

# Farmers' Mutual Group Bill

Private Bill

## Explanatory note

### General policy statement

Farmers' Mutual Insurance Association, which will be renamed Farmers' Mutual Group by this bill (**Mutual**), is a mutual insurance association that provides general insurance, risk protection and financial services to farmers and members of the rural community.

The Mutual is incorporated under the Mutual Insurance Act 1955 (**1955 Act**). The 1955 Act consolidates the Mutual Fire Insurance Act 1903 which provided for the formation of mutual fire insurance associations to insure farmers and owners of isolated properties. These associations were mutuals owned by their policyholders. The Mutual was formed from the merger of a number of associations incorporated under the 1955 Act, and it is the only remaining association incorporated under that Act.

The Mutual 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 that Act. Those powers, authorities and requirements are outdated and inappropriate, and restrict the Mutual's ability to compete with others in its industry and to provide relevant products and services.

The principal purpose of this bill is to incorporate the Mutual as a mutual under the enacted bill, change the Mutual's name to Farmers' Mutual Group, give the Mutual the same capacity and powers as a company, establish a modern governance regime based on that in the Companies Act 1993, and to disband some obsolete requirements. The bill also:

- removes the Mutual from the jurisdiction of the 1955 Act but confirms its ongoing mutuality under the bill; and
- entrenches the continuation of the Mutual's principal business, thus providing consistency with the purposes for which the Mutual was incorporated; and
- confirms the requirement for members to hold insurance issued by the Mutual for risks to rural property (described in the Bill as a 'qualifying policy') but otherwise requires the Mutual to have a constitution which sets out eligibility for membership; and
- confirms the Mutual's ability to give rebates to members; and
- terminates the obligations of members of the Mutual under premium notes given by them pursuant to the 1955 Act; and
- makes the Mutual a reporting entity under the Financial Reporting Act 1993; and
- repeals the Farmers' Mutual Group Act 1998 (1998 No 4 (P)).

## **Preamble and clause by clause analysis**

*The Preamble* describes the background to the bill, and sets out the objects of the bill.

*Clause 1* sets out the title of the bill.

*Clause 2* is the commencement clause. Sections 1 and 2 and Part 1 come into force on the day after the date on which the bill receives Royal assent. The rest of the bill comes into force on a date or dates specified by Order in Council.

*Clause 3* defines certain terms used in the bill.

*Clause 4* allows the members of the Farmers' Mutual Insurance Association to adopt the initial constitution of the Mutual by special resolution within the meaning in the Mutual Insurance Act 1955. A special resolution requires approval by a 75% majority of members entitled to vote that vote. Such a resolution is effective whether passed before or after clause 4 comes into force provided certain requirements are met.

*Clause 5* provides for the incorporation of the Mutual as a mutual under the bill and changes its name to Farmers' Mutual Group on the date the constitution of the Mutual is lodged with the Registrar of Companies.

*Clause 6* requires that the principal business of the Mutual must at all times be the provision by the Mutual (itself or through a subsidiary) of rural risk insurance to members and non-members.

*Clause 7* states the Mutual is a body corporate with perpetual succession and applies to the Mutual Part III of the Companies Act 1993 which relates to capacity, powers and validity of actions.

*Clause 8* ends any obligations of members arising pursuant to premium notes given by them.

*Clause 9* sets out the criteria for eligibility for membership and provides that persons who are a member may remain a member so long as they are a customer of the Mutual or a subsidiary of the Mutual. Persons who were members of the Farmers' Mutual Insurance Association before the Mutual became incorporated under the bill remain members after incorporation so long as they are a customer. A member may cease to be a member by giving notice to the Mutual.

*Clause 10* requires the Mutual to enter the names of members, the date on which each member became a member and the date on which each member ceased to be a member into the members register. The Mutual is permitted to refuse or delay entry of a name into the register in certain circumstances. Entry of the name of a person in the members register is prima facie evidence of membership.

*Clause 11* removes members' liability for obligations of the Mutual.

*Clause 12* sets out the procedure for changing the name of the Mutual and requirements for the name.

