

# **Farmers' Mutual Group Bill**

Private Bill

As reported from the Primary Production Committee

## **Commentary**

### **Recommendation**

The Primary Production Committee has examined the Farmers' Mutual Group Bill and recommends that it be passed with the amendments shown.

This is a private bill. We report that the statements in the preamble have been proved to our satisfaction.

### **Introduction**

The forerunner to the Farmers' Mutual Insurance Association (the Mutual) was established 102 years ago by farmers dissatisfied with the high cost of fire insurance. After the enactment of the Mutual Fire Insurance Act 1903 mutual groups were established in many rural areas of New Zealand.

The Mutual Insurance Act 1955 sets out the powers and responsibilities of mutuals, and a 1956 Order in Council allowed a mutual to expand its services to members.

In 1978 a number of mutuals amalgamated and one organisation was formed with its Head Office in Palmerston North, where it remains today. Therefore, the Farmers' Mutual Insurance Association is the only remaining mutual association incorporated under the Mutual Insurance Act.

The Farmers' Mutual Insurance Association will be renamed the Farmers' Mutual Group, and will be incorporated under the legislation resulting from the enactment of this bill.

The Farmers' Mutual Group retains its mutuality under this bill, but it will also have the powers, capacity, and governance regime of a company under the Companies Act 1993.

### **Interpretation**

We recommend an amendment to clause 3 to include definitions of “Registrar” (as defined in the Companies Act 1993) and “register”, to make it clear that the register on which the Mutual is registered is not the companies register. We recommend consequential amendments to clauses 30 and 31.

### **Membership**

Clause 9 sets out the criteria for membership of the Mutual, and clause 10 provides for the names of members to be entered on the register. We recommend amending these clauses to indicate that membership arises upon the entry of a person’s name on the register. We also recommend a consequential amendment to clause 16.

### **Change of name**

Clause 12 provides a process for changing and registering the name of the Mutual. We recommend an amendment to this clause to clarify that the forms used to record a change of name should be those prescribed under the Companies Act.

### **Constitution**

Clause 13 details the various requirements for the Mutual’s constitution, and states that sections 30, 32, 33, and 34 of the Companies Act apply to the Mutual. We recommend amending clause 13 and inserting new clauses 13A, 13B, and 13C to include text that incorporates these provisions into the bill itself. We believe that the inclusion of these requirements would provide clarity and transparency as to the constitutional requirements for members and potential members of the Mutual.

### **Rights and powers attached to membership**

Clause 14 sets out the rights and powers of the members. We recommend an amendment to subclause (2) to include the words “or by any Act” to ensure that members can enjoy rights granted by any other Act.

## **Members register**

Clause 16 requires that the Mutual maintain a members register. The clause originally referred to a number of sections from the Companies Act as applying to the Mutual. We recommend amending clause 16 to incorporate text from sections 87, 93 and 94 of the Companies Act, which set out the provisions for maintaining a membership register, into the bill itself.

The clause originally included a reference to section 90 of the Companies Act, which imposes a duty on directors to take reasonable steps to ensure the register is properly kept and that share transfers are registered promptly. However, we do not believe this is required, as clause 16(7) provides adequate protection against directors failing to maintain the register properly. We also note that Farmers' Mutual Group does not issue shares, and therefore the second limb of the duty does not apply.

## **Alteration of members' rights**

Clause 18 protects members from having their rights altered. However, the only rights members have are those accorded by the Act (which the board cannot change) or the constitution (which members can control through special resolutions). Therefore, we believe that there is no need for the protections set out in clause 18, and recommend that it be deleted.

## **Entitlement to receive notice and to vote**

We recommend that clause 20 be deleted and new clause 20 inserted, for simplicity. This clause specifies which members are entitled to receive a notice of meeting of members, and which members are entitled to vote on a resolution put to members at a meeting.

## **Voluntary administration**

We recommend the insertion of new clause 28A, to apply Part 15A of the Companies Act, which had not been enacted when the bill was being prepared.

**Minor amendments**

We recommend a number of other minor amendments to clarify the intention of the bill, to address omissions or drafting errors, or to make other improvements.

**Conclusion**

We are sympathetic to the intention of the bill and recommend to the House that it proceed.

## **Appendix**

### **Committee process**

The Farmers' Mutual Group Bill was referred to the committee on 13 June 2007. The closing date for submissions was 6 July 2007. We received and considered 2 submissions from interested groups and individuals. We heard 1 submission.

We received advice from the Ministry of Economic Development.

### **Committee membership**

Hon David Carter (Chairperson)

Dr Ashraf Choudhary (Deputy Chairperson)

Nathan Guy

Phil Heatley

Moana Mackey

Hon Mita Rininui

Eric Roy

Hon Dover Samuels

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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*Hon Steve Maharey*

# **Farmers' Mutual Group Bill**

## **Private Bill**

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## **Preamble**

- (1) The Farmers' Mutual Insurance Association (the **(Mutual) FMIA**) was formed from the merger of a number of associations incorporated under the Mutual Insurance Act 1955 (the **1955 Act**). Those associations were incorporated to provide fire and other insurance to their members, being principally farmers and persons that service or support farmers: 5
- (2) The **(Mutual) FMIA** is now the only association incorporated under the 1955 Act:
- (3) The **(Mutual) FMIA** can operate only within the limited powers and authorities conferred upon it by the 1955 Act, and must comply with the governance requirements specified in the 1955 Act. Those powers, authorities, and requirements are outdated and inappropriate, and restrict the **(Mutual's) FMIA's** ability to compete with others in its industry and to provide relevant products and services: 10  
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- (4) The **(Mutual) FMIA** wishes to preserve its mutual status, but modernise its powers and authorities. At the same time, the **(Mutual) FMIA** wishes to maintain its current principal business and to grant membership rights to policyholders insuring risks to rural property. Accordingly, this Act removes the **(Mutual) FMIA** from the jurisdiction of the 1955 Act, renames it the Farmers' Mutual Group, and incorporates it as a mutual association under this Act with the powers, capacity, and governance regime of a company under the Companies Act 1993: 5
- (5) The objects of this Act cannot be achieved without the authority of Parliament: 10

