

7 December 2022

Hon David Parker, Attorney-General

### **Consistency with the New Zealand Bill of Rights Act 1990: Hawke's Bay Agricultural and Pastoral Society Empowering Bill**

1. We have considered whether the Hawke's Bay Agricultural and Pastoral Society Empowering Bill (the Bill), a private bill in the name of Hon Meka Whaitiri, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. The Hawke's Bay Agricultural and Pastoral Society (the Society) is a charitable, incorporated, not-for-profit society formed in 1858 to champion the primary industry sector. Located at the Hawke's Bay Tomoana Showgrounds, the Society works to promote agricultural, pastoral, horticultural, viticultural and forestry resources, and organises events to showcase and celebrate primary industries.
3. Currently, the provisions of the Agricultural and Pastoral Societies Act 1908 require the Society to invest the proceeds of a land sale into more land. The Bill empowers the Society to sell its interests in the Tomoana Showgrounds (and any other land it may acquire) and apply the sale's proceeds towards purposes that are consistent with the Society's objectives.
4. Section 3 of the Bill of Rights Act states that the Bill of Rights Act applies only to acts done:
  - a. by the legislative, executive, or judicial branches of the Government of New Zealand; or
  - b. by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.
5. The Society is not part of the legislative, executive or judicial branches of government. We have considered whether the Bill includes any functions or powers that fall within the scope of section 3(b) of the Bill of Rights Act.
6. In *Ransfield v The Radio Network Ltd*<sup>1</sup>, the High Court held that a decision about whether an entity is performing a public function, power or duty under section 3(b) of the Bill of Rights Act will be fact dependent, while noting that "a private organisation (whether or not it is providing services to the public) is entitled to manage its business as it sees fit. Unless it is exercising public functions, powers or duties ... in terms of s

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<sup>1</sup> [2005] 1 NZLR 233 (HC).

3(b), the only constraints upon its freedoms are those imposed by the general law”.<sup>2</sup> In a subsequent case involving a Trust Board, the High Court found that there was a “very weak” case for suggesting the Trust Board’s functions fell within section 3(b) of the Bill of Rights Act.<sup>3</sup>

7. We do not consider that the Society undertakes public functions, powers or duties, as its work is of a private character rather than governmental in nature.<sup>4</sup> Consequently, the Bill’s proposed changes to how the Society can spend the money from the sale of land do not engage any rights or freedoms affirmed in the Bill of Rights Act.
8. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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<sup>2</sup> Ibid at [70].

<sup>3</sup> *Falun Dafa Association of New Zealand Inc v Auckland Children's Christmas Parade Trust Board* [2009] NZAR 122 (HC) at [43] – [45].

<sup>4</sup> *Ransfield v Radio Network Ltd* [2005] 1 NZLR 233 (HC) at [69(f)], endorsed in *Low Volume Vehicle Technical Assoc Inc v Brett* [2019] NZCA 67 at [25].