*Clause 13* requires the Mutual to have a constitution and defines the relationship between the constitution, the Act, the Companies Act 1993, the Mutual, and members. The constitution of the Mutual is the document received by the Registrar under clause 5(1), a document adopted as a constitution under section 32 of the Companies Act 1993 or described in section 33 of the Companies Act 1993, or any such document as altered by the Mutual under the provisions of the Companies Act 1993.

*Clause 14* sets out members' rights to vote at a meeting of the Mutual and to share in any distribution of the surplus assets of the Mutual.

*Clause 15* gives the board the power to authorise a rebate to members provided the Mutual will satisfy the solvency test in the Companies Act 1993 immediately after giving the rebate.

*Clause 16* requires the Mutual to maintain a members register and adopts certain provisions of the Companies Act 1993 relating to the keeping of the register.

*Clause 17* adopts certain provisions of the Companies Act 1993 to give members similar powers to pass resolutions that shareholders of a company can.

*Clause 18* restricts the Mutual's ability to alter the rights attached to membership without the approval of members by special resolution.

*Clause 19* sets out the requirements for calling and holding annual and special meetings of members, and adopts certain provisions of the Companies Act 1993 relating to shareholder meetings.

*Clause 20* sets out the method for determining the members entitled to exercise rights and attend meetings and adopts certain provisions of the Companies Act 1993 for that purpose.

*Clause 21* adopts certain provisions of Part VIII of the Companies Act 1993 dealing with directors and their powers and duties.

*Clause 22* requires that a majority of the directors of the Mutual are members and obliges the board to ensure that.

*Clause 23* adopts Part IX of the Companies Act 1993, which deals with enforcement, subject to a modification to section 164(1).

*Clause 24* adopts certain provisions of Part X the Companies Act 1993 which relates to administration of companies.

*Clause 25* adopts certain provisions of Part XI of the Companies Act 1993 which relates to accounting records and audit.

*Clause 26* adopts Part XII of the Companies Act 1993 which relates to disclosure by companies to shareholders, the Registrar and the public, and prescribes a form of annual return for the Mutual.

*Clause 27* adopts certain provisions of Part XIII of the Companies Act 1993 which relates to amalgamations.

*Clause 28* adopts Part XIV of the Companies Act 1993 which relates to compromises with creditors.

*Clause 29* adopts Part XVI of the Companies Act 1993 which relates to liquidations.

*Clause 30* adopts Part XVII of the Companies Act 1993 which relates to removal from the New Zealand companies register and provides that the Mutual will cease to exist if removed from the register.

*Clause 31* applies certain provisions of Part XX of the Companies Act 1993 to give the Registrar of Companies and the court jurisdiction over the Mutual.

*Clause 32* applies Part XXI of the Companies Act 1993 which sets out the offences and penalties for failing to comply with that Act.

*Clause 33* adopts certain provisions from Part XXII of the Companies Act 1993 which relates to miscellaneous matters.

*Clause 34* requires the Mutual to comply with the Financial Reporting Act 1993 as if the Mutual were a reporting entity.

*Clause 35* continues the Mutual's identity and existence after incorporation under the bill.

*Clause 36* provides for the continuation of existing legal and other proceedings on and after the date of incorporation and makes it unnecessary to amend any application, notice or other document to continue legal and other proceedings in respect of the Mutual.

*Clause 37* states that references to the Farmers' Mutual Insurance Association in documents executed before, on or after the date of incorporation are references to the Mutual on and after the date of incorporation.

*Clause 38* preserves for the Mutual contracts and other instruments made by, entered into, or given to the Farmers' Mutual Insurance Association prior to the date of incorporation.

*Clause 39* preserves appointments of directors and the auditor made before the Mutual is incorporated under the bill, subject to the terms of the bill and the constitution.

*Clause 40* continues the employment by the Mutual of persons employed by Farmers' Mutual Insurance Association immediately prior to the date of incorporation and states that the employment of such a person is to be treated for all purposes as a single continuous period of employment. The terms and conditions of employment of each employee must remain the same as the terms and conditions of employment immediately before the date of incorporation.