**The Parliament of New Zealand therefore enacts as follows:**

**1 Title**

This Act is the Farmers' Mutual Group Act **2007**. 15

**2 Commencement**

- (1) **Section 1**, this section, and **Part 1** come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of the Act comes into force on a date or dates to be appointed by the Governor-General by Order in Council; and *(1) one or more Orders in Council may be made appointing different dates for different provisions and for different purposes.* 20
- (3) An Order in Council must not be made under **subsection (2) (of this section)** unless the members of the Farmers' Mutual Insurance Association have adopted a constitution as the initial constitution of the Mutual in accordance with **section 4**. 25

**Part 1  
Preliminary**

**3 Interpretation** 30

- (1) In this Act, unless the context otherwise requires,—
- board** has the meaning set out in section 127 of the Companies Act 1993, applied as if the Mutual were a company registered under that Act
- constitution** means *(a document) the constitution of the Mutual*, as referred to in **section 13(5)** 35

**date of incorporation** means the date stated in the certificate of incorporation issued by the Registrar under **section 5(1)**

**director** has the meaning set out in section 126 of the Companies Act 1993, applied as if the Mutual were a company registered under that Act

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**Farmers' Mutual Insurance Association** means the association of that name incorporated under the Mutual Insurance Act 1955 that, after the date of incorporation, will be known as the Mutual

**member** means a person whose name is entered in the members register as a member of the Mutual in accordance with this Act and the constitution

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**members register** means the members register required to be *(kept)* maintained under **section 16(1)**

**Mutual** means the association that—

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- (a) before the date of incorporation, is called Farmers' Mutual Insurance Association, an association incorporated under the Mutual Insurance Act 1955; and
- (b) on and after the date of incorporation, is called Farmers' Mutual Group (unless its name is changed under this Act), an association incorporated under this Act

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#### **New (unanimous)**

**register** means a register, other than a register of companies, kept by the Registrar

**Registrar** means the Registrar of Companies as defined in the Companies Act 1993

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**solvency test** has the meaning set out in section 4 of the Companies Act 1993, applied as if the Mutual were a company registered under that Act

**special meeting** means a meeting called in accordance with **section 19(5)**

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**special resolution** means a resolution on which not less than 500 members entitled to vote cast votes and which is approved by a majority of 75% or, if a higher majority is required by the constitution, that higher majority, of the votes of those members entitled to vote and voting on the question.

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- (2) Terms and expressions used in this Act that are defined in the Companies Act 1993 have the meaning set out in that Act, unless specified otherwise in this Act or the constitution.
- (3) Where a provision of the Companies Act 1993 applies under this Act—
- (a) terms and expressions used in the provision and defined in the Companies Act 1993 have the meaning set out in that Act with such modifications as may be necessary:
  - (b) other provisions (including the schedules) of the Companies Act 1993 referred to in the provision apply with such modifications as may be necessary, except where not applied, or expressly excluded, by this Act or the constitution.

**Struck out (unanimous)**

- 4 Adoption of constitution**
- The members of the Farmers' Mutual Insurance Association may by resolution adopt a constitution as the initial constitution of the Mutual. Such a resolution, whether passed before or after this section came into force, shall be valid and effective for the purposes of this Act provided—
- (a) notice specifying the intention to propose the resolution was posted to each member of the Farmers' Mutual Insurance Association at his or her last known place of abode or business and section 27 of the Mutual Insurance Act 1955 was otherwise complied with; and
  - (b) the resolution was passed as a special resolution within the meaning in, and in the manner prescribed by, section 8(2) of the Mutual Insurance Act 1955.

**New (unanimous)**

- 4 Adoption of constitution**
- (1) The members of the Farmers' Mutual Insurance Association may, by resolution, adopt a constitution as the initial constitution of the Mutual.
- (2) A resolution to adopt a constitution is valid and effective, whether passed before or after this section comes into force, if—

**New (unanimous)**

- (a) notice of the meeting at which the resolution is passed is given in accordance with section 27(1) and (2)(a) of the Mutual Insurance Act 1955; and
  - (b) the resolution is passed as a special resolution in accordance with section 8(2) of the Mutual Insurance Act 1955. 5
- (3) To avoid doubt, section 27(3) of the Mutual Insurance Act 1955 applies with respect to the notice, meeting, and resolution referred to in this section.

## Part 2

### Incorporation and governance

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*Mutual and its members***5 Transfer of incorporation and change of name**

- (1) The Registrar must, on receipt of a constitution certified by a director of the Farmers' Mutual Insurance Association in accordance with **subsection (5)**, issue a certificate that the Mutual is incorporated under this Act. 15
- (2) On and from the date of incorporation—
  - (a) the name of the Farmers' Mutual Insurance Association is changed to Farmers' Mutual Group (unless its name is subsequently changed under this Act); and 20
  - (b) the Mutual ceases to be an association incorporated under the Mutual Insurance Act 1955 and is an association incorporated under this Act.

**Struck out (unanimous)**

- (3) The certificate of incorporation issued by the Registrar under **subsection (1)** must record the date that the Mutual is incorporated under this Act and the change of name to Farmers' Mutual Group, and is conclusive evidence the Mutual is incorporated under this Act. 25

**New (unanimous)**

- (3) The certificate of incorporation issued by the Registrar under **subsection (1)**—
- (a) must record the date that the Mutual is incorporated under this Act and the change of name to Farmers' Mutual Group; and 5
  - (b) is conclusive evidence that the Mutual is incorporated under this Act.
- (4) At the same time that the Registrar issues the certificate of incorporation (*under subsection (1)*), the Registrar must—
- (a) register the Mutual on (*the New Zealand*) a register; and 10

**Struck out (unanimous)**

- (b) allocate October to the Mutual for the purposes of section 214(4) (annual return) of the Companies Act 1993.

