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Ministry of Business, Innovation and Employment

Submission on: **Exposure Draft of the Incorporated Societies Bill**

From: DairyNZ

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## 1. INTRODUCTION

- 1.1 Thank you for the opportunity to respond to the Exposure Draft of the Incorporated Societies Bill.
- 1.2 We understand that the purpose of the Bill is to give guidance to people who run societies, updating an Act that is now more than 100 years old. The aim is to strengthen the legal framework, help societies to govern themselves robustly, and provide more constructive options when things go wrong.
- 1.3 We appreciate this intention, but submit that industry good bodies like DairyNZ Incorporated have a distinct mandate and modus operandi that does not fit comfortably with some of the proposed changes. We outline our points below.

## 2. BACKGROUND

2.1 DairyNZ Incorporated as an industry good body operates under a guiding principle, namely:

To promote, or fund the provision of Industry Good activities being to provide net benefits to a dairy industry group or groups, as defined by the Board, and which would not be sufficiently provided by the market because:

- (a) The benefits flowing to those prepared to pay voluntarily are not sufficient to cover the costs of the activity; and
- (b) It is not practical to prevent others who do not contribute to the costs of the activity, from benefiting.

2.2 The objects of the Society on behalf of its members are:

- To secure and enhance dairy farming in New Zealand.
- To undertake and promote dairy farming research and development in the interests of the dairy industry in New Zealand, both domestic and export.
- To capture the benefits of unique knowledge for dairy farmers, including independent information storage and transfer.
- To support efficient and effective nation-wide methods of quality assurance, biosecurity, product safety and animal health status.
- To benchmark industry standards to meet international and domestic demands.
- To support and encourage positive perceptions of the industry as a major contributor to the economy.
- To liaise and work with other relevant dairy industry organisations in New Zealand and overseas in furtherance of these objects.
- To have the industry perceived as a good place to work and as a good corporate citizen.
- To advocate on specific issues of interest to the industry on behalf of the whole industry.

- To ensure there is adequate research and promotion of new farming practices that enhance environmental quality.
- To ensure that the level of investment in “industry good” activities is appropriate for the size of the industry and its importance to the New Zealand economy.
- To ensure that the industry has a sound infrastructure on which to build its future development.
- To initiate, organise and publicise seminars, workshops, conferences and meetings for the education and development of participants in the dairy industry.

### 3. IMPLICATIONS OF THE BILL

#### 3.1 Dispute resolution procedures

3.1.1 The Bill will require DairyNZ Inc’s constitution to include procedures to resolve disputes between members (in their capacity as members) and between members and the society. These procedures must comply with the rules of natural justice and the minimum requirements set out sections 31 and 32 and Schedule 2 of the Bill.

3.1.2 We accept that these processes are fair and reasonable for most incorporated societies (such as sports clubs) but they are not appropriate for an incorporated society such as DairyNZ, where we take positions that support the industry but are not always commensurate with the views of individual members. We aim to ensure that decisions are supported by the majority of levy payers, but they are not consensus decisions. The obligation to renew our mandate every five years compels us to play a considered ‘long game’ with our levy-payers.

3.1.3 We consider the Bill needs to nuance the dispute resolution procedures to take into account majority decision-making. We accept the need for dispute resolution procedures for disputes between members.

#### 3.2 ‘Best interests of the society’

3.2.1 The Bill provides that officers of the society must “when exercising powers or performing duties... act in good faith and in what the officer believes to be in the best interests of the society.”

3.2.2 This terminology differs from the obligations imposed on officers under DairyNZ’s existing rules. These rules refer to actions that will “best attain the objects of the society”.

3.2.2 We consider our current rules are preferable because they focus on achieving the objects of DairyNZ, rather than the interests of the society as a separate legal entity distinct from its objects. We submit that officers should have a duty to act in a way that achieves the objects of the society rather than acting in the best interests of the society.

#### 3.3 Conflict of interest disclosure requirements

3.3.1 The disclosure requirements of the Bill are similar to those imposed on directors of companies and contained in DairyNZ’s existing constitution.

3.3.2 Under DairyNZ's existing rules, a director with a conflict of interest can vote and take part in relevant decisions after disclosing their interest. We agree that this is inconsistent with best practice and support the requirement in Section 58 for conflicted officers to be prohibited from being involved with relevant decisions.

3.3.3 However, under DairyNZ's constitution, there are no specified consequences if a director fails to notify a conflict of interest, which conflicts with the Bill, which proposes significant consequences for a failure to disclose:

- The Board must notify all members of the society "as soon as practicable after becoming aware of the failure." We consider this is **not** desirable or practical given the large number of our members.
- Our view is consistent with Section 60, which allows for transactions entered into by DairyNZ in which an officer is interested to be "avoided" at any time within 3 months of the interest being disclosed to members, unless DairyNZ received "fair value" under the transaction.

3.3.4 We suggest limiting the scope of the notification required to an obligation to notify members only if the society did not receive fair value for the relevant transaction.

#### 3.4 Consent to be a member

3.4.1 Section 67 of the Bill provides that "a person must consent to become a member of a society." At present, DairyNZ's membership is deemed to arise on payment of the relevant levy.

3.4.2 We suggest that section 67 be amended to allow for deemed membership such as occurs with our members.

### 4. CONCLUSION

4.1 DairyNZ is an industry good body funded by a levy, the mandate for which is subject to a vote every five years. This gives it a distinct purpose and modus operandi which does not fit comfortably with the Exposure Draft of the Bill. We recommend further nuancing of the Bill to incorporate the intent and modus operandi of industry good bodies.

#### .ABOUT DAIRYNZ

- a. DairyNZ is the industry good organisation representing New Zealand's dairy farmers. Funded by a levy on milksolids and through Government investment, our purpose is to secure and enhance the profitability, sustainability and competitiveness of New Zealand dairy farming.
- b. We deliver value to farmers through leadership, influencing, investing, partnering with other organisations and through our own strategic capability. Our work includes research and development to create practical on-farm tools, leading on-farm adoption of best practice farming, promoting careers in dairying and advocating for farmers with central and regional government. For more information visit [www.dairynz.co.nz](http://www.dairynz.co.nz).