*Clause 41* repeals the Farmers Mutual Group Act 1998.

## **Farmers' Mutual Group Bill**

Private Bill

### **Contents**

#### **Preamble**

- (1) The Farmers' Mutual Insurance Association (the **Mutual**) was formed from the merger of a number of associations incorporated under the Mutual Insurance Act 1955 (**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:
- (2) The Mutual is now the only association incorporated under the 1955 Act:
- (3) The Mutual 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 ability to compete with others in its industry and to provide relevant products and services:
- (4) The Mutual wishes to preserve its mutual status, but, modernise its powers and authorities. At the same time, the Mutual wishes to maintain its current principal business and to limit membership to policyholders insuring risks to rural property. Accordingly, this Act removes the Mutual from the jurisdiction of the 1955 Act 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) The objects of this Act cannot be achieved without the authority of Parliament.

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

##### **1 Title**

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

##### **2 Commencement**

- (1) **Section 1**, this section, and **Part 1** come into force on the day after the date on which this Act receives 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 or more Orders in Council may be made appointing different dates for different provisions and for different purposes.

- (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**.

## Part 1

### Preliminary

#### 3 Interpretation

In this Act, unless the context otherwise requires,—

- (1) **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 referred to in **section 13(5)**

**customer** means a person who—

- (a) holds a policy of insurance issued by the Mutual or a subsidiary of the Mutual; or
- (b) has invested money with, or in securities issued by, the Mutual or a subsidiary of the Mutual; or
- (c) is otherwise a customer of the Mutual or a subsidiary of the Mutual

**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

**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

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

**Mutual** means the association that—

- (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

**qualifying policy** has the meaning in the constitution

**rural risk insurance** has the meaning in the constitution

**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)**

**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

- (2) Words used in this Act that are defined in the Companies Act 1993 have the meaning in that Act unless specified otherwise.
- (3) Where a provision of the Companies Act 1993 applies under this Act—
  - (a) terms 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 and 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.

#### **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. 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 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.

## Part 2

### Incorporation and governance

#### 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 (4)**, and not before the date appointed as the commencement date of this Part 2 in accordance with **section 2(2)**, issue a certificate that the Mutual is incorporated under this Act. 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
  - (b) the Mutual ceases to be an association incorporated under the Mutual Insurance Act 1955 and is an association incorporated under this Act.  
*Compare s7 1955 No 23*
- (2) 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.  
*Compare s7(2) 1955 No 23 & s14 1993 No 105*
- (3) At the same time the Registrar issues the certificate of incorporation under **subsection (1)**, the Registrar must—
  - (a) register the Mutual on the New Zealand register; and
  - (b) allocate October to the Mutual for the purposes of section 214(4) (Annual return) of the Companies Act 1993.
- (4) A director's certificate for the purposes of **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) and (b)** were complied with.  
*Compare s8(1) 1955 No 23*
- (5) The Registrar, without further authority than this section, has the power to enter the name of the Mutual on the New Zealand register.

## **6 Principal business**

The principal business of the Mutual must at all times consist of the provision by the Mutual (either itself or through a subsidiary) of rural risk insurance to members and non-members.

## **7 Capacity, powers and validity of actions**

- (1) The Mutual is a body corporate with perpetual succession.  
*Compare s7 1955 No 23*
- (2) Part III (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—
  - (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.  
*Compare s16(1) 1993 No 105*

## **8 Premium notes**

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

## **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.  
*Compare s3(3) 1955 No 23*
- (2) Every person who holds a qualifying policy as defined in the constitution, whether personally or in some other capacity, is, subject to any exclusion in the constitution, eligible to be a member. Every person who is eligible to be a member and who agrees to be a member is a member from the first working day after the Mutual receives notice to that effect, subject to the provisions of this Act.
- (3) Every member may remain a member so long as they are a customer, and notwithstanding they subsequently cease to hold a qualifying policy.
- (4) A member who gives the Mutual written notice to the effect that they no longer wish to be a member will cease to be a member on the first working day after such notice is received

by the Mutual.