**New (unanimous)**

- (b) for the purposes of section 214(4) (annual return) of the Companies Act 1993, allocate the month of October to the Mutual. 15
- (5) **(A)** The director's certificate (*for the purposes of*) given under subsection (1) must certify that the constitution has been approved by the members of the Farmers' Mutual Insurance Association as the initial constitution of the Mutual and that the provisions of **section (4(1)(a)) 4(2)(a) and (b)** were complied with. 20
- (6) The Registrar, without further authority than this section, has the power to enter the name of the Mutual on (*the New Zealand*) a register. 25
- Compare: (s7, s7(2), s8(1) 1955 No 23; s14 1993 No 105) 1955 No 23 ss 7, 8(1); 1993 No 105 s 14

**6 Principal business**

- (1) The principal business of the Mutual must at all times consist of the provision by the Mutual (whether directly (*and/or*) or) 30

through a subsidiary, or through both) of rural risk insurance to both members and non-members.

- (2) *(In this section, rural risk insurance)* **Rural risk insurance** has the meaning set out in the constitution.

## 7 Capacity, powers, and validity of actions

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- (1) The Mutual is a body corporate with perpetual succession.

### Struck out (unanimous)

- (2) Part 3 (capacity, powers, and validity of actions) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that Act. In particular, subject to this Act, any other enactment, and the general law, the Mutual has, both within and outside New Zealand—

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- (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.

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### New (unanimous)

- (2) Part 3 (capacity, powers, and validity of actions) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that Act.

- (3) In particular, subject to this Act, any other enactment, and the general law, the Mutual has, both within and outside New Zealand,—

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- (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.

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Compare: (s7) 1955 No 23 s7; (s16(1)) 1993 No 105 s16(1)

## 8 Premium notes

- (1) The obligations (if any) of members (, if any,) in relation to premium notes terminate on the date of incorporation.

**Struck out (unanimous)**

- (2) In this section, premium note means a signed undertaking in the form set out in Schedule 2 of the Mutual Insurance Act 1955 held by the Mutual on the date of incorporation.

**New (unanimous)**

- (2) **Premium note** means a signed premium note (as defined in section 2 of the Mutual Insurance Act 1955) that is held by the Mutual on the date of incorporation. 5

**Struck out (unanimous)****9 Membership**

- (1) Subject to the provisions of this Act, every person who is a registered member of the Farmers' Mutual Insurance Association immediately before the date of incorporation is a member of the Mutual from the date of incorporation. 10
- (2) Every person who holds a qualifying policy, whether personally or in some other capacity, is, subject to any exclusion in the constitution, eligible to be a member.
- (3) Every person who is eligible to be a member pursuant to **subsection (2)** and who agrees to be a member is a member from the first working day after the Mutual receives notice that the person agrees to be a member, subject to the provisions of this Act. 15
- (4) Every member may remain a member so long as they are a customer, and notwithstanding they subsequently cease to hold a qualifying policy. 20
- (5) A member who gives the Mutual written notice that they no longer wish to be a member ceases to be a member on the first working day after the notice is received by the Mutual. 25
- (6) In this section,—
- (a) **qualifying policy** has the meaning in the constitution; and
- (b) **customer** means a person who—
- (i) holds a policy of insurance issued by the Mutual or a subsidiary of the Mutual; or 30

**Struck out (unanimous)**

- (ii) has invested money with, or in securities issued by, the Mutual or a subsidiary of the Mutual; or
- (iii) is otherwise a customer of the Mutual or a subsidiary of the Mutual.

Compare: s3(3) 1955 No 23

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**10 Entry of members' details in members register**

- (1) Subject to **subsection (2)**, the Mutual must enter or cause to be entered in the members register (if not already entered)—
  - (a) the names, alphabetically arranged, and latest known address of each person who is or becomes a member. In the case of a person who becomes a member by virtue of **section 9(3)**, entry must be made forthwith on receipt of notice under that section unless **subsection (2) or (3)** of this section apply; and 10
  - (b) the date on which the member became a member. 15
- (2) The Mutual may refuse or delay entry of the name of a person on the members register if—
  - (a) the board resolves, within 30 working days of the person being entitled or apparently entitled to have their name entered on the members register, to refuse or delay registration of the person's name, and the resolution sets out in full the reasons for doing so; and 20
  - (b) notice of the resolution, including those reasons is sent to the person within 5 working days of the resolution being passed by the board; and 25
  - (c) this Act or the constitution expressly permits the board to refuse or delay registration for the reasons stated.
- (3) Subject to the constitution, the board may refuse or delay registration of a person's name if the person has failed to pay the Mutual or any subsidiary of the Mutual an amount due in respect of any transaction the person has with the Mutual or a subsidiary. 30
- (4) If the Mutual fails to comply with **subsection (1)**, section 84(6) (a) and (b) (Offence to fail to enter name on register) of the Companies Act 1993 applies as if the Mutual were a company registered under that Act. 35



**Struck out (unanimous)**

- (5) Subject to section 91 of the Companies Act 1993, the entry of the name of a person in the members register is prima facie evidence of membership of the Mutual.
- (6) The Mutual must enter in the members register the date on which a person ceased to be a member.

