



# Submission on Exposure Draft Incorporated Societies Regulations 2023

Federated Farmers of New Zealand

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# SUBMISSION ON DRAFT INCORPORATED SOCIETIES REGULATIONS 2023

**TO:** Ministry of Business, Innovation & Employment

**DATE:** 24 July 2023

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## ABOUT FEDERATED FARMERS

Federated Farmers of New Zealand is a membership organisation, which is mandated by its members to advocate on their behalf and ensure representation of their views. Federated Farmers does not collect a compulsory levy under the Commodity Levies Act and is funded from voluntary membership.

Federated Farmers represents rural and farming businesses throughout New Zealand. We have a long and proud history of representing the needs and interests of New Zealand's farmers.

Federated Farmers aims to empower farmers to excel in farming. Our key strategic outcomes include provision for an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment;
- Our members' families and their staff have access to services essential to the needs of a vibrant rural community; and
- Our members adopt responsible management and sustainable food production practices.

## **SUBMISSION ON DRAFT INCORPORATED SOCIETIES REGULATIONS 2023**

- 1.1. Federated Farmers of New Zealand welcomes the opportunity submit on the exposure draft of the Incorporated Societies Regulations 2023
- 1.2. As its name conveys, Federated Farmers is a federation of incorporated societies made up of 24 semi-autonomous geographically defined provinces – most of whom are incorporated societies.
- 1.3. As an organisation Federated Farmers has been operating for over 120 years and has been operating under the name of Federated Farmers of New Zealand since 1945 when the New Zealand Farmers' Union joined with the Sheep Owners' Federation.
- 1.4. Like many other incorporated societies Federated Farmers is also a very strong and highly recognised brand, upon which it relies heavily for its effectiveness as an advocacy organisation and its ability to raise the funds it requires – predominately from voluntary membership but also through commercial relationships.
- 1.5. Due to the nature of its work as an advocacy organisation Federated Farmers also faces a number of significant risks and liabilities if the many people that speak on out its behalf cause offence or are considered to have undertaken, or encouraged others to undertake, unlawful activities.
- 1.6. The ability to protect our brand at both the national and the provincial (region) level is vital. As outlined in the next section we strongly oppose the ability of there to be two societies of the same or very similar names unless, like our Provincial Branches, the organisations are inextricably linked.

## **2. RESPONSE TO INDIVIDUAL EXPOSURE DRAFT REGULATIONS**

- 2.1. Federated Farmers supports the draft regulations except for where we provide a contrary view below.

### **Regulation 109(2) Physical address of society's officers must be contained in a society's annual return.**

- 2.2. Federated Farmers supports the requirement that a physical address for each officer of a Society be provided in the society's annual return.
- 2.3. Federated Farmers notes that in the supporting material that the intention is that physical address is NOT publicly available, but we cannot find anything in the exposure draft that ensures that this is the case.
- 2.4. Federated Farmers submits that final regulations contain a statement that either:
  - a. The address of society officers will not be publicly available or displayed in any of the material released or provided by the registrar; OR
  - b. The address of society officers will not be publicly available or displayed in any of the material released or provided by the registrar unless the express written permission of the officer has been obtained or provided.

## Requirement to make applications and file online.

- 2.5. Federated Farmers notes that the default requirement is that “communications with the Registrar” such as applications for incorporation and annual returns are to be on-line with the caveat that the “Registrar may accept an application made in another manner if the Registrar considers it would be unreasonable to refuse the application”.
- 2.6. While Federated Farmers recognises the value of on online filing it is important to recognise that for some people this may not be practicable due to their personal circumstances and/or poor or no telecommunications connectivity.
- 2.7. Federated Farmers considers that an alternative would be for discretion as to whether other methods can be used to lie with the applicant not the registrar.
- 2.8. Federated Farmers suggests the following amendment:
  - a. *However, the Registrar ~~may~~ must accept an application made in another manner if ~~the Registrar considers it would be unreasonable to refuse the application~~.*
- 2.9. While not a matter for these regulations, it should be an obligation of the Registrar to, as far as is practicable, to maximise the accessibility of online processes to make them:
  - a. Simple to follow and initiate;
  - b. Able to be accessed by those with low internet speeds and bandwidth; and
  - c. Designed to handle situations where those inputting data do so at a slow rate and where internet connections are unreliable (e.g., system designed so it saves as it goes so partial filing is not lost if the internet connection cuts out and the system does not time out).

