

Submission on *Consultation on regulations for the Incorporated Societies Act 2022*

Your name and organisation

Name	Jared Phillips on behalf of the New Zealand Dairy Workers Union Te Runanga Wai U
Organisation (if applicable)	New Zealand Dairy Workers Union Te Runanga Wai U
Contact details	[REDACTED]

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Responses to questions

Part 2 of the discussion document: section 254

	Matter	Question
1	<i>Prescribing information that must be included or provided</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(a)?

DWU Submissions on Section 9(a) - Information to be included in the Application for Incorporation Regulation Requirements

In relation to the Incorporated Societies Act 2022 (“the Act”) s 9(a) regulation requirements, regarding information to be included in incorporation applications, the Dairy Workers Union (“DWU”) strongly opposes one of the elements of information that is proposed for inclusion. That element is certification that a majority of members of the proposed society have consented to the application.

- The DWU represents approximately 8,500 workers employed in the collection, transport, processing, manufacturing, testing, and distribution of dairy products throughout Aotearoa New Zealand. The DWU believes that DWU members do not prioritise following Incorporated Societies law or the DWU’s legal identity. The DWU membership expects its elected leadership structures to ensure that the DWU is legally compliant as an entity.
- The DWU upholds democratic processes such as voting on working conditions (by way of ratification of Collective Employment Agreements), on Rules and Policies, and on representatives at Work Sites, for National Governance, and for Special Interest Group structures .
- No member of the DWU has ever previously given their consent, withheld their consent, voted on the DWU being incorporated, or on its legal identity more broadly. To provide for that, the DWU would require a substantial amount of resource, including to provide education for DWU members about Incorporated Societies, and to undertake a vote procedure for approximately 8,500 members who are spread across approximately 88 worksites.
- It is not logical that voluntary fee-paying members of a Union would want their Union to become non-compliant, or to cease to exist by way of not incorporating under the ISA 2022.

The DWU submits that re-registration of the DWU is not a matter for which the DWU should be required to certify a majority consent of its membership.

DWU Submissions on Regulations for the Section 86(2) - Information that the Society’s Annual Report Must Contain

The DWU strongly supports the proposal in the Consultation on Regulations for the Incorporated Societies Act 2022 (“Consultation Document”) that “Societies shall be able to determine for themselves what information they consider meets those requirements” (Consultation Document, October 22, p. 12) of the annual report on the operations and affairs of the society during the most recently completed accounting period.

The DWU submits that due to the wide variation in the nature and objectives of Incorporated Societies, the proposal that the Incorporated Societies themselves should determine the information to meet these requirements is correct.

2	<i>Prescribing the manner in which things must be done</i>	Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(b)?
No comment.		

3	<i>Authorising the Registrar to determine the manner in which things must be done</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(c)?
	No comment.	
4	<i>Declaring persons to be, or not to be, officers</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?
	No comment.	
5	<i>Prescribing circumstances related to independent committee members</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(e)?
	No comment	
6	<i>Prescribing jurisdictions whose officer disqualifications we will recognise</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?
	No comment.	
7	<i>Prescribing the types of changes in officer information that must be notified</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(g)?
	<p>The DWU submits that the inclusion of "Change of officer's name, contact address, or email address (including date of change)" is logical.</p> <p>However, "Change of officer status, for example resignation, disqualification, death (including date of change)" is overly prescriptive. Section 52(1)(b) - that an Incorporated Society must ensure that notice of "a person ceasing to hold office as an officer" is given to the registrar - should suffice.</p> <p>Further, as noted in the Consultation Document, the Companies Act 1993 requires only for the change in the name or the residential address of a Company Director to be notified. The DWU submits that Incorporated Societies should not be held to a higher standard than Companies.</p>	

8	<i>Regulating constitutional provisions on conflicts of interest</i>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(h)?</p> <p>Yes. Sections 63 and 64 of the Act are sufficiently prescriptive for the proper disclosure and control of conflicts of interest. The DWU agrees that no further regulations should be made at this stage.</p>
9	<i>Prescribing societies that can restrict general meeting attendance to delegates</i>	<p>Do you have any suggestions regarding regulations that should be made under section 254(1)(i)?</p> <p>The DWU acknowledges and strongly supports the rule at s 84(4) of the Act which specifies for Unions that their constitutions may provide that a right to attend an annual general meeting applies only to delegates or other representatives of members (rather than to all members).</p> <p>The DWU acknowledges and supports the commentary by MBIE (at item 66 of the Consultation Document) that describes the practical limitations for Unions to operate well without that rule.</p> <p>The DWU does not submit any comments on the application of s 84(4) or its regulations for Incorporated Societies that are not Unions.</p>
10	<i>Defining the term 'total current assets'</i>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(j)?</p> <p>No comment.</p>
11	<i>Prescribing additional requirements for the financial statements of small societies</i>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(k)?</p> <p>No comment.</p>
12	<i>Determining the class of society that must have its financial statements audited</i>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(l)? For example, do you agree that focusing on the proportion of societies that should be captured is appropriate?</p> <p>No comment.</p>
13	<i>Setting infringement fees</i>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?</p>