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Compare: s84(4), s89 1993 No 105

**New (unanimous)****9 Membership**

- (1) Every person who is a registered member of the Farmers' Mutual Insurance Association on the day before the date of incorporation is a member of the Mutual on and from the date of incorporation, subject to this Act. 10
- (2) A person who is not a member by virtue of **subsection (1)** is eligible to be a member of the Mutual if he or she—
- (a) holds a qualifying policy; and
  - (b) is not subject to an exclusion set out in the constitution; 15
  - and
  - (c) agrees to become a member.
- (3) A person who is eligible to be a member becomes a member on the date on which the person's name is entered in the members register in accordance with **section 10**. 20
- (4) Every member may remain a member so long as they are a customer, even if they subsequently cease to hold a qualifying policy.
- (5) If a member advises the Mutual that he or she no longer wishes to be a member, the Mutual must remove the person's name from the members register; and from the date of removal from the register, the person is no longer a member. 25
- (6) In this section,—
- (a) **customer** means a person who—
    - (i) holds a policy of insurance issued by the Mutual 30
    - or a subsidiary of the Mutual; or
    - (ii) has invested money with, or in securities issued by, the Mutual or a subsidiary of the Mutual; or

**New (unanimous)**

- (iii) is otherwise a customer of the Mutual or a subsidiary of the Mutual; and
- (b) **qualifying policy** has the meaning set out in the constitution.

Compare: 1955 No 23 s 3(3)

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**10 Entry on members register**

- (1) The Mutual must ensure that the name of every person who is a member by virtue of **section 9(1)** is entered on the members register on the date of incorporation.
- (2) The Mutual must, subject to **subsections (4) and (5)**, enter the name of a person in the members register as soon as practicable after the person becomes eligible to be a member under **section 9(2)**. 10
- (3) Entry of the name of a person in the members register is prima facie evidence of membership of the Mutual, subject to section 91 of the Companies Act 1993 (as applied by **section 16(6)(b)**). 15
- (4) The Mutual may refuse or delay entry of a person's name on the members register if—
- (a) the board resolves, within 30 working days of the person being entitled or apparently entitled to have their name entered on the members register, to refuse or delay entry of the person's name, and the resolution sets out in full the reasons for doing so; and 20
- (b) notice of the resolution, including those reasons, is sent to the person within 5 working days of the resolution being passed by the board; and 25
- (c) this Act or the constitution expressly permits the board to refuse or delay entry on the register for the reasons stated. 30
- (5) Subject to the constitution, the board may refuse or delay entry of a person's name on the register if the person has failed to pay the Mutual or any subsidiary of the Mutual an amount due in respect of any transaction the person has with the Mutual or the subsidiary. 35

**New (unanimous)**

- (6) If the Mutual fails to comply with **subsection (1) or (2)**, section 84(6) of the Companies Act 1993 (which contains an offence about failing to enter names on a register) applies as if the Mutual were a company registered under that Act.

Compare: 1993 No 105 ss 84(4), (5), (6), 89(1)

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**Struck out (unanimous)****11 Liability of members**

No member or former member is liable for an obligation of the Mutual by reason only of being a member. Nothing in this section affects the liability of a member or former member to the Mutual under a contract, or for any tort, or breach of fiduciary duty, or other actionable wrong committed by the member.

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Compare: s34 1955 No 23; s97 1993 No 105

**New (unanimous)****11 Liability of members**

- (1) No member or former member is liable for an obligation of the Mutual by reason only of being a member.
- (2) Nothing in this section affects the liability of a member, or former member, to the Mutual under a contract, or for any tort, breach of fiduciary duty, or other actionable wrong committed by the member.

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Compare: 1955 No 23 s 34; 1993 No 105 s 97

**12 Name**

- (1) The Registrar must not register a change of name of the Mutual unless the name has been reserved.
- (2) An application for reservation of a name of the Mutual must—
- (a) include the word “Mutual” in the name; and
  - (b) be sent or delivered to the Registrar; and
  - (c) be in the *(prescribed form)* form prescribed for the purposes of section 22 of the Companies Act 1993.
- (3) The Registrar must not reserve a name—

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- (a) the use of which would contravene an enactment; or
  - (b) that is identical or almost identical to the name of a company under the Companies Act 1993 or *(to)* the name of another mutual association; or
  - (c) that is identical or almost identical to a name that the Registrar has already reserved under the Companies Act 1993 and that is still available for registration; or
  - (d) that, in the opinion of the Registrar, is offensive. 5
- (4) The Registrar must advise the Mutual by notice in writing—
- (a) whether or not the Registrar has reserved the name; and 10
  - (b) if the name has been reserved, that, unless the reservation is sooner revoked by the Registrar, the name is available for registration on a change of name for 20 working days after the date stated in the notice.
- (5) An application to change the name of the Mutual must— 15
- (a) be in the *(prescribed form)* form prescribed for the purposes of section 23 of the Companies Act 1993; and
  - (b) be accompanied by a notice reserving the name; and
  - (c) subject to the constitution, be made by a director of the Mutual with the approval of its board. 20
- (6) An application to change the name of the Mutual is not an amendment of its constitution for the purposes of this Act.
- (7) As soon as the Registrar receives a properly completed application, the Registrar must—
- (a) enter the new name of the Mutual on *(the New Zealand)* a register; and 25
  - (b) issue a certificate of incorporation for the Mutual recording the change of name.
- (8) A change of name of the Mutual—
- (a) takes effect from the date of the certificate issued under **subsection (7)(b)**; and 30
  - (b) does not affect the rights or obligations of the Mutual, or legal proceedings by or against the Mutual, and legal proceedings that might have been continued or commenced against the Mutual under its former name may be continued or commenced against it under its new name. 35
- (9) The following provisions of the Companies Act 1993 apply to the Mutual as if it were a company registered under that Act:
- (a) section 24 (direction to change name) *(provided)*, but any name selected by the Registrar under subsection (2) 40

of that section must *(have)* include the word “Mutual” *(in it)*:

- (b) section 25 (use of company name).

Compare: (s20, s22(1)–(3), s23(1)–(4) 1993 No 105) 1993 No 105 ss 20, 22, 23

### 13 Constitution

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- (1) The Mutual must have a constitution.

- (2) The Mutual, the board, each director, and each member have the rights, powers, duties, and obligations set out in this Act except to the extent that they are negated or modified, in accordance with this Act, by the constitution.