## **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 every person who becomes a member by virtue of **section 9(2)**, entry must be made forthwith on receipt of notice under that section; and
  - (b) the date on which the member became a member.
- (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
  - (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
  - (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.
- (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.
- (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.  
*Compare s89 1993 No 105*
- (6) The Mutual must enter in the members register the date on which any person ceased to be a member.

## **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.

*Compare s34 1955 No 23, s97 1993 No 105*

## **12 Name**

- (1) The Registrar must not register a change of name of the Mutual unless the name has been reserved.  
*Compare s20 1993 No 105*
- (2) An application for reservation of a name of the Mutual must—
  - (a) include the word "Mutual" in the name;
  - (b) be sent or delivered to the Registrar; and
  - (c) be in the prescribed form.  
*Compare s22(1) 1993 No 105*
- (3) The Registrar must not reserve a name—
  - (a) the use of which would contravene an enactment; or
  - (b) that is identical or almost identical 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.  
*Compare s22(2) 1993 No 105*
- (4) The Registrar must advise the Mutual by notice in writing—
  - (a) whether or not the Registrar has reserved the name; and
  - (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.  
*Compare s22(3) 1993 No 105*
- (5) An application to change the name of the Mutual must—
  - (a) be in the prescribed form; 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.  
*Compare s23(1) 1993 No 105*

- (6) An application to change the name of the Mutual is not an amendment of its constitution for the purposes of this Act.  
*Compare s23(2) 1993 No 105*
- (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 register; and
  - (b) issue a certificate of incorporation for the Mutual recording the change of name.  
*Compare s23(3) 1993 No 105*
- (8) A change of name of the Mutual—
- (a) takes effect from the date of the certificate issued under **subsection (7)(b)**; and
  - (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.  
*Compare s23(4) 1993 No 105*
- (9) The following sections of the Companies Act 1993 apply to the Mutual as if it were a company registered under that Act—
- (a) 24 (Direction to change name) provided any name selected by the Registrar under subsection (2) must have the word 'Mutual' in it.
  - (b) 25 (Use of company name).

### **13 Constitution**

- (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.  
*Compare s27 1993 No 105*
- (3) The constitution has no effect to the extent it contravenes or is inconsistent with this Act.  
*Compare s31(1) 1993 No 105*
- (4) Subject to this Act, the constitution is binding as between—
- (a) the Mutual and each member; and
  - (b) each member;
- in accordance with its terms.  
*Compare s31(2) 1993 No 105*
- (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
  - (d) a document described in **paragraph (a)** or **paragraph (b)** or **paragraph (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 sections 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) 30 (Contents of constitution):
  - (b) 32 (Adoption, alteration, and revocation of constitution):
  - (c) 33 (New form of constitution):
  - (d) 34 (Court may alter constitution).

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

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

## **15 Rebates to members**

- (1) The board if satisfied on reasonable grounds that the Mutual will, immediately after giving the rebate, satisfy the solvency test, may, subject to **subsection (3)** authorise the giving of a rebate by the Mutual at a time, of an amount, and to any members it thinks fit.

*Compare s52(1) 1993 No 105*

- (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.

*Compare s30(2) 1996 No 24*

- (3) Subsections (2), (3) and (5) of section 52, and section 56 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.

## **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.

- (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.

- (3) The following sections 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) 87(3) (Agent may maintain register):
- (b) 88 (Place register kept and division of register):
- (c) 90 (Directors duty to supervise register, offence to fail to do so):
- (d) 91 (Power of court to rectify register):
- (e) 93 (Personal representative may be entered):
- (f) 94 (Assignee of bankrupt may be entered).

## **17 Powers of members**

The following sections 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) 104 (Exercise of powers reserved to shareholders):
- (b) 105 (Exercise of powers by ordinary resolution):

(c) 106 (Powers exercised by special resolution) other than 106(1)(c), applied using the definition of special resolution in this Act:

(d) 109 (Management review by shareholders).