	<p>The DWU agrees that despite the legislated limit for infringement fees being a maximum of \$1000, the Regulations should set the infringement fees for the three most serious infringements (those described at item 114 of the Consultation Document) at an amount lower than \$1000, due to the circumstances outlined at item 115 of the Consultation Document. The DWU supports the concept that infringement fees must be set out at descending lesser rates for less serious infringements.</p> <p>The DWU submits that the Regulations must make provisions for, and be clear that, reregistering Incorporated Societies cannot be subject to an infringement fee until after both of:</p> <ul style="list-style-type: none"> (i) An Incorporated Society's transition to incorporation under the new Act has been completed; and (ii) after that transition is completed, a limited and defined Grace Period allowing all ongoing compliance with the Act (and the associated administration processes) to be implemented, has been completed. <p>The DWU submits that, if implemented, a Grace Period should be for a period of no less than three (3) months.</p>				
14	<table border="1" style="width: 100%;"> <tr> <td style="width: 20%;"><i>Prescribing the information to be included in infringement and reminder notices</i></td> <td>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(n)?</td> </tr> <tr> <td colspan="2">No comment.</td> </tr> </table>	<i>Prescribing the information to be included in infringement and reminder notices</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(n)?	No comment.	
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	The DWU agrees that no regulations should be made at this stage.	
18	<i>Prescribing how documents must be served on a society</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?
	The DWU submits that the methods listed at item 140 of the Consultation Document are too numerous and that some of the methods listed are too informal, and some of these methods may lead to an Incorporated Society not being sufficiently warned or notified of a legal proceeding. The DWU submits that these methods should be limited to the methods a(i) and a(v) listed at 140 of the Consultation Document.	
19	<i>Prescribing how documents must be served on a person</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(s)?
	The DWU submits that the methods listed at item 152 for delivery of documents, other than those of a legal proceeding, served on an Officer are too numerous and some of these methods may lead to an Officer not being sufficiently warned of a proceeding other than a legal proceeding. The DWU submits that the methods described at d, e, and f listed under item 152 of the Consultation Document should be omitted from the Regulations.	
20	<i>Prescribing matters relating to the incorporated societies register</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(t)?
	No comment.	
21	<i>Specifying matters concerning conversion into an incorporated society</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(u), (v) or (w)?
	No comment.	

Part 3 of the discussion document: section 254

	Matter	Question
22	<i>Setting fees for the performance of functions or the exercise of powers</i>	Do you have any suggestions on regulations that should be made under section 255(1)(a)?
	No comment.	
23	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?

	No comment.	
24	<i>Setting other fees</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 255(1)(c)?
	No comment.	

Part 4 of the discussion document: section 254

	Matter	Question
25	<i>Providing that certain rules apply</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(a)?
	No comment.	
26	<i>Providing that certain legislative rules do not apply</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(b)?
	No comment.	
27	<i>Prescribing matters for the purposes of Part 1 of Schedule 1</i>	Do you have any comments on MBIE's proposals regarding regulations under section 256(1)(c)?

DWU Submission on Schedule 1, cl. 5(3)(e) – Reregistration fee

The DWU is comfortable with MBIE’s suggestion relating to Schedule 1, cl. 5(3)(e) of the Act, that the reregistration application fee be set in the Regulations at around \$50.

DWU Submissions on Schedule 1, cl. 10(2)(a)(ii) - Additional Regulations Should be Made for Approval of new Constitutions

The DWU submits that a Regulation should be made to in relation to Schedule 1, cl. 10(2)(a)(ii), pertaining to the manner of approval by an existing Incorporated Society of a new constitution (before that constitution takes effect at time of reregistration under the Act).

Schedule 1, cl. 10(2)(a) provides that the constitution must be **either A)** approved at a general meeting of the existing society by a majority vote of those members entitled to vote and voting on the question [per cl. 10(2)(a)(ii)], **or B)** approved in a manner prescribed by the regulations [per cl. 10(2)(a)(ii)].

The DWU strongly submits that Regulations should be made for cl. 10(2)(a)(ii), to provide an alternative to the first option (the option of approval by way of a general meeting).

The DWU submits that the same principle as that of s 84(4) of the Act should apply. Section 84(4) of the Act provides that Incorporated Societies that are Unions (or other kinds of Societies prescribed by Regulations) may have in their constitutions that a right to attend Annual General Meetings applies only to Delegates and other Representatives of members (rather than to all members).

The Consultation Document (at item 66) itself describes the practical limitations for Unions to operate well without the s 84(4) rule.

Similarly, the DWU submits that for a General Meeting to take place for a membership vote on a new constitution in terms of Schedule 1, cl. 10(2)(a)(i), this would be a practical impossibility, having approximately 8,500 DWU members who are spread across 88 work sites throughout the country, and who work on different days of the week, and on different shifts of the day. However, the DWU is able to obtain release from work and assist with travel arrangements for Union Delegates and other Representatives of members.

Therefore, we strongly submit that a Regulation should be entered for Schedule 1, cl. 10(2)(a)(ii), and that it is similar to the s 84(4) rule. We submit that this Regulation should provide that in the case of an existing Union (or an existing society of a kind prescribed by regulations), the new constitution may be approved at a general meeting, and the right to attend may be provided only to delegates and other representatives of members.

Other comments

No comment.