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#### New (unanimous)

- (2A) The constitution may contain—

- (a) matters contemplated by this Act and the Companies Act 1993 (to the extent that it is applied by this Act) for inclusion; and  
 (b) such other matters as the Mutual wishes to include in its constitution.

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- (3) The constitution has no effect to the extent that it contravenes or is inconsistent with this Act or any other Act.

- (4) Subject to this Act, the constitution is binding, in accordance with its terms, as between—

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- (a) the Mutual and each member; and  
 (b) each *(member,—)* member.

#### Struck out (unanimous)

in accordance with its terms.

- (5) The constitution of the Mutual is—

- (a) the document received by the Registrar under **section 5(1)**; or  
 (b) a document that is adopted by the Mutual as its constitution under section 32 of the Companies Act 1993; or  
 (c) a document described in section 33 of the Companies Act 1993; or

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**Struck out (unanimous)**

- (d) a document described in **paragraph (a)** or **(b)** or **(c)** as altered by the Mutual under section 32 of the Companies Act 1993 or varied by the Court under section 34 of the Companies Act 1993.
- (6) The following provisions of the Companies Act 1993 apply to the Mutual as if it were a company registered under that Act, each member a shareholder of the company and every reference to a constitution to the constitution of the Mutual under **subsection (5)**:
- (a) section 30 (Contents of constitution): 10
- (b) section 32 (Adoption, alteration, and revocation of constitution):
- (c) section 33 (New form of constitution):
- (d) section 34 (Court may alter constitution). 15
- Compare: s27, s31(1)–(2) 1993 No 105

**New (unanimous)**

- (5) The constitution of the Mutual is—
- (a) the document received by the Registrar under **section 5(1)**, together with all current amendments to that document that are subsequently made under **section 13A**; or
- (b) the constitution as altered by the High Court and delivered to, and registered by, the Registrar under **section 13B**, together with all current amendments to that document that are subsequently made under **section 13A**; or
- (c) a consolidated constitution registered by the Registrar in accordance with **section 13C**, together with all current amendments to that document that are subsequently made under **section 13A**. 25

Compare: 1993 No 105 ss 27, 30, 31

**13A Alteration of constitution by members**

- (1) The members may, by special resolution, alter the constitution. 30
- (2) Within 10 working days of the adoption of an alteration to the constitution, the board must ensure that a notice, in the form prescribed for the purpose of section 32 (adoption, alteration,

**New (unanimous)**

and revocation of constitution) of the Companies Act 1993, is delivered to the Registrar for registration.

- (3) If the board fails to comply with **subsection (2)**, section 32(4) of the Companies Act 1993 applies as if the failure were a failure to comply with subsection (3) of that Act. 5

Compare: 1993 No 105 s 32

**13B Court may alter constitution**

- (1) The High Court may, on the application of a director or member, make an order altering the constitution of the Mutual on such terms and conditions as it thinks fit, if the Court is satisfied that it is not practicable to alter the constitution under **section 13A**. 10

- (2) The applicant for an order must ensure that a copy of the order, together with a copy of the constitution as altered, is delivered to the Registrar for registration within 10 working days of the making of the order. 15

- (3) If a person fails to comply with **subsection (2)**, section 34(3) (Court may alter constitution) of the Companies Act 1993 applies as if the failure were a failure to comply with subsection (2) of that section. 20

Compare: 1993 No 105 s 34

**13C Registration of consolidated constitution**

- (1) The Mutual may from time to time deliver to the Registrar for registration a single document that sets out the Mutual's constitution together with all current amendments incorporated into it (a **consolidated constitution**). 25

- (2) The Registrar may, by notice in writing, require the Mutual to deliver a consolidated constitution for registration if the Registrar considers that, by reason of the number of amendments to the Mutual's constitution, it would be desirable for the constitution to be contained in a single document. 30

- (3) The Mutual must comply with a notice issued under **subsection (2)** within 20 working days of receiving it.

- (4) The board must ensure that if a consolidated constitution is delivered for registration under this section, it is accompanied 35

**New (unanimous)**

- by a certificate, signed by a person authorised by the board, that the consolidated constitution sets out the Mutual's constitution together with all current amendments incorporated into it.
- (5) As soon as the Registrar receives a consolidated constitution that is certified in accordance with **subsection (4)**, the Registrar must register it. 5
- (6) If the board fails to comply with **subsection (3) or (4)**, section 33(6) (new form of constitution) of the Companies Act 1993 applies as if the failure were a failure to comply with subsection (4) of that section. 10
- Compare: 1993 No 105 s 33

**14 Rights and powers attached to membership**

- (1) *(Subject to **subsections (2) and (3)**, a) Every member of the Mutual has the right to—* 15
- (a) one vote on a poll at a meeting of the Mutual on any resolution, including any resolution to do any of the following:
- (i) appoint or remove a director or auditor:
- (ii) adopt a constitution: 20
- (iii) alter the constitution (*of the Mutual*):
- (iv) approve a major transaction:
- (v) put the Mutual into liquidation; and
- (b) an equal share in the distribution of the surplus assets of the Mutual. 25
- (2) The rights specified in **subsection (1)** may be added to by the constitution or by any Act, but may not be reduced or negated.
- (3) A person may be a member in more than one capacity(.) (for example, personally and as a (*trustee,*) trustee) and may separately exercise the rights of membership in each capacity. 30
- Compare: {s36 1993 No 105}1993 No 105 s 36

**15 Rebates to members**

- (1) If the board is satisfied on reasonable grounds that the Mutual will, immediately after giving the rebate, satisfy the solvency test, the board may authorise the giving of a rebate by the 35



Mutual at a time, and of an amount, and to any members, as it thinks fit.

- (2) Rebates may, without limitation, be calculated by reference to the premium value of, or the profit derived by the Mutual from, transactions by the members with the Mutual or subsidiaries of the Mutual. 5
- (3) Subsections (2), (3), and (5) of section 52, and section 56 (*other than subsection (4)*), (other than subsection (4)) of the Companies Act 1993 apply to the Mutual as if the Mutual were a company registered under that Act, each member a shareholder of the company, and a rebate a distribution. 10

Compare: (s52(1) 1993 No 105; s30(2) 1996 No 24) 1993 No 105 s 52; 1996 No 24 s 30(2)

## 16 Members register

- (1) The Mutual must maintain a members register (*that records the names of members*). The members register may be that used by the Farmers' Mutual Insurance Association. 15

### Struck out (unanimous)

- (2) If the Mutual fails to comply with **subsection (1)**, section 87(4)(a) and (b) (Offence to fail to keep register) of the Companies Act 1993 apply as if the Mutual were a company registered under that Act. 20
- (3) The following provisions of the Companies Act 1993 apply to the Mutual as if it were a company registered under that Act and the members register a share register:
- (a) section 87(3) (Agent may maintain register): 25
  - (b) section 88 (Place register kept and division of register):
  - (c) section 90 (Directors duty to supervise register, offence to fail to do so):
  - (d) section 91 (Power of Court to rectify register):
  - (e) section 93 (Personal representative may be entered): 30
  - (f) section 94 (Assignee of bankrupt may be entered).

### New (unanimous)

- (2) The register must, without limitation, record the following:
- (a) the name of every member:

**New (unanimous)**

- (b) the latest known address of every member:
- (c) the date on which each person becomes a member or, if a person is a member by virtue of **section 9(1)**, the date on which the person became a member of the Farmers' Mutual Insurance Association. 5
- (3) An agent may maintain the members register.
- (4) The personal representative of a deceased person who was a member is entitled to be registered as a member in the representative's capacity as the personal representative of the deceased person. 10
- (5) The assignee of the property of a bankrupt member is entitled to be registered as a member in the assignee's capacity as the assignee of the property of the bankrupt member.
- (6) The following provisions of the Companies Act 1993 apply to the Mutual as if it were a company registered under that Act and the members register were a share register: 15
- (a) section 88 (place register kept and division of register):
- (b) section 91 (power of Court to rectify register).
- (7) If the Mutual fails to comply with **subsection (1) or (2)**, section 87(4) of the Companies Act 1993 (which contains an offence of failing to maintain a register and record required information on it) applies as if the Mutual were a company registered under that Act. 20

Compare: 1993 No 105 ss 87, 93, 94

- 17 Powers of members** 25
- The following provisions of the Companies Act 1993 apply to the Mutual as if it were a company registered under that Act and each member a shareholder of the company:
- (a) section 104 (exercise of powers reserved to shareholders) as if the references in that section to sections 120 and 121 were references to **section 19** of this Act: 30
- (b) section 105 (exercise of powers by ordinary resolution):
- (c) section 106 (powers exercised by special resolution)<sub>2</sub> other than section 106(1)(c), applied using the definition of special resolution set out in **section 3** of this Act: 35
- (d) section 109 (management review by shareholders).

**Struck out (unanimous)****18 Alteration of member rights**

- (1) The Mutual must not take action that affects the rights attached to membership unless that action has been approved by a special resolution.
- (2) For the purposes of **subsection (1)**, the rights attached to membership include—
- (a) the rights, privileges, limitations, and conditions attached to membership by this Act or the constitution, including voting rights; and
  - (b) the right to have the procedure set out in this section and any further procedure required by the constitution for the amendment or alteration of rights, observed by the Mutual; and
  - (c) the right that a procedure required by the constitution for the amendment or alteration of rights not be amended or altered.
- (3) The taking of action by the Mutual affecting the rights attached to membership is not invalid by reason only that the action is not approved in accordance with this section.

Compare: s117, s119 1993 No 105

**19 Meetings of members**

- (1) The board must call an annual meeting of members to be held not later than 6 months after the balance date of the Mutual and not later than 15 months after the previous annual meeting.
- (2) The Mutual must hold its annual meeting on the date on which it is called to be held.
- (3) The first annual meeting of the Mutual after the date of incorporation must be held within 15 months of the last annual meeting of the Farmers' Mutual Insurance Association.
- (4) The following provisions of the Companies Act 1993 apply to the Mutual as if it were a company registered under that Act and each member a shareholder of the company:
- (a) section 122 (resolution in lieu of meeting);
  - (b) section 123 (Court may call meeting of shareholders).
- (5) A special meeting of members entitled to vote on an issue—
- (a) may be called at any time by—

- (i) the board; or
- (ii) a person who is authorised by the constitution to call the meeting; and

**Struck out (unanimous)**

- (b) must be called by the board on the written request of members holding together not less than 5% of the voting rights entitled to be exercised on the issue.

5

**New (unanimous)**

- (b) must be called by the board on the written request of 5% of the members.

- (6) The provisions of Schedule 1 of the Companies Act 1993, modified as follows, govern proceedings at meetings of members except to the extent that the constitution makes provision for the matters that are expressed in that schedule to be subject to the constitution of a company:

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- (a) the reference in clause 4(3)(a) *(of that Schedule)* to section 121(b) of the Companies Act 1993 is to be read as a reference to **section 19(5)** of this Act:
- (b) the provisions of clause 9 (shareholder proposals) *(of that Schedule)* do not apply to the nomination of a person for appointment as a director.

15

Compare: *(s121, s124 1993 No 105)* 1993 No 105 ss 121, 124

20

**Struck out (unanimous)**

**20** **Ascertaining members entitled to exercise rights and attend meetings**

- (1) The members who are entitled to exercise any right or receive any benefit under this Act or the constitution are to be determined in accordance with section 125(1)(d) and (e) (shareholders entitled to receive distributions, attend meetings, and exercise rights) of the Companies Act 1993. Those subsections and subsection (2) of section 125 of the Companies Act 1993 apply to the Mutual as if it were a company registered under that Act, each member a shareholder of the company, and the members register the share register.