## Regulation 7: Consent to use of identical or almost identical name.

- 2.10. Federated Farmers opposes the proposal that, under any circumstance, that two societies can use identical or almost identical names. To allow this will create significant and unnecessary legal challenges and commercial and public confusion. This appears to be contrary to section 11(3)(b) of the Act that the Registrar needs to be satisfied “that the society’s use of the name will not be contrary to the public interest”.
- 2.11. Federated Farmers sees no reason or benefit and only downside of allowing two societies to have identical or almost identical names.
- 2.12. Federated Farmers would support a proposal that a parent society can give its consent to another society to use a **similar** name but not an identical or almost identical name.
- 2.13. Federated Farmers Provinces fit into the criteria of having similar names. For example, the common naming formats for our Provinces is Federated Farmers (Province Name) Incorporated or Federated Farmers of New Zealand (Province Name) Province Incorporated.
- 2.14. Their names provide two very important and clear concepts:
  - a. The Federated Farmers part of their name shows that they are part of the collective body of Federated Farmers of New Zealand with all the benefits of the Federated Farmers brand and its collective resources; and
  - b. The Province part of their name provides each province with a strong local identity that differentiates it from other Federated Farmers Provinces and other local organisations.

#### **Regulation 14: Attendance at annual general meetings**

*For the purposes of section 84(4) of the Act, if a society has 1,000 or more members, the society's constitution may provide that a right to attend an annual general meeting applies only to delegates or other representatives of members (rather than to all members).*

- 2.15. Federated Farmers supports draft regulation 14 as the cost of allowing all members to attend annual general meetings could consume a significant proportion of some society's resources.
- 2.16. Federated Farmers supports the discretion to limit attendance (for societies with 1,000 or more members) to delegates or other representatives of members (rather than to all members) to be provided for via a society's constitution.

#### **Regulation 17: Annual returns: prescribed manner**

*(1) A society must give an annual return required under section 109 of the Act to the Registrar within 6 months after the society's balance date.*

- 2.17. While Federated Farmers acknowledges the importance of placing timeframes on societies, we question the need to the proposed 6-month deadline.
- 2.18. Federated Farmers of New Zealand operates on a calendar financial year (year end 31 December), but its farmer and grower delegates and members work on a seasonal basis meaning that meetings cannot easily be held during busy times in the farming calendar. Federated Farmers provinces usually hold their AGMs in April and May as it takes time for their annual accounts to be prepared (often at a time when accountants are busy with March year end commitments) and they must also be held prior to the national AGM (in order to elect delegates and submit motions to it). It is therefore practically difficult to hold the national AGM before late June/early July. Another reason to hold it at that time is to avoid a clash with the National (Mystery Creek) Field Days that occur mid-to-late June. We are sure that the situation faced by Federated Farmers is not unique – particularly amongst incorporated societies with branches needing to hold their own AGMs.
- 2.19. Federated Farmers requests that draft regulation 17 be amended as follows:  
*(1) A society must give an annual return required under section 109 of the Act to the Registrar within 6 8 months after the society's balance date*

#### **26 Receipt of documents.**

- (1) The regulation applies for the purposes of regulations 22 to 25.*
- (2) A document is treated as received,—*
- (a) if it is delivered to a natural person,—*
    - (i) when it is handed to that person; or*
    - (ii) if the person refuses to accept the document, when it is brought to the attention of, and left in a place accessible to, that person:*
  - (b) if it is emailed, on the first working day following the day on which it is sent:*
  - (c) if it is posted, **5 working days** [our emphasis] after it is posted or any shorter period determined by the court in a particular case:*
  - (d) if it is delivered to a document exchange, 5 working days after it is delivered or any shorter period determined by the court in a particular case:*
  - (e) if it is sent by fax, on the first working day following the day on which it was sent.*
- 2.20. Federated Farmers questions the accuracy of the assumption that posted mail will be delivered within 5 working days. With the reduction in postal delivery frequencies 5 working days is not enough time. We suggest it should be increased to 10 working days.

2.21. Federated Farmers requests that draft regulation 26(2)(c) be amended as follows:

(c) *if it is posted, 5 10 working days after it is posted ~~or any shorter period determined by the court in a particular case:~~*