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**Ministry of Business, Innovation and Employment**  
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**Submission on the:**  
**The Exposure Draft of the Incorporated Societies Bill**

**Submitter:** Horticulture New Zealand Incorporated  
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1. Horticulture New Zealand Incorporated (HortNZ), together with the organisations listed below are making this submission on the Exposure Draft of the Incorporated Societies Bill:

Blackcurrants New Zealand Incorporated  
Central Otago Regional Fruitgrowers Association Incorporated  
Hawke's Bay Fruitgrowers' Association Incorporated  
Hawke's Bay Vegetables Growers Association Incorporated  
Katikati Fruitgrowers' Association Incorporated  
Kiwifruit Vine Health Incorporated  
NZ Avocado Growers Association Incorporated  
NZ Citrus Growers Incorporated  
NZ Feijoa Growers Association Incorporated  
NZ Kiwifruit Growers Incorporated  
Onions NZ Incorporated  
Persimmon Industry Council Incorporated  
Pipfruit New Zealand Incorporated  
Te Puke Fruitgrowers' Association Incorporated  
The KVH Foundation Incorporated  
Tomatoes NZ Incorporated

2. HortNZ along with its affiliated organisations represents the interests of New Zealand's 5,500 commercial fruit and vegetable growers. The NZ horticulture industry is valued at over \$5.5 billion with \$3 billion in exports.

**Incorporated Societies Role in Horticulture**

3. The commercial fruit and vegetable growers have created, to represent their interests, incorporated societies regionally (for example in Pukekohe, Hawke's Bay, Central Otago) by product (for example potatoes, tomatoes, onions, pipfruit, avocados, kiwifruit) and nationally (for example HortNZ).
4. Depending on the role of each of these incorporated societies they can employ staff (for example HortNZ's employs 26 staff) and have turnover in the millions of dollars (for example HortNZ's annual turnover is over \$6 million).

5. These incorporated societies are funded either by membership subscriptions or under a commodity levy. The Commodity Levies Act 1990 enables the imposition of levies on certain commodities, payable to organisations that are representative of the levy payers. Levy payers can only be producers of that commodity. Levies are imposed by Order-in-Council, signed by the Governor-General on the recommendation of the Minister for Primary Industries. For a commodity levy to be imposed, the levy payers must agree to it. The voting process is undertaken every six years. Implicit in this process is the maintenance of a register of all levy payers so that they can vote on the levy and be regularly consulted.

#### **Submission – Recognition of Horticulture Incorporated Societies: Clauses 33 and 34**

6. Horticulture incorporated societies play an integral role representing commercial growers. Experience has resulted in the rules for our societies being adapted to meet the needs of the members. We submit that the Bill should permit (as is currently proposed) for the members to determine whether they adopt the standard provisions to satisfy each of the minimum requirements. This recognises that the members will determine how to manage their incorporated societies to best meet its and their objectives and purposes.

#### **Submission – Definition of Officer: Clauses 36, 51 to 55**

7. The Clause 36 definition includes key staff employed by the larger incorporated societies such as the Chief Executive and Finance Manager. The effect of this definition is that key staff take on the responsibilities of Officers who are actual members of the incorporated society. We submit that staff who have duties under the Bill, should also be given the powers of the committee members. The alternative we submit is for key staff not to be given these duties.

#### **Submission – Conflicts of Interest: Clauses 56 to 58, 60 to 62**

8. Clause 57 provides that committee members must disclose their interests and under clause 65 the disclosures are to be listed in an interests register. The Bill's provisions for the management of a conflict of interest are partly taken from the Companies Act. Under the Companies Act, a transaction in which a director is interested can be avoided by the company within three months after the transaction is disclosed to shareholders. It cannot, however, be avoided if the company received fair value. In the case of the Companies Act, this makes some sense because directors are allowed to vote notwithstanding that they have an interest (effectively overriding the common law).
9. The Bill has provisions which are nearly the same – that is, that the transaction cannot be avoided by the society within three months after it is disclosed to members if the society received fair value. However, under the Bill, not only can committee members not vote, but if 50% or more of the members of the committee are prevented from voting on the matter, then the matter must be determined by a special general meeting of the society. We submit that this provision is neither pragmatic nor warranted. We submit the full regime from the Companies Act should be incorporated not just part of the provisions including the full avoidance provisions from the Companies Act. The Companies Act allows the conflicted director to vote and has a provision for avoiding the transaction. However the Bill provides that committee members are prohibited from voting and taking part in the discussion. In addition calling a meeting of members is, for large commercially active organisations particularly, costly and impractical. We submit that the Bill should mirror the Companies Act provisions in all respects permitting conflict members to vote and avoidance be permitted where there is fair value.

#### **Submission – Consent to be a Member: Clause 67**

10. Where an incorporated society is funded through a commodity levy order made under the Commodity Levies Act 1990, the need for each levy paying member to consent to becoming a member, we submit should be waived. It is noted that Clause 67 codifies case law. There has been no case law addressing membership consent for those incorporated societies operating under a commodity levy order. The codification of case law it is submitted should

therefore make allowance for this particular situation. This would mean that the commodity levy process would be taken as meeting the requirement for member consent as it requires every levy paying member to vote on the proposed commodity levy and maintenance of a register of all levy paying members. In addition regular communications both by meeting and newsletter is maintained with the levy paying members. The key point is that the levy paying member is knowingly funding the incorporated society for their benefit that in our submission addresses the need for consent. We submit that the purpose of Clause 67 is so that members know that they are in fact members. We submit that this requirement is satisfied through the commodity levy system.

#### **Submission – Financial Reporting: Clauses 83 to 84**

11. It is accepted that societies should as a minimum report meeting the XRB's simple format reporting standards for not-for-profit entities (tiers 3 or 4). We submit that it should be a matter for the members of a society whether they report under tiers 1 or 2. A society having met the tiers 3 or 4 standards ensures that appropriate financial standards are met. To require more without the agreement of the members imposes cost and, what the members would consider to be, unnecessary bureaucracy. Leaving audit for the membership of each incorporated society is supported.

#### **Submission – Terminology**

12. A number of incorporated societies have adopted company terminology having directors and boards for example. We submit that the members should be permitted to determine what terminology is used in their Rules and what to call their Rules, Rules or Constitution.

#### **Opportunity to Present on These Submissions**

13. If there is an opportunity to present or discuss this submissions in person, HortNZ asks that it be heard in support of this submission.

Withheld

**MJ Chapman**  
**Chief Executive**