25

30

**Struck out (unanimous)**

- (2) The members who are entitled to receive notice of a meeting of members are—
- (a) if the board fixes a date for the purposes, those members whose names are registered in the members register on that date; or 5
  - (b) if the board does not fix a date for the purpose, those members whose names are registered in the members register at the close of business on the day immediately preceding the day on which the notice is given.
- (3) A date must not be fixed under **subsection (2)** that precedes by more than 30 working days or less than 10 working days the date on which the meeting is to be held. 10

**New (unanimous)**

- 20 Who is entitled to receive notice and to vote**
- (1) The following people are entitled to receive notice of a meeting of members: 15
- (a) those people who are members on a particular date that is specified by the board for the purpose; or
  - (b) if the board does not specify a date, those people who are members on the date that is 7 working days before the date on which the notice of the meeting is sent. 20
- (1A) A date must not be specified by the board under **subsection (1)(a)** that is more than 30, or less than 10, working days before the date of the meeting.
- (2) The following people are entitled to vote on a resolution put to a meeting of members: 25
- (a) those people who are members on a particular date specified by the board for the purpose; or
  - (b) if the board does not specify a date, those people who are members on the last working day before the date of the meeting. 30
- (2A) A date must not be specified by the board under **subsection (2)(a)** that is more than 10 working days before the date of the meeting.

Compare: (s125(3)-(4) 1993 No 105)1993 No 105 s 125

**21 Directors and their powers and duties**

Part 8 (directors and their powers and duties) of the Companies Act 1993, other than sections 146, 147, and 148, *(apply)* applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company.

5

**22 Majority of (board) directors to be members**

- (1) A majority of the directors in office must be members. *(If at any time a majority of the directors in office are not members, the board must immediately take steps to ensure a majority of the directors in office are members.)*

10

**New (unanimous)**

- (1A) If at any time a majority of the directors in office are not members, the board must immediately take steps to ensure a majority of the directors in office are members.

- (2) A person must not be appointed or elected as a director if, immediately after his or her appointment or election, the number of directors in office who are members would be less than a majority of the total number of directors then in office.

15

*Other provisions of Companies Act 1993 applied***23 Enforcement**

- (1) Part 9 (enforcement) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company, subject to **subsection (2)**.

20

- (2) Applications under section 164(1) (injunctions) of the Companies Act 1993 may be made in relation to conduct that would contravene—

25

- (a) those provisions of the Companies Act 1993 which apply to the Mutual; or  
 (b) the constitution *(of the Mutual)*; or  
 (c) this Act; or  
 (d) the Financial Reporting Act 1993.

30

**24 Administration of (the) Mutual**

Part 10 (administration of companies) of the Companies Act 1993, other than sections 182 to 185(A), *(apply)* applies to the

Mutual as if it were a company registered under that Act, each member a shareholder of the company, and the members register the share register.

## 25 Accounting records and audit

Part 11 (accounting records and audit) of the Companies Act 1993, other than sections 195 and 201, (*apply*) applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company. 5

## 26 Disclosure by *(the)* Mutual

- (1) Part 12 (disclosure by companies) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that Act, each member a shareholder of the company, and the members register the share register. 10

### Struck out (unanimous)

- (2) For the purposes of section 214 of the Companies Act 1993, the form of annual return in the Schedule to this Act is prescribed in respect of the Mutual. 15

### New (unanimous)

- (2) The annual return set out in the Schedule is the prescribed form to be used by the Mutual for the purposes of section 214 (annual returns) of the Companies Act 1993.

## 27 Amalgamations

- (1) Part 13 (amalgamations) of the Companies Act 1993, other than sections 219, 220 and 221, (*apply*) applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company, to allow the Mutual and one or more companies that are directly or indirectly wholly owned by it to amalgamate and continue as the Mutual. 20 25
- (2) In the event of such an amalgamation, the Mutual is to be treated as an ("*amalgamated company*") amalgamated company for the purposes of Part 13 of the Companies Act 1993. 30

**28 Compromises with creditors**

Part 14 (compromises with creditors) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company.

5

**New (unanimous)****28A Voluntary administration**

Part 15A (voluntary administration) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company.

10

**29 Liquidation**

Part 16 (liquidations) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company.

**30 Removal from (*New Zealand*) register**

15

(1) Part 17 (removal from the New Zealand register) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that ~~(Act and)~~ Act, each member a shareholder of the company, and the register the New Zealand register.

20

(2) The Mutual ceases to exist when ~~(removed from the New Zealand)~~ it is no longer registered on a register.

Compare: (*s15 1993 No 105*)1993 No 105 s 15

**31 Registrar of Companies**

For the purpose of the following provisions of the Companies Act 1993, the Mutual is to be treated as if it were a company registered under that Act and the register were the New Zealand register:

25

(a) section 359 (responsible District Registrar):

(b) section 360A (rectification or correction of New Zealand register and overseas register):

30

(c) section 360B (powers of Court):

(d) section 361 (Registrar may direct transfer):

(e) section 363 (inspection and evidence of registers):



(f) section 365 (Registrar's powers of inspection).

**32 Offences and penalties**

Part 21 (offences and penalties) of the Companies Act 1993 applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company.

5

**33 Miscellaneous**

Part 22 (miscellaneous) of the Companies Act 1993, other than sections 395, 396, and 397, (*apply*) applies to the Mutual as if it were a company registered under that Act and each member a shareholder of the company.

10

*Application of Financial Reporting Act 1993*

**34 Reporting entity**

The Mutual is required to comply with the Financial Reporting Act 1993 as if it were a reporting entity.

*Transitional provisions*

15

**35 Continued existence**

The mutual association called Farmers' Mutual Group is the same mutual association as the Farmers' Mutual Insurance Association existing immediately before the date of incorporation.

20

**36 Continuation of legal and other proceedings**

(1) Every action, arbitration, proceeding, or cause of action that was pending or that existed by, against, or in favour of, the Farmers' Mutual Insurance Association or to which the Farmers' Mutual Insurance Association was a party immediately before the date of incorporation may, on and after the date of incorporation, be continued and enforced by, against, or in favour of the Mutual on and after the date of incorporation.