## **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;

(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.

*Compare s117 1993 No 105*

(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 s119 1993 No 105*

## **19 Meetings of members**

(1) The board must call an annual meeting of members to be held not later than six months after the balance date of the Mutual and not later than 15 months after the previous annual meeting.

*Compare s120(1) 1993 No 105*

(2) The Mutual must hold its annual meeting on the date on which it is called to be held.

*Compare s120(4) 1993 No 105*

(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 sections 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) 122 (Resolution in lieu of meeting):

(b) 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;
- (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.  
*Compare s121 1993 No 105*

(6) The provisions of Schedule 1 to 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:

- (a) the reference in clause 4(3)(a) of Schedule 1 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 Schedule 1 do not apply to the nomination of a person for appointment as a director.  
*Compare s124 1993 No 105*

**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.
- (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;
  - (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.  
*Compare s125(3) and (4) 1993 No 105*

**21 Directors and their powers and duties**

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

**22 Majority of board 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.
- (2) A person must not be appointed or elected as a director if immediately after his 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.

**23 Enforcement**

Part IX (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, with the following modification:

- (a) applications under section 164(1) (Conduct in contravention of memorandum or articles) may be made in relation to conduct that would contravene those provisions of the Companies Act 1993 which apply to the Mutual, or which would contravene the constitution of the Mutual or this Act or the Financial Reporting Act 1993.

**24 Administration of the Mutual**

Part X (Administration of companies) of the Companies Act 1993, other than sections 182 to 185(A), 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 Accounting records and audit**

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

**26 Disclosure by the Mutual**

- (1) Part XII (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.

- (2) Despite anything in section 214 of the Companies Act 1993, for the purposes of that section and in relation to the Mutual, "prescribed" means complying with the form in the Schedule to this Act.

## **27 Amalgamations**

Part XIII (Amalgamations) of the Companies Act 1993, other than sections 219, 220 and 221, apply 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. In the event of such an amalgamation, the Mutual is to be treated as an 'amalgamated company' for the purposes of the said Part.

## **28 Compromises with creditors**

Part XIV (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.

## **29 Liquidation**

Part XVI (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 the New Zealand register**

- (1) Part XVII (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 each member a shareholder of the company.

- (2) The Mutual will cease to exist when removed from the New Zealand register.

*Compare s15 1993 No 105*

## **31 Registrar of Companies**

- (1) For the purpose of the following sections of the Companies Act 1993, the Mutual is to be treated as if it were a company registered under that Act:

- (a) 359 (Responsible District Registrar):
- (b) 360A (Rectification or correction of New Zealand register and overseas register):
- (c) 360B (Powers of Court):
- (d) 361 (Registrar may direct transfer):
- (e) 363 (Inspection and evidence of registers):
- (f) 365 (Registrar's powers of inspection).

**32 Offences and penalties**

Part XXI (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.

**33 Miscellaneous**

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

**34 Reporting entity**

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

**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.

**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.
- (2) It is not necessary to amend any application, notice or other document to do so.  
*Compare s21 2002 No 3(P)*

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

A 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)*

**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**

Every person who held office as a director or auditor of the Farmers' Mutual Insurance Association immediately before the date of incorporation will continue to hold that office with the Mutual 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.

### **40 Employees**

- (1) Each person who was an employee of Farmers' Mutual Insurance Association immediately prior to the date of incorporation will continue to be an employee of the Mutual from the date of incorporation.
- (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 Farmers' Mutual Insurance Association must be treated as a period of service with the Mutual.
- (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 Farmers' Mutual Insurance Association immediately before the date of incorporation, but they may be varied in the same manner.
- (4) An employee is not entitled to receive a payment or benefit because he or she has, as a result solely of this Act, ceased to be an employee of Farmers' Mutual Insurance Association.
- (5) This section applies despite anything else in this Act.  
*Compare s23 2002 No 3(P)*

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

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

**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.]*

**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

**Date of annual return**

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

Date

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:

Email [*optional*]:

Facsimile: