M is—
 - (i) the trustee or one of the trustees; or
 - (ii) a beneficiary under the trust.

130 Section 99 amended (Exemptions from registration)

- (1) In the heading to section 99, replace “**registration**” with “**incorporation under this Part**”.
- (2) In section 99(1)(a) and (b) and (2), delete “, society, or body of persons (whether corporate or unincorporate)”.
- (3) In section 99(3), delete “, society, or body of persons” in each place.

131 Section 100 replaced (Society may register as credit union)

Replace section 100 with:

100 Persons eligible to incorporate credit union

- (1) Any 21 or more persons falling within **subsection (2)** may apply to the Registrar in accordance with **section 100A** for the incorporation of a credit union under this Part.
- (2) The persons referred to in **subsection (1)** are as follows:
 - (a) an adult;
 - (b) a charitable entity as defined by the Charities Act 2005:

- (c) an incorporated society registered under the Incorporated Societies Act 1908.

100A Application for incorporation of credit union

- (1) An application under **section 100** for the incorporation of a credit union must—
 - (a) be signed by each of the applicants; and
 - (b) include a copy of the credit union’s proposed rules; and
 - (c) include a list of the names, addresses, and designations of the officers proposed for the credit union; and
 - (d) include such information or evidence as the Registrar may reasonably require in relation to any of the matters referred to in **section 100B(1)(a) to (f)**.
- (2) The credit union’s proposed rules must either—
 - (a) contain provisions in respect of the matters mentioned in Schedule 4; or
 - (b) accord with any model rules applicable to credit unions produced by the Registrar under section 9.
- (3) Section 16 applies (with any necessary modifications) to a credit union’s proposed rules received by the Registrar under this section as it applies to a society’s rules received by the Registrar under section 12.

100B Incorporation of credit union

- (1) **Subsection (2)** applies if an application is made under **section 100** for the incorporation of a credit union and the Registrar is satisfied—
 - (a) that the credit union will have at least 21 members who fall within **section 100(2)**; and
 - (b) that the only objects of the credit union will be those of a credit union specified in section 101; and
 - (c) that the credit union will have a common bond as defined in section 102; and
 - (d) that the credit union’s name will comply with section 103; and
 - (e) that there is no reason to expect that the credit union will not be operated in accordance with its rules and this Part; and
 - (f) that the requirements of this Part as to incorporation have otherwise been satisfied.
- (2) The Registrar must—
 - (a) register the credit union’s name; and
 - (b) issue a certificate of incorporation; and

- (c) register the credit union’s rules (together with any other documents or information relating to the credit union that the Registrar thinks appropriate).
- (3) The credit union is, on and after the date of incorporation set out in the certificate of incorporation, a body corporate that has—
 - (a) perpetual succession; and
 - (b) the capacity, rights, powers, and privileges provided for in **section 107B**.
- (4) The credit union continues in existence until it is removed from the register under **section 140**.
- (5) The certificate of incorporation is conclusive evidence that—
 - (a) all the requirements of this Part as to incorporation have been complied with; and
 - (b) on and after the date of incorporation set out in the certificate, the credit union is registered and incorporated under this Part.
- (6) If the Registrar refuses to act under **subsection (2)** in relation to an application, the applicants may, within 3 months after the date on which they are notified of the refusal, appeal against the refusal to the High Court.
- (7) If the refusal is overruled on appeal, then, subject to such terms and conditions as the court may impose or otherwise in pursuance of the court order, the Registrar must act under **subsection (2)** as soon as practicable.

132 Section 101 amended (Objects of credit union)

Repeal section 101(2).

133 Section 102 amended (Qualifications for admission to membership of credit union)

In section 102(1)(e), replace “forming a society to be registered as” with “incorporating”.

134 Section 103 amended (Name to contain words “credit union”)

- (1) In the heading to section 103, replace “to contain words “credit union”” with “of credit union”.
- (2) In section 103, delete “society registered as a”.
- (3) In section 103, insert as subsections (2) and (3):
 - (2) A credit union’s name must not—
 - (a) be identical, or almost identical, to that of—
 - (i) any other credit union; or
 - (ii) any other body corporate established or registered in New Zealand or carrying on activities in New Zealand; or

- (b) be, in the Registrar’s opinion, likely to mislead the credit union’s members or the public as to the credit union’s nature or identity; or
 - (c) be, in the Registrar’s opinion, offensive; or
 - (d) be a name the use of which by the credit union contravenes any other enactment.
- (3) If, at any time, a credit union’s name contravenes (through inadvertence or otherwise) this section,—
- (a) the Registrar may by notice to the credit union require the credit union to change its name so that the name does not contravene this section; and
 - (b) if the Registrar does so, the credit union must change its name accordingly within the period of 4 weeks from the date on which it receives the Registrar’s notice or within such longer period as the Registrar may allow.

135 Section 104 repealed (Registration and rules of credit union)

Repeal section 104.

136 Section 105 amended (Effect of rules on members of credit union)

Replace section 105(1) with:

- (1) The rules of a credit union are binding, in accordance with their terms, as between—
 - (a) the credit union and each member; and
 - (b) each member.
- (1A) **Subsection (1)** is subject to the rest of this Act.

137 Section 106 amended (Membership of credit union, voting rights)

- (1) In section 106(1)(a), replace “39” with “39(1) and (2)”.
- (2) After section 106(1)(a), insert:
 - (aa) no person under the age of 18 years can be an officer of a credit union; and
- (3) Repeal section 106(7).

138 New sections 106A to 106C inserted

After section 106, insert:

106A Members not liable for obligations of credit union

- (1) A member of a credit union is not liable for an obligation of the credit union by reason only of being a member.
- (2) **Subsection (1)** does not affect—
 - (a) section 141; or

- (b) any liability that a member of a credit union has to the credit union—
 - (i) under its rules or a contract; or
 - (ii) for any tort, breach of a fiduciary duty, or other actionable wrong committed by the member.

106B Amendment of credit union’s rules

- (1) A credit union’s rules may be amended by a resolution of a majority of its members entitled to vote and voting on the matter.
- (2) Section 26 (which permits the Registrar to amend rules) applies (with any necessary modifications) to a credit union’s rules as it applies to a registered society’s rules.
- (3) An amendment of a credit union’s rules has no effect until the amendment is registered.
- (4) For the purposes of **subsection (3)**, a copy of the amendment, signed by 3 members, must be sent to the Registrar for registration (unless the amendment is made by the Registrar under section 26).
- (5) **Subsections (3) and (4)** do not apply to a change in the situation of a credit union’s registered office, but notice of the change must be sent promptly to the Registrar for registration.
- (6) An amendment of a credit union’s rules may be registered only if the rules as amended either—
 - (a) contain provisions in respect of the matters mentioned in Schedule 4; or
 - (b) accord with any model rules applicable to credit unions produced by the Registrar under section 9.
- (7) Section 24(1) applies (with any necessary modifications) to an amendment of a credit union’s rules as it applies to an amendment of a registered society’s rules.
- (8) Before registering an amendment of a credit union’s rules, the Registrar may require from the credit union such information or evidence as may be reasonable to show that, after the amendment takes effect, the credit union will be operated in accordance with its rules and this Part.

106C Credit union to supply copy of rules

A credit union must deliver to any person on request, on payment of any reasonable charge imposed by the credit union, a copy of the rules of the credit union.

139 Cross-heading above section 107 replaced

Replace the cross-heading above section 107 with:

Shares and securities

140 Section 107A amended (Credit union may offer credit union securities)

In section 107A(1), delete “and trust deed”.

141 New sections 107B to 107E and cross-heading inserted

After section 107A, insert:

Capacity, powers, and validity of actions

107B Capacity and powers of credit union

- (1) A credit union has, both within and outside New Zealand,—
 - (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
 - (b) for the purposes of **paragraph (a)**, full rights, powers, and privileges.
- (2) **Subsection (1)** is subject to this Act, any other enactment, and the general law.
- (3) The credit union’s rules may contain a provision relating to the capacity, rights, powers, or privileges of the credit union only if the provision restricts the capacity of the credit union, or its rights, powers, and privileges.

107C Validity of actions

- (1) An act of a credit union or the transfer of property to or by a credit union is not invalid merely because the credit union did not have the capacity, right, or power to do the act or to transfer or take a transfer of the property.
- (2) **Subsection (1)** does not limit—
 - (a) section 118; or
 - (b) any proceedings that may otherwise be taken—
 - (i) by a member of a credit union against the credit union or an officer of the credit union to prevent an act of, or a transfer of property to or by, the credit union that would be invalid apart from **subsection (1)**; or
 - (ii) by a credit union or a member or former member of a credit union against an officer or a former officer of the credit union in relation to an act of, or a transfer of property to or by, the credit union that would have been invalid apart from **subsection (1)**.
- (3) The fact that an act is not, or would not be, in the best interests of a credit union does not affect the capacity of the credit union to do the act.

107D Dealings between credit union and other persons

- (1) A credit union may not assert against a person dealing with the credit union that—

- (a) this Act has not, or the credit union's rules have not, been complied with; or
 - (b) a person named as an officer of the credit union in any register—
 - (i) is not an officer of the credit union; or
 - (ii) has not been duly appointed; or
 - (iii) does not have authority to exercise a power that, given the nature of the credit union, an officer customarily has authority to exercise; or
 - (c) a person held out by the credit union as an officer, employee, or agent of the credit union—
 - (i) has not been duly appointed; or
 - (ii) does not have authority to exercise a power that, given the nature of the credit union, a person appointed to that capacity customarily has authority to exercise; or
 - (d) a person held out by the credit union as an officer, employee, or agent of the credit union does not have the authority to exercise a power that the credit union holds the person out as having; or
 - (e) a document issued on behalf of the credit union by an officer, employee, or agent of the credit union with actual or usual authority to issue the document is not valid or not genuine.
- (2) However, a credit union may assert any of the matters referred to in **subsection (1)(a) to (e)** against a person dealing with the credit union if that person had, or ought to have had, by virtue of the person's position with or relationship to the credit union, knowledge of those matters.
- (3) **Subsection (1)** applies even though a person of a kind referred to in **subsection (1)(b) to (e)** acts fraudulently or forges a document that appears to have been signed on behalf of the credit union, unless the person dealing with the credit union has actual knowledge of the fraud or forgery.
- (4) In this section, **person dealing**—
- (a) means, in the case of a transaction with a credit union, the other party to the transaction; and
 - (b) includes a person who has acquired property, rights, or interests from a credit union.

107E No constructive notice

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

- (a) the rules are, or the document is,—
 - (i) registered; or

- (ii) available to the public under section 5(3) or (4); or
- (iii) available for inspection at an office of the credit union; or
- (b) in the case of the rules, a copy of them can be requested under **section 106C**.

142 Section 109 repealed (Power of credit union to borrow money)

Repeal section 109.

143 Section 109A repealed (Power of credit union to appoint supervisor for debt securities)

Repeal section 109A.

144 Section 110 repealed (Credit union may make loans to members)

Repeal section 110.

145 Section 112 repealed (Credit union property to vest in trustees)

Repeal section 112.

146 Section 113 repealed (Credit union may hold land)

Repeal section 113.

147 Section 114 repealed (Officers of credit union to give security)

Repeal section 114.

148 Section 115 repealed (Duty of officers of credit union to account)

Repeal section 115.

149 Section 116 repealed (Priority on death, bankruptcy, etc, of officer)

Repeal section 116.

150 Section 117 repealed (Investment of surplus funds)

Repeal section 117.

151 Section 127 amended (Annual return)

Replace section 127(3)(d) with:

- (d) must have attached a list containing the names, addresses, and designations of the officers of the credit union; and

152 Section 133 amended (Credit union to be insured against fraud or other dishonesty)

(1) Replace section 133(1) with:

- (1) A credit union must have a policy of insurance that complies with the requirements of this section.

- (2) Repeal section 133(4).

153 New sections 133A and 133B inserted

After section 133, insert:

133A Method of contracting

- (1) A contract or other enforceable obligation may be entered into by a credit union as follows:
- (a) an obligation that, if entered into by a natural person, would, by law, be required to be by deed may be entered into on behalf of the credit union in writing signed under the name of the credit union by—
 - (i) 2 or more officers of the credit union; or
 - (ii) if the credit union’s rules so provide, an officer, or other person or class of persons, whose signature or signatures must be witnessed; or
 - (iii) 1 or more attorneys appointed by the credit union in accordance with **section 133B**:
 - (b) an obligation that, if entered into by a natural person, is, by law, required to be in writing may be entered into on behalf of the credit union in writing by a person acting under the credit union’s express or implied authority;
 - (c) an obligation that, if entered into by a natural person, is not, by law, required to be in writing may be entered into on behalf of the credit union in writing or orally by a person acting under the credit union’s express or implied authority.
- (2) A credit union may, in addition to complying with **subsection (1)**, affix its common seal, if it has one, to the contract or document containing the enforceable obligation.
- (3) **Subsection (1)** applies to a contract or other obligation—
- (a) whether or not that contract or obligation was entered into in New Zealand; and
 - (b) whether or not the law governing the contract or obligation is the law of New Zealand.

133B Attorneys

- (1) A credit union may, by an instrument in writing executed in accordance with **section 133A(1)(a)**, appoint a person as its attorney either generally or in relation to a specified matter.
- (2) **Subsection (1)** is subject to the credit union’s rules.
- (3) An act of the attorney in accordance with the instrument binds the credit union.

- (4) Sections 19 to 21 of the Property Law Act 2007 apply, with all necessary modifications, in relation to a power of attorney executed by a credit union—
- (a) to the same extent as if the credit union were a natural person; and
 - (b) as if the commencement of the liquidation of the credit union or, if there is no liquidation, the removal of the credit union from the register under **section 140** were an event revoking the power of attorney within the meaning of those sections.

154 Section 134 repealed (Guarantee funds)

Repeal section 134.

155 Section 135 replaced (Amalgamation of credit unions and transfer of engagements)

Replace section 135 with:

Amalgamations

135 Amalgamation of credit unions

- (1) Two or more credit unions may amalgamate as 1 credit union under **sections 135A to 135E**.
- (2) The amalgamated credit union may continue as—
 - (a) one of the amalgamating credit unions; or
 - (b) a new credit union.
- (3) A credit union must not amalgamate with another body, except as permitted by this section.

135A Amalgamation proposal

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

135B Information relating to amalgamation proposal for members, creditors, and public

The committee of management of each amalgamating credit union must, not less than 20 working days before the amalgamation is to become effective,—

- (a) send to each member of that credit union a copy of the amalgamation proposal and all other prescribed information (if any); and
- (b) send a copy of the amalgamation proposal to every secured creditor of the credit union; and
- (c) give public notice of the proposed amalgamation in the prescribed manner.

135C Approval of amalgamation proposal

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

135D Documents to be sent to Registrar

The following must be sent to the Registrar to give effect to the amalgamation:

- (a) the approved amalgamation proposal;
- (b) all certificates required under **section 135C**;
- (c) all other prescribed information (if any).

135E Registration of amalgamation

- (1) **Subsection (2)** applies if the Registrar, after receiving the information required under **section 135D**, is satisfied—
 - (a) that the requirements of **section 100B(1)(a) to (f)** are met in relation to the amalgamated credit union; and

- (b) that each amalgamating credit union has approved the amalgamation in accordance with **section 135C**.
- (2) The Registrar must—
- (a) issue a certificate of amalgamation; and
 - (b) if the amalgamated credit union is one of the amalgamating credit unions, make any necessary changes to that credit union’s registration (for example, registering its new rules); and
 - (c) if the amalgamated credit union is a new credit union, act under **section 100B(2)** (and **section 100B(3) to (5)** applies accordingly); and
 - (d) remove from the register under **section 140** any amalgamating credit union that is not the amalgamated credit union.
- (3) On and after the date set out in the certificate of amalgamation,—
- (a) the amalgamation is effective in accordance with the amalgamation proposal; and
 - (b) the amalgamated credit union succeeds to all the property, rights, powers, and privileges of each of the amalgamating credit unions; and
 - (c) the amalgamated credit union succeeds to all the liabilities and obligations of each of the amalgamating credit unions; and
 - (d) proceedings pending by, or against, an amalgamating credit union may be continued by, or against, the amalgamated credit union; and
 - (e) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating credit union may be enforced by, or against, the amalgamated credit union.
- (4) The date set out in the certificate of amalgamation must be—
- (a) the date on which it is issued; or
 - (b) if later, the date set out in the amalgamation proposal as the date on which the amalgamation is to become effective.
- (5) In this Part, the term **non-qualifying member**, in relation to an amalgamated credit union, includes a person who does not fulfil the qualifications for admission to membership of that credit union but became a member of it by virtue of the amalgamation, having been, immediately before the amalgamation became effective, a member of one of the amalgamating credit unions.

135F Other registers

- (1) No Registrar-General of Land, nor any other person charged with keeping any books or registers, is obliged to change the name of an amalgamating credit union to that of an amalgamated credit union in those books or registers or in any documents solely because an amalgamation has been effected under **sections 135A to 135E**.

- (2) The presentation to a Registrar or any other person of a specified instrument is, in the absence of evidence to the contrary, sufficient evidence that the property to which the instrument relates has become the property of the amalgamated credit union.
- (3) In **subsection (2)**, a **specified instrument** is an instrument that—
 - (a) is executed or purports to be executed by the amalgamated credit union; and
 - (b) relates to any property held immediately before the amalgamation by an amalgamating credit union; and
 - (c) states that the property has become the property of the amalgamated credit union by virtue of **sections 135A to 135E**.
- (4) **Subsection (5)** applies if—
 - (a) any financial products issued by a person (A) or any rights or interests in property of a person (A) become, by virtue of **sections 135A to 135E**, the property of an amalgamated credit union; and
 - (b) a certificate signed on behalf of the committee of management of the amalgamated credit union is presented to A, stating that those products, rights, or interests have by virtue of **sections 135A to 135E** become the property of the amalgamated credit union.
- (5) Despite **subsections (1) and (2)** and any other enactment or rule of law, A, on presentation of the certificate, must register the amalgamated credit union as the holder of the financial products or as the person entitled to the rights or interests.
- (6) Except as provided in this section, nothing in **sections 135A to 135E** derogates from the provisions of the Land Transfer Act 1952.

135G Powers of court in relation to proposed amalgamation

- (1) A creditor of an amalgamating credit union, or a person to whom an amalgamating credit union is under an obligation, who believes that he, she, or it would be unfairly prejudiced by a proposed amalgamation under **sections 135A to 135E** may, before the date on which the amalgamation becomes effective, apply to a District Court for an order under **subsection (2)**.
- (2) The court may, if it is satisfied that the creditor or person who is owed the obligation would be unfairly prejudiced by the proposed amalgamation, make any order the court thinks fit in relation to the proposal, including—
 - (a) directing that effect must not be given to the proposal;
 - (b) modifying the proposal in any manner specified in the order;
 - (c) directing the amalgamating credit union or its committee of management to reconsider the proposal or any part of it.

- (3) An order may be made under **subsection (2)** on the conditions that the court thinks fit.

156 Section 136 repealed (Registrar may approve amalgamations or transfers of engagements of credit unions)

Repeal section 136.

157 Cross-heading above section 137 amended

In the cross-heading above section 137, replace “*and suspension of business*” with “*removal from register, and restoration to register*”.

158 New section 137A inserted (Members may resolve to put credit union into liquidation)

After section 137, insert:

137A Members may resolve to put credit union into liquidation

- (1) A credit union may be put into liquidation by the appointment of a liquidator by a resolution of a majority of the credit union’s members entitled to vote and voting on the matter.
- (2) Part 16 of the Companies Act 1993 applies to the liquidation of a credit union under **subsection (1)**, with all necessary modifications, as if the credit union were a company that has been put into liquidation under section 241(2)(a) of that Act.

159 Section 138 amended (Registrar may apply to put credit union into liquidation)

- (1) In the heading to section 138, replace “**Registrar may apply to**” with “**High Court may**”.
- (2) In section 138, replace “the application of the Registrar” with “an application under this section”.
- (3) In section 138, delete “in accordance with the Companies Act 1993”.
- (4) Replace section 138(a) with:
- (a) the credit union is unable to pay its debts; or
 - (aa) the credit union has not commenced operations within 1 year of incorporation or has suspended its operations for more than 6 months; or
 - (ab) incorporation has been obtained for the credit union by fraud or mistake; or
 - (ac) the credit union exists for an illegal purpose; or
 - (ad) the requirement about membership in **section 100B(1)(a) or 146(1)(a)** is not met in relation to the credit union; or
- (5) In section 138, insert as subsections (2) and (3):

- (2) An application under this section may be made by any of the following:
- (a) the credit union;
 - (b) a member of the credit union;
 - (c) a creditor of the credit union;
 - (d) the Registrar.
- (3) Part 16 of the Companies Act 1993 applies, with any necessary modifications,—
- (a) to an application under this section as if the application were an application under section 241(2)(c) of that Act; and
 - (b) to the liquidation as if the liquidator had been appointed under section 241(2)(c) of that Act.

160 Section 139 repealed (Registrar may suspend business of credit union)

Repeal section 139.

161 Section 140 replaced (Cancellation or suspension of registration, and dissolution of credit union)

Replace section 140 with:

140 Removal from register

- (1) A credit union is removed from the register when the Registrar, acting under **subsection (2)**, registers a notice issued by the Registrar stating that the credit union is removed from the register.
- (2) The Registrar may remove a credit union from the register if—
- (a) the credit union is an amalgamating credit union, other than an amalgamated credit union, on the date set out in the certificate of amalgamation issued by the Registrar under **section 135E**; or
 - (b) a request that the credit union be removed from the register on a ground specified in **subsection (3)** is given to the Registrar in accordance with the credit union's rules; or
 - (c) the credit union has been put into liquidation, and—
 - (i) no liquidator is acting; or
 - (ii) the documents referred to in section 257(1)(a) of the Companies Act 1993 (as applied by section **137A** or 138 of this Act) have not been sent or delivered to the Registrar within 6 months after the liquidation is completed; or
 - (d) a liquidator sends or delivers to the Registrar—
 - (i) the documents referred to in section 257(1)(a) of the Companies Act 1993 (as applied by section **137A** or 138 of this Act); and
 - (ii) a copy of the notice referred to in **section 140A(a)**.

- (3) A request may be made on the grounds—
- (a) that the credit union has ceased to operate, has discharged in full its liabilities to all its known creditors, and has distributed its remaining assets to those persons entitled to them or otherwise in accordance with its rules; or
 - (b) that the credit union has no assets remaining after paying its debts in full or in part, and no creditor has applied to the High Court under section 138 for an order putting the credit union into liquidation.
- (4) A request must be made in the prescribed manner (if any).

140A Notice of intention to remove from register

The Registrar may remove a credit union from the register under **section 140(2)(b) to (d)** only if—

- (a) the Registrar is satisfied that notice of the intention to remove the credit union from the register has been given in the prescribed manner to the public and all other prescribed persons (if any); and
- (b) the Registrar—
 - (i) is satisfied that no person has objected to the removal under **section 140B**; or
 - (ii) if an objection to the removal has been received, has complied with **sections 140C and 140D**.

140B Objection to removal from register

- (1) If a notice is given under **section 140A**, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any of the following grounds:
- (a) that the credit union is still operating or there is other reason for it to continue in existence;
 - (b) that the credit union is a party to a legal proceeding;
 - (c) that the credit union is in receivership or liquidation, or both;
 - (d) that the person is a creditor who has an undischarged claim against the credit union;
 - (e) that, for any other reason, it would not be just and equitable to remove the credit union from the register.
- (2) Section 321(2)(a) of the Companies Act 1993 applies for the purposes of **subsection (1)(d)**, with all necessary modifications, as if the credit union were a company.

140C Objections under section 140B(1)(a), (b), or (c)

If an objection is made under **section 140B(1)(a), (b), or (c)**, the Registrar must not proceed with the removal unless the Registrar is satisfied that—

- (a) the objection has been withdrawn; or
- (b) any facts on which the objection is based are not, or are no longer, correct; or
- (c) the objection is frivolous or vexatious.

140D Objections under section 140B(1)(d) or (e)

- (1) If an objection is made under **section 140B(1)(d) or (e)**, the Registrar may give notice to the person objecting that, unless notice of a specified application is given to the Registrar not later than 20 working days after the date of the notice, the Registrar intends to proceed with the removal.
- (2) In this section, **specified application** means an application under section 138 or **140F**.
- (3) The Registrar may proceed with the removal if—
 - (a) notice of a specified application is not served on the Registrar; or
 - (b) the specified application is withdrawn; or
 - (c) on the hearing of the specified application, the court refuses to grant either an order putting the credit union into liquidation or an order that the credit union not be removed from the register.
- (4) Every person who makes a specified application must give the Registrar notice in writing of the decision of the court within 5 working days after the decision is given.

140E Registrar must send information to person who requests removal

The Registrar must send the following to a person who delivered a request under **section 140(2)(b)** or a liquidator referred to in **section 140(2)(d)**:

- (a) a copy of an objection under **section 140B**;
- (b) a copy of a notice given by or to the Registrar under **section 140D**;
- (c) if the credit union is removed from the register, notice of the removal.

140F High Court may order that credit union not be removed

- (1) A person who gives a notice objecting to the removal of a credit union from the register on a ground specified in **section 140B(1)(d) or (e)** may apply to the High Court for an order that the credit union is not to be removed from the register.
- (2) The court may, if it is satisfied that the credit union should not be removed from the register on any of the grounds in **section 140B(1)**, make an order that the credit union is not to be removed from the register.

140G Liability of officers, members, and others to continue

The removal of a credit union from the register does not affect the liability of any former officer or member of the credit union or any other person in respect

of any act or omission that took place before the credit union was removed from the register, and that liability continues and may be enforced as if the credit union had not been removed from the register.

140H Restoration of credit union to register

- (1) A credit union is restored to the register when the Registrar, acting under **section 140I** or an order made under **section 140K**, registers a notice issued by the Registrar stating that the credit union is restored to the register.
- (2) A credit union that is restored to the register must be treated as having continued in existence as if it had not been removed from the register.

140I Registrar may restore credit union to register

- (1) The Registrar must, on an application made in the prescribed manner, and may, on the Registrar's own motion, restore a credit union to the register if the Registrar is satisfied that, at the time the credit union was removed from the register,—
 - (a) the credit union was still operating or another reason existed for the credit union to continue in existence; or
 - (b) the credit union was a party to a legal proceeding; or
 - (c) the credit union was in receivership or liquidation, or both.
- (2) This section does not limit **section 140K**.

140J Notice of proposed restoration

- (1) Before the Registrar restores a credit union to the register under **section 140I**, the Registrar must be satisfied that notice of the intention to restore the credit union to the register has been given in the prescribed manner to the public and all other prescribed persons (if any).
- (2) The Registrar must not restore a credit union to the register if the Registrar receives an objection to the restoration within the period stated in the notice.

140K High Court may order restoration of credit union

- (1) The High Court may, on the application of a person referred to in **subsection (2)**, order that a credit union be restored to the register if it is satisfied that,—
 - (a) at the time the credit union was removed from the register,—
 - (i) the credit union was still operating or another reason existed for the credit union to continue in existence; or
 - (ii) the credit union was a party to a legal proceeding; or
 - (iii) the credit union was in receivership or liquidation, or both; or
 - (iv) the applicant was a creditor or another person who had an undischarged claim against the credit union; or

- (b) for any other reason it is just and equitable to restore the credit union to the register.
- (2) The following persons may make an application:
 - (a) any person who is prescribed for the purposes of this subsection:
 - (b) the Registrar:
 - (c) with the leave of the court, any other person.

140L Registrar or High Court may require requirements to be complied with

The Registrar or the High Court may, before restoring a credit union to the register under **section 140I** or ordering its restoration to the register under **section 140K**, require any of the provisions of this Act to be complied with (being provisions with which the credit union had failed to comply before it was removed from the register).

140M Other High Court orders

- (1) This section applies if a credit union is restored to the register under **section 140I** or its restoration to the register is ordered under **section 140K**.
- (2) The High Court may, on the application of the Registrar or the applicant for restoration or on its own motion, give any directions or make any orders that may be necessary or desirable for the purpose of placing the credit union and any other persons as nearly as possible in the same position as if the credit union had not been removed from the register.
- (3) However, a direction or an order may not require the return to the credit union of any assets that have been properly transferred in accordance with any provision of the credit union's rules that falls within **clause 17** of Schedule 4.

162 Section 141 amended (Liability of members on winding up)

- (1) In section 141, replace “section 138” with “section **137A** or 138”.
- (2) In section 141, delete “qualified”.

163 Section 143 amended (Associations of credit unions to be registered)

- (1) In the heading to section 143, replace “**registered**” with “**incorporated under this Part**”.
- (2) In section 143(1), replace “registered as an association under this Part” with “an association of credit unions incorporated under this Part in accordance with **section 146**”.
- (3) Replace section 143(2) to (4) with:
 - (2) Any 2 or more credit unions may apply to the Registrar in accordance with section 145 for the incorporation of an association of credit unions under this Part.
 - (3) The objects of an association must be, or fall within, the objects set out in **subsection (4)**.

- (4) The objects referred to in **subsection (3)** are as follows:
 - (a) to promote the interests of the association’s members;
 - (b) otherwise, to provide products or services or carry out other activities for the benefit, or in the interests, of relevant bodies.
- (5) For the purposes of **subsection (4)**, a **relevant body** is a credit union or another type of co-operative or mutual body.

164 Section 144 amended (Membership of association)

Repeal section 144(2).

165 Section 145 amended (Application for registration of association)

- (1) In the heading to section 145, replace “**registration**” with “**incorporation**”.
- (2) Replace section 145(1) and (2) with:
 - (1) An application under **section 143(2)** for the incorporation of an association of credit unions must be signed by each of the applicants.
 - (2) The application must include—
 - (a) a copy of the association’s proposed rules; and
 - (b) a list of the names, addresses, and designations of the officers proposed for the association.
- (2A) Section 16 applies (with any necessary modifications) to an association’s proposed rules received by the Registrar under this section as it applies to a society’s rules received by the Registrar under section 12.
- (3) Repeal section 145(4).

166 Section 146 replaced (Registration of association)

Replace section 146 with:

146 Incorporation of association

- (1) **Subsection (2)** applies if an application is made under **section 143(2)** for the incorporation of an association of credit unions and the Registrar is satisfied—
 - (a) that the association will have at least 2 members;
 - (b) that the rules as submitted are not contrary to the provisions of this Act and may be reasonably approved by the Registrar; and
 - (c) that there are reasonable grounds for believing that the association will be able to carry out its objects successfully; and
 - (d) that there is no reasonable cause why the association should not be incorporated.
- (2) The Registrar must—
 - (a) register the association’s name; and

- (b) issue a certificate of incorporation; and
 - (c) register the association's rules (together with any other documents or information relating to the association that the Registrar thinks appropriate).
- (3) The association is, on and after the date of incorporation set out in the certificate of incorporation, a body corporate that has—
- (a) perpetual succession; and
 - (b) the capacity, rights, powers, and privileges provided for in **section 107B**.
- (4) The association continues in existence until it is removed from the register under **section 140**.
- (5) The certificate of incorporation is conclusive evidence that—
- (a) all the requirements of this Part as to incorporation have been complied with; and
 - (b) on and after the date of incorporation set out in the certificate, the association is registered and incorporated under this Part.
- (6) If the Registrar refuses to act under **subsection (2)** in relation to an application, the applicants may, within 3 months after the date on which they are notified of the refusal, appeal against the refusal to the High Court.
- (7) If the refusal is overruled on appeal, then, subject to such terms and conditions as the court may impose or otherwise in pursuance of the court order, the Registrar must act under **subsection (2)** as soon as practicable.
- (8) Sections 98 to 102, **103(1)**, 106(1) to (7), **106B(6)**, 107, 107A, 131, **135 to 135G**, **138(1)(c)**, and 142 do not apply to associations.
- (9) **Section 103(3)** applies to an association as if section 145(3) were in section 103.

167 New sections 147A and 147B inserted

After section 147, insert:

147A Meetings may be held using audio, audio and visual, or electronic communication

The rules of a registered society or branch or of a credit union may (without limitation) provide for meetings to be held using audio, audio and visual, or electronic communication.

147B Postal, electronic, and proxy voting

- (1) This section applies to any matter that is to be determined by a vote of members of a registered society or branch or of a credit union.
- (2) The rules of the registered society or branch or of the credit union—

- (a) may (without limitation) permit voting in 1 or more of the following ways:
 - (i) by post;
 - (ii) by electronic means (for example, by email or by the use of an Internet site);
 - (iii) by proxy; and
- (b) must set out the procedures to be followed in relation to any voting permitted under **paragraph (a)**.
- (3) Rules under this section that permit voting by post or electronic means may permit or require votes cast by post or electronic means to be cast in advance of any meeting at which the matter in question is to be determined.
- (4) **Subsection (3)** applies despite any enactment (for example, sections 64(3), 65(1)(a), and 82(1) of this Act) that requires a resolution to be passed, or a matter to be otherwise determined, at a meeting.

168 Section 151 amended (Appeals)

In section 151(3), after “Registrar”, insert “under Part 2”.

169 Section 152 amended (Regulations)

After section 152(c), insert:

- (ca) prescribing matters as referred to in **section 135A, 135B(a) or (c), 135D(c), 140(4), 140A(a), 140I(1), 140J(1), or 140K(2)(a)**:

170 Section 154 amended (Recovery of fines, etc, imposed on society, branch, or credit union)

- (1) In the heading to section 154, replace “, branch, or credit union” with “or branch”.
- (2) In section 154, replace “or branch, or credit union” with “or branch”.
- (3) In section 154, replace “, branch, or credit union” with “or branch” in each place.

171 Section 155 amended (Status of trustees and officers for purposes of Crimes Act 1961)

In section 155(1), delete “or credit union”.

172 Section 156 amended (Liability of officers and of members of committee on commission of offence)

In section 156, delete “or credit union” in each place.

173 Section 157 amended (Institution of legal proceedings by or against society or branch or credit union)

- (1) In the heading to section 157, delete “or credit union”.

- (2) In section 157, delete “or credit union” in each place.
- (3) In section 157(2), delete “or (credit union)”.

174 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 2** of this Act as the first schedule to appear after the last section of the principal Act.

175 Schedule 4 amended

- (1) In Schedule 4, replace clause 6 with:
 - 6 The appointment and removal of a committee of management (by whatever name known) and of other officers.
- (2) In Schedule 4, replace clause 9 with:
 - 9 The mode and circumstances, expressed either generally or specifically, in which loans by the credit union are to be made and repaid, including any special provision for the insurance of persons to whom loans are made.
- (3) In Schedule 4, after clause 16, insert:
 - 16A Provision about when, and by whom, a request may be made under **section 140(2)(b)**.
- (4) In Schedule 4, replace clause 17 with:
 - 17 Provision requiring, on the credit union’s winding-up under **section 137A** or 138 or on or before its removal from the register under **section 140**, any assets remaining after the payment of debts, repayment of share capital, and discharge of other liabilities—
 - (a) to be transferred to another credit union, or an association of credit unions; or
 - (b) if not so transferred, to be applied for charitable purposes.

176 Amendment to Insurance (Prudential Supervision) Act 2010

- (1) This section amends the Insurance (Prudential Supervision) Act 2010.
- (2) Replace section 11 with:

11 Application of Act to friendly societies

This Act applies to a friendly society (as that term is defined in section 2 of the Friendly Societies and Credit Unions Act 1982) as if the friendly society were a body corporate.

177 Amendment to Financial Reporting Act 2013

- (1) This section amends the Financial Reporting Act 2013.
- (2) In section 5(1), definition of **entity**, paragraph (f), replace “society, a branch of a society, or a credit union” with “society or a branch of a society”.

Subpart 10—Insolvency Act 2006

178 Principal Act

This subpart amends the Insolvency Act 2006 (the **principal Act**).

179 Section 228 amended (Assignee’s final statement of receipts and payments)

Replace section 228(2) and (3) with:

- (2) The final statement of receipts and payments must show in detail the receipts and payments in respect of the bankrupt’s estate.
- (3) The Assignee must provide a copy of the final statement of receipts and payments to any creditor, or other person who has an interest, if the creditor or other person requests a copy.
- (4) The copy must be provided within 20 working days after the Assignee receives the request.

180 Section 348 replaced (Termination of appointment for failure to supervise adequately)

Replace section 348 with:

348 Termination of supervisor’s appointment

The Assignee may—

- (a) terminate the supervisor’s appointment if the Assignee considers—
 - (i) that the supervisor has failed to supervise the debtor’s compliance adequately; or
 - (ii) that, after being appointed, the supervisor has been convicted of an offence involving dishonesty; and
- (b) appoint a replacement supervisor accordingly.

181 Section 350 amended (Variation or discharge of order)

- (1) In the heading to section 350, replace “**discharge of order**” with “**cancellation of order by Assignee on application from debtor, creditor, or supervisor**”.
- (2) In section 350, replace “discharge” with “cancel”.

182 New section 350A inserted (Cancellation of order by Assignee without application)

After section 350, insert:

350A Cancellation of order by Assignee without application

The Assignee may (without an application from any person) cancel a summary instalment order if satisfied that the debtor—

- (a) is in default under the order; or

- (b) is able immediately to pay the debtor's unsecured debts (excluding any student loan balance); or
- (c) cannot be located.

183 Section 352 amended (Proceedings against debtor)

In section 352(2)(b), after “order”, insert “or the order has been cancelled”.

184 Section 355 amended (Meaning of current summary instalment order)

In section 355, replace “discharged” with “cancelled”.

185 Section 365 repealed (Assignee must notify creditors)

Repeal section 365.

186 Section 367 amended (When debtor admitted to no asset procedure)

Replace section 367(2) with:

- (2) The Assignee must, as soon as practicable,—
 - (a) notify each known creditor of the debtor that the debtor has been admitted to the no asset procedure and send each of them a summary of the debtor's assets and liabilities; and
 - (b) advertise in the prescribed manner that the debtor has been admitted to the no asset procedure.

187 Section 408 amended (Assignee must apply for order of release)

- (1) In the heading to section 408, replace “**must**” with “**may**”.
- (2) Replace section 408(1) with:
 - (1) After preparing the final statement of receipts and payments in relation to the estate of a bankrupt (*see* section 228), the Assignee may apply to the court for an order releasing the Assignee from the administration of the estate.

188 Schedule 1 amended

- (1) In Schedule 1, paragraph (w)(v), replace “1993).” with “1993):”.
- (2) In Schedule 1, after paragraph (w), insert:
 - (x) bring a proceeding challenging the existence or terms of a trust (even if the bankrupt could not have brought the proceeding if the bankrupt was not bankrupt and even if the bankrupt is a settlor, trustee, or beneficiary of the trust).

189 Amendment to Insolvency (Personal Insolvency) Regulations 2007

- (1) This section amends the Insolvency (Personal Insolvency) Regulations 2007.
- (2) Revoke regulation 16.

Subpart 11—New Zealand Superannuation and Retirement Income Act 2001

190 Principal Act

This subpart amends the New Zealand Superannuation and Retirement Income Act 2001 (the **principal Act**).

191 Section 83 amended (Functions)

- (1) After section 83(d), insert:
 - (da) to promote education, and publish information, about financial matters to assist individuals to make financial decisions confidently and informedly:
 - (db) to advise on financial capability issues, when requested to do so by the Minister:
- (2) In section 83(g), replace “enactment.” with “enactment:”.
- (3) After section 83(g), insert:
 - (h) to perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.

Subpart 12—Takeovers Act 1993

192 Principal Act

This subpart amends the Takeovers Act 1993 (the **principal Act**).

193 Section 8 amended (Functions of Panel)

- (1) After section 8(1)(c), insert:
 - (ca) to make determinations in relation to the reimbursement of expenses under **Part 2AA**:
- (2) In section 8(2), replace “3” with “**2AA**, 3”.

194 New Part 2AA inserted (Reimbursement of expenses incurred in connection with takeover attempt)

After Part 2, insert:

Part 2AA

Reimbursement of expenses incurred in connection with takeover attempt

31AA Interpretation of Part

In this **Part**, the following terms have the meaning for the time being given in the takeovers code:

- (a) equity security:
- (b) offer:
- (c) offeror:
- (d) takeover notice:
- (e) target company.

31AAB Reimbursement of directors

- (1) Despite anything in the constitution of a target company, each director of the target company is entitled to be reimbursed by the target company for any expenses properly incurred by the director on behalf, and in the interests, of holders of equity securities of the target company in relation to the offer or takeover notice.
- (2) The amount to be reimbursed to a director is the amount—
 - (a) agreed between the director and the target company; or
 - (b) determined by the Panel on an application made by the director or the target company (*see* **section 31AAD**).

31AAC Reimbursement of target company

- (1) A target company is entitled to be reimbursed by the offeror for any expenses properly incurred by the target company in relation to the offer or takeover notice, whether as a result of **section 31AAB** or otherwise.
- (2) The amount to be reimbursed to the target company is the amount—
 - (a) agreed between the target company and the offeror; or
 - (b) determined by the Panel on an application made by the target company or the offeror (*see* **section 31AAD**).

31AAD Determinations by Panel of amount to be reimbursed

- (1) If the Panel receives an application under **section 31AAB(2)(b)** or **31AAC(2)(b)**, the Panel must (unless an agreement is reached beforehand under **section 31AAB(2)(a)** or **31AAC(2)(a)**)—
 - (a) determine the amount to be reimbursed for the purposes of **section 31AAB(2)(b)** or **31AAC(2)(b)**; and
 - (b) order that amount to be paid, as the case may be,—
 - (i) by the target company to the director; or
 - (ii) by the offeror to the target company.
- (2) The Panel may, if it considers it appropriate to do so, adjust the amount determined under **subsection (1)(a)** to take account of any costs incurred in connection with the application by, as the case may be,—
 - (a) the target company or the director; or
 - (b) the offeror or the target company.

31AAE Appeals against Panel's determination

- (1) The director or the target company may appeal to the court against the Panel's determination for the purposes of **section 31AAB(2)(b)**.
- (2) The target company or the offeror may appeal to the court against the Panel's determination for the purposes of **section 31AAC(2)(b)**.
- (3) An appeal under this section must be made—
 - (a) within 21 days of the date on which the appellant was notified of the Panel's determination; or
 - (b) within any longer time allowed by the court.
- (4) The court must determine the appeal by either dismissing the appeal or giving such directions or making such determination in the matter as it thinks fit.

31AAF Enforcement of agreement of amount to be reimbursed

If the amount to be reimbursed is agreed, the amount is recoverable as a debt due in any court of competent jurisdiction, as the case may be,—

- (a) by the director from the target company; or
- (b) by the target company from the offeror.

31AAG Enforcement of Panel's order for payment of amount to be reimbursed

- (1) If the amount to be reimbursed is determined by the Panel, the Panel's order under **section 31AAD(1)(b)** is enforceable by entry as a judgment of the court.
- (2) In this section, **court** means—
 - (a) the District Court, if the amount to be reimbursed is no more than \$200,000; or
 - (b) the High Court, if the amount to be reimbursed is more than \$200,000.

195 Section 44Q replaced (Jurisdiction of courts in New Zealand)

Replace section 44Q with:

44Q Jurisdiction of courts in New Zealand

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than the following:

- (a) proceedings for offences against this Act;
- (b) proceedings in relation to recovery or enforcement as referred to in **sections 31AAF and 31AAG**;
- (c) proceedings for appeals under section 31G.

196 Amendment to Takeovers Code Approval Order 2000

- (1) This section amends the Takeovers Code Approval Order 2000.

- (2) In the Schedule, revoke rule 49.

Part 3 Communications

197 Principal Act

This Part amends the Postal Services Act 1998 (the **principal Act**).

198 Section 2 amended (Interpretation)

In section 2(1), replace the definition of **letter** with:

letter means any form of written communication, or any other document or article (and includes any envelope, packet, package, or wrapper containing that communication, document, or article),—

- (a) that is addressed to a specific person or a specific address; and
- (b) that is to be conveyed other than by electronic means; and
- (c) that does not exceed any 1 or more of—
 - (i) 260 mm in height;
 - (ii) 385 mm in length;
 - (iii) 20 mm in thickness;
 - (iv) 1 kg in weight; and
- (d) for which a charge is made in respect of carrying, taking charge of, or sending it

Part 4 Energy and Resources

Subpart 1—Energy Efficiency and Conservation Act 2000

199 Principal Act

This subpart amends the Energy Efficiency and Conservation Act 2000 (the **principal Act**).

200 Section 37 repealed (Incorporation of material by reference)

Repeal section 37.

Subpart 2—Gas Act 1992

201 Principal Act

This subpart amends the Gas Act 1992 (the **principal Act**).

202 Section 2 amended (Interpretation)

In section 2(1), replace the definition of **gas distributor** with:

gas distributor—

- (a) means any person who supplies line function services, whether by means of a distribution system or by other means, to any gas retailer or to any other person or persons; and
- (b) includes a gas distributor who is also a gas retailer providing line function services to itself

203 Section 43EA amended (Membership of dispute resolution scheme)

- (1) In section 43EA(3)(a), replace “section 43S(1)” with “**subsection (3A)**”.
- (2) After section 43EA(3), insert:
 - (3A) The Governor-General may, on the recommendation of the Minister of Consumer Affairs made after consultation with the Minister of Energy and Resources, make regulations exempting, on any terms and conditions, any class of industry participants identified in regulations as a class that need not be a member of the dispute resolution scheme.

204 Section 43S amended (Supplementary empowering provision for regulations and rules)

Repeal section 43S(1)(fa).

Schedule 1
Transitional, savings, and related provisions for amendments to Unit
Titles Act 2010

s 46

Schedule 1AA
Transitional, savings, and related provisions

s 9A

Part 1
Provisions relating to Regulatory Systems Amendment Act 2015

1 Interpretation

In this **Part**,—

commencement date means the date of commencement of **subpart 2** of **Part 1** of the Regulatory Systems Amendment Act **2015**

regulations means the Unit Title Regulations 2011.

2 Saving provision for existing notices requesting extraordinary general meeting

- (1) This clause applies to any notice given to the chairperson, in accordance with the requirements of section 90(2)(a) (including as applied by Schedule 2), before the commencement date and for which a meeting has not been held before the commencement date.
- (2) Section 90(2)(a) and any related regulations, in each case as in force immediately before the commencement date, continue to apply to that notice despite the enactment of the Regulatory Systems Amendment Act **2015**.

3 Saving provision for existing High Court declarations authorising cancellation of unit plan

- (1) This clause applies to any declaration of the High Court, made under section 188 (including as applied by section 165) authorising the cancellation of a unit plan, and dated before the commencement date.
- (2) Section 189 and any related regulations, in each case as in force immediately before the commencement date, continue to apply in relation to that declaration despite the enactment of the Regulatory Systems Amendment Act **2015**.

Schedule 2
Transitional, savings, and related provisions for amendments to
Friendly Societies and Credit Unions Act 1982

s 174

Schedule 1AA
Transitional, savings, and related provisions

s 2A

Part 1
Provisions relating to Regulatory Systems Amendment Act 2015

1 Interpretation

In this **Part**,—

application period means the period of 6 months beginning with the main commencement date

existing credit union means a credit union that is registered under Part 3 immediately before the main commencement date

liabilities means liabilities, debts, charges, duties, and obligations, whether present or future, whether actual or contingent, and whether payable in, or to be observed or performed in, New Zealand or elsewhere

main commencement date means the date on which the main regulatory systems provision comes into force

main regulatory systems provision means **sections 121, 123, 128 to 166, 168 to 173, and 175 to 177** of the Regulatory Systems Amendment Act 2015

property means real or personal property in New Zealand or elsewhere and includes—

- (a) choses in action and money; and
- (b) goodwill; and
- (c) rights, interests, and claims in or to property, whether arising from or accruing under, or created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

relevant post-commencement date, in relation to an existing credit union, means the date of incorporation set out in the existing credit union's certificate of incorporation in accordance with **clause 3(6)**

rights means rights, powers, privileges, and immunities, whether actual, contingent, or prospective, and whether arising or conferred in New Zealand or elsewhere.

2 Application of main regulatory systems provision to existing credit unions

Except as provided for in **clause 3**, the main regulatory systems provision applies to an existing credit union—

- (a) only if a certificate of incorporation is issued for the existing credit union on an application for its incorporation sent to the Registrar in accordance with **clause 3**; and
- (b) only on and after the relevant post-commencement date.

3 Existing credit unions to apply for incorporation

- (1) An existing credit union must, during the application period, send to the Registrar an application for its incorporation.
- (2) The application must be made on behalf of the existing credit union by, as the case may be,—
 - (a) the members of its committee of management acting under **section 100** as replaced by the main regulatory systems provision; or
 - (b) at least 2 of its members acting under **section 143(2)** as replaced by the main regulatory systems provision.
- (3) For the purposes of **subclause (2)(a)**, it does not matter if the number of the members of the committee of management is less than the minimum number of applicants that would normally be required.
- (4) The application is to be dealt with in accordance with this Act as amended by the main regulatory systems provision.
- (5) For the purposes of **section 100B(1)(d)** (if applicable), it is to be assumed that the existing credit union's name immediately before the main commencement date complies with section 103.
- (6) If a certificate of incorporation is issued on the application, the date of incorporation set out in the certificate is to be—
 - (a) the first day of the existing credit union's first financial year to begin after the end of the application period; or
 - (b) if later, the date on which the certificate is issued.

4 Failure of existing credit union to apply for incorporation, etc

- (1) **Subclause (2)** applies if an existing credit union fails to send to the Registrar an application for its incorporation in accordance with **clause 3**.
- (2) The existing credit union's registration is cancelled at the end of the application period.
- (3) **Subclause (4)** applies if—

- (a) an existing credit union sends an application to the Registrar for its incorporation in accordance with **clause 3**; and
 - (b) the Registrar refuses to act under **section 100B(2) or 146(2)**; and
 - (c) the Registrar's refusal is not appealed against under **section 100B(6) or 146(6)** or, if it is appealed against under **section 100B(6) or 146(6)**, it is not overruled.
- (4) The existing credit union's registration is cancelled at the end of the application period or, if later,—
- (a) the end of the period of 3 months referred to in **section 100B(6) or 146(6)**, if there is no appeal; or
 - (b) the end of the day on which the appeal is finally determined, if there is an appeal.
- (5) The cancellation of an existing credit union's registration by this clause is to be treated as a cancellation by the Registrar under section 140 (as in force before its replacement by the main regulatory systems provision) and this Act and all other relevant enactments apply accordingly (disregarding the main regulatory systems provision), except that sections 92(2) to (6) and 151 of this Act do not apply to the cancellation.

5 Vesting of existing credit union's property, rights, and liabilities in body corporate, etc

- (1) This clause and **clauses 6 to 12** apply to an existing credit union for which a certificate of incorporation is issued on an application for its incorporation that is sent to the Registrar in accordance with **clause 3**.
- (2) At the beginning of the relevant post-commencement date, the property, rights, and liabilities of the existing credit union belong to, and vest in, the body corporate established by **section 100B(3) or 146(3)**.
- (3) **Clauses 6 to 11** do not limit the generality of **subclause (2)** of this clause.

6 Status of contracts and other instruments

- (1) **Subclause (2)** applies to contracts, agreements, guarantees, conveyances, deeds, leases, licences, financial products, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made with, given to or by, or addressed to the existing credit union (whether alone or with another person) before the relevant post-commencement date and subsisting immediately before that date.
- (2) The instruments to which this subclause applies are, on and after the relevant post-commencement date, binding on, and enforceable by, against, or in favour of, the existing credit union as the body corporate as if the body corporate had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed.

- (3) A reference (express or implied) to the existing credit union in an instrument made, given, passed, or executed before the relevant post-commencement date is a reference to the existing credit union as the body corporate on and after that date.

7 Continuation of legal and other proceedings

- (1) A proceeding that was pending or that existed by, against, in favour of, or otherwise in relation to, the existing credit union or to which the existing credit union was a party before the relevant post-commencement date must be continued and enforced by, against, in favour of, or otherwise in relation to, the existing credit union as the body corporate or with the body corporate as the party.
- (2) It is not necessary to amend an application, notice, or other document to do so.
- (3) In **subclause (1), proceeding** includes action, arbitration, cause of action, conviction, judgment, liquidation, order, and ruling.

8 Employees

- (1) At the beginning of the relevant post-commencement date, each employee of the existing credit union becomes an employee of the existing credit union as the body corporate.
- (2) For the purposes of an enactment, rule of law, contract, or agreement relating to the employee, the contract of employment of the employee must be treated as unbroken and a period of service with the existing credit union before the relevant post-commencement date must be treated as a period of service with the existing credit union as the body corporate.
- (3) The terms and conditions of employment of the employee must remain the same as the terms and conditions of his or her employment with the existing credit union immediately before the relevant post-commencement date, but they may be varied in the same manner.
- (4) The employee is not entitled to receive a payment or benefit by reason only of the change in the employee's employment status under this clause.

9 Taxes and duties

For the purposes of the Inland Revenue Acts (as that term is defined in section 3 of the Tax Administration Act 1994),—

- (a) the existing credit union as the body corporate is the same person as the existing credit union before the relevant post-commencement date; and
- (b) a transaction entered into by, or as an act of, the existing credit union at a time (the **relevant time**) before the relevant post-commencement date must be treated—
- (i) as having been entered into by, or as an act of, the existing credit union as the body corporate; and

- (ii) as having been entered into, or performed by, the existing credit union as the body corporate at the relevant time.

10 Other registers

- (1) No Registrar-General of Land, nor any other person charged with keeping any books or registers, is obliged to make any changes to those books or registers or in any other documents solely because any property of the existing credit union belongs to, and vests in, the body corporate at the beginning of the relevant post-commencement date.
- (2) The presentation to a Registrar or any other person of a specified instrument is, in the absence of evidence to the contrary, sufficient evidence that the property to which the instrument relates belongs to, and is vested in, the existing credit union as the body corporate.
- (3) In **subclause (2)**, a **specified instrument** is an instrument that—
 - (a) is executed or purports to be executed by the existing credit union as the body corporate; and
 - (b) relates to any property of the existing credit union before the relevant post-commencement date; and
 - (c) states that the property belongs to, and is vested in, the existing credit union as the body corporate by virtue of this schedule.
- (4) **Subclause (5)** applies if—
 - (a) any financial products issued by a person (**A**) or any rights or interests in property of a person (**A**) belong to, and vest in, the body corporate at the beginning of the relevant post-commencement date; and
 - (b) a certificate signed on behalf of the committee of management of the existing credit union as the body corporate is presented to **A**, stating that those products, rights, or interests have become the property of the existing credit union as the body corporate.
- (5) Despite **subclauses (1) and (2)** and any other enactment or rule of law, **A**, on presentation of the certificate, must register the body corporate as the holder of the financial products or as the person entitled to the rights or interests.
- (6) Except as provided in this clause, nothing in this schedule derogates from the provisions of the Land Transfer Act 1952.

11 Effect of clauses 5 to 10 and things done under them

Nothing in **clauses 5 to 10** and nothing done under them—

- (a) places the existing credit union or any other person in breach of contract or confidence or makes any of them liable for a civil wrong; or
- (b) entitles a person to terminate or cancel a contract or arrangement or to accelerate the performance of an obligation; or

- (c) places the existing credit union or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or
- (d) releases a surety from an obligation; or
- (e) invalidates or discharges a contract or security.

12 Termination of security provided under section 114

- (1) Despite **clauses 5(2) and 6 to 11**, any security provided under section 114 before the relevant post-commencement date terminates at the beginning of that date.
- (2) **Subclause (1)** does not prevent the body corporate from enforcing the security in relation to any failure or other event that occurs before the relevant post-commencement date.