25

(2) It is not necessary to amend any application, notice or other document to do so.

30

Compare: *(s21 2002 No 3(P))2002 No 3 (P) s 21*

**37 References to Farmers' Mutual Insurance Association in existing instruments, etc**

Every reference (expressed or implied) to the Farmers' Mutual Insurance Association in an instrument, enactment, policy, register, communication, or any other thing made, given, passed, or executed before, on, or after the date of incorporation is a reference to the Mutual on and after the date of incorporation.

Compare: (s20 2002 No 3(P))2002 No 3 (P) s 20

**38 Status of contracts and other instruments**

(1) This section applies to contracts, agreements, guarantees, conveyances, deeds, leases, licences, directions, and other instruments, undertakings and notices (whether or not in writing), entered into by, made with, given to or by, or addressed to the Farmers' Mutual Insurance Association (whether alone or with any other person) before the date of incorporation and subsisting immediately before that date.

(2) The instruments to which this section applies are, on and after the date of incorporation, binding on, and enforceable by, against, or in favour of, the Mutual as if the Mutual and not the Farmers' Mutual Insurance Association 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.

**39 Continuity of appointments**

(1) Every person who (*held*) holds office as a director or auditor of the Farmers' Mutual Insurance Association immediately before the date of incorporation (*will continue*) continues to hold that office with the Mutual on and after the date of incorporation until removed or replaced in accordance with this Act and the constitution. (*Until such removal or replacement such persons will hold office subject to the terms of this Act and the constitution.*)

**New (unanimous)**

(2) Until removal or replacement, directors and auditors hold office subject to this Act and the constitution.

**40 Employees**

- (1) Every person who is an employee of the Farmers' Mutual Insurance Association immediately before the date of incorporation (a continuing employee) is an employee of the Mutual (*(a continuing employee)*) on and after the date of incorporation until the person otherwise ceases to be employed by the Mutual. 5
- (2) No aspect of a continuing employee's employment agreement with the Farmers' Mutual Insurance Association is affected by their becoming an employee of the Mutual. 10
- (3) For the purposes of any enactment, law, determination, contract, or agreement,—
- (a) a continuing employee's continuity of employment is not broken by reason of their becoming an employee of the Mutual; and 15
- (b) a continuing employee's period of service with the Farmers' Mutual Insurance Association is deemed to have been a period of service with the Mutual.
- (4) A continuing employee is not entitled to receive a redundancy or severance payment or benefit on the grounds his or her employment with the Farmers' Mutual Insurance Association has ceased. (*This subsection overrides a continuing employee's employment agreement, despite subsection (2).*) 20

**New (unanimous)**

- (5) **Subsection (4)** overrides a continuing employee's employment agreement, despite **subsection (2)**. 25

Repeal**41 Repeal of Farmers' Mutual Group Act 1998**

The Farmers' Mutual Group Act 1998 (1998 No 4 (P)) is repealed.

**Struck out (unanimous)**

s 26

**Schedule  
Form of Annual Return**

Section 26 Farmers' Mutual Group Act 2007 and section 214(1)  
Companies Act 1993

*[If there is insufficient space on the form to supply the information  
required, attach a separate sheet containing the information set out  
in the prescribed format.]*

5

New (unanimous)

## Schedule Form of Annual Return

s 26

Form  
Annual return

*Section 26, Farmers' Mutual Group Act 2007 and section 214(1), Companies Act 1993*

5

*[If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.]*

### Farmers' Mutual Group - annual return

**Address for communication**

*[This is the postal address to which communications from the Registrar will usually be sent.]*

| Current address | Updated address |
|-----------------|-----------------|
|                 |                 |

**Email reminder**

*[To receive a reminder by email instead of by paper, provide your email address here.]*

| Email address |
|---------------|
|               |

**Mobile telephone number**

*[To receive a text message as well as an email reminder, provide your mobile telephone number here.]*

| Mobile telephone number* |
|--------------------------|
|                          |

\* The costs of the message will be charged to your mobile telephone

**Address of registered office**

*[This address must be a physical address and not a PO Box, Private Bag or document exchange address.]*

| Current address | Updated address |
|-----------------|-----------------|
|                 |                 |

**Address for service**

*[This address must be a physical address and not a PO Box, Private Bag or document exchange address.]*

| Current address | Updated address |
|-----------------|-----------------|
|                 |                 |

**Directors**

| Full legal name | Residential address |
|-----------------|---------------------|
|                 |                     |

**Auditor and annual meeting**

Specify the date of the last annual meeting or resolution in lieu of a meeting

|  |  |
|--|--|
|  |  |
|--|--|

Date

|  |  |
|--|--|
|  |  |
|--|--|

Month

|  |  |
|--|--|
|  |  |
|--|--|

Year

Did the members pass a unanimous resolution not to appoint an auditor for the current year?

|     |    |
|-----|----|
| Yes | No |
|-----|----|

If you answered yes to the question above, specify the date of the resolution.

|  |  |
|--|--|
|  |  |
|--|--|

Date

|  |  |
|--|--|
|  |  |
|--|--|

Month

|  |  |
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Year

**Date of annual return**

*[This is the date within the month that your return is due to be filed]*

|  |  |
|--|--|
|  |  |
|--|--|

Date

|  |  |
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Month

|  |  |
|--|--|
|  |  |
|--|--|

Year

**Authorised signature**

I certify that the particulars contained in this annual return are correct.

Name of director/authorised person .....

Signature of director/authorised person .....

Details of person filing this return

| Name and postal address | Other details   |
|-------------------------|---|
|                         | Telephone:<br><br>Email [optional]:<br><br>Facsimile: |

**Legislative history**

1 May 2007  
13 June 2007

Introduction (Bill 116-1)  
First reading and referral to Primary Production Committee

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