Responses to Questions: Part 2 of Discussion Document.

Question 1: Prescribing Information that must be included or provided under §245(1)(a).

§9(a) Application for Incorporation

Throughout, you propose that every officer of a society provide an email address. I propose that an email address be permitted, but not be mandatory. Not all people have an email address. Even those that do often have email provided by private companies that forbid commercial use of their email service --- and their terms of use are phrased such that the use for the administration of an incorporated society would count as such. Refer for example to the terms prescribed by Google for their G-Mail offering, or Microsoft for their Hotmail offering. In the case of a limited liability company, it is likely that the company will provide email facilities for its officers. In the case of smaler societies, it is unlikely that there is the ability or desire to have to operate an email server

§109(2) Contents of Annual Return

You also propose that the society's contact person must provide an email address. As above, this is not necessarily possible, and I propose that it be permitted but not mandatory.

You also propose that the full details of the society's officers be included in the annual return. While perhaps not an undue cost, it is another cost of time and effort to collate that information. I propose that the names be required, but that the contact details be optional in the annual return.

It also strikes me as concerning, and one would hope un-necessary, that a certification of an AGM be included in the annual return.

Question 2: Prescribing the manner in which things must be done.

You propose that the only way to communicate with the Registrar is to be through an internet site.

I object to this, for many reasons. The provision of internet is not universal: there are many useful members of society (and indeed of societies) that do not have access to it, or the competence to understand how to safely interact with it. This is especially true for smaller, and more rural, societies.

Requiring internet service to interact with the registrar, and thus the cost of equipment to use the internet, presents an undue cost to the societies, against the purpose of the Act.

I have also found, both in my capacity as a agent for businesses and societies and as an individual person, that the procedure for accessing the internet sites to submit information is rather more complicated, time consuming, and generally frustrating than submitting the same information by post. This is true not of any particular internet site, but of using the internet in general. The fundamental problem is the verification of identity, which is to say website credentials and authority to act on behalf. I will assert that the extra work involved in this is an undue cost to the society involved, as well as being undue government interference in the society by making the agents of the society jump through hoops tom submit the information required by law.

I propose that in all parts of the table under ¶23 of the discussion document that the phrase "Except with the leave of the Registrar in his or her absolute discretion, ... must be <made/filed> online through the internet site designated by the Registrar" be altered so that societies may submit their communications by post as they can do at present.

Question 6: Prescribing jurisdictions whose officer disqualifications we will recognise.

I am of the opinion that a person disqualified from being an officer of a company in New Zealand or overseas should not necessarily be disqualified from being an officer of an Incorporated Society. This is especially true for those very small societies such as sports clubs and cultural organisations, where finding anyone to help run the club can be difficult.

The counterpoint to this is that the very small societies may well not have the means to check or control such disqualified people, putting the society at risk of the disqualified person causing harm to the society.

This is only a comment on the discussion document, and I have no proposal of my own to make.

Question 7: Prescribing Types of changes in officer information that must be notified.

I will repeat what I said above about not all people having email access, and the requirement then to provide one being impossible.

A concern I have is the speed at which the changes must be notified. I would like to suggest that it not be required, at least in small societies (by whichever definition might be made to suit) that the change be notified at once. Perhaps at the latest at the filing of the next annual return, so that the information held by the Registrar i no more than a year old.

In the case of a small society the loss of a committee member can case enough difficulties for those left that the additional burden of reporting the change at once would be unduly difficult.

I also propose that the exact date not be required, if it be possible; that for example the phrase "Mr A.B. resigned from the committee in the month of April 2022," or "Mrs C.D. left the committee during the year up to October 2022" be acceptable notifications. This will require careful implementation in the register database, but is not impossible to do.

Question 8: Regulating constitutional provisions on conflicts of interest.

I agree with the proposal to not make any regulations under §254(1)(h) of the Act.

Question 10: Defining the term "total current assets"

I will first note that $50,000 is not very much money. However, it is prescribed by the Act and can't be changed here.

I am satisfied that the definition by exclusion is tolerable --- certainly I cannot think of a better way to define it.

I would suggest that the proposed wording in ¶73 of the discussion document be changed so that "...which are not expected to be sold within..." reads "...which would not generally be expected to be disposed of within...", that is, the definition be

> "Total Current Assets means total assets excluding fixed assets, where fixed assets are those items of property, plant, and equipment which would not generally be expected to be disposed of in the 12 months following the society's balance date."

In the case of the example given in ¶71,76,77, then, the piece of land would qualify as a fixed asset even in 2027, so that the threshold was not breached for that year and the higher standard of financial report was not needed. Of course, if the land did sell the society would have the cash and have to apply the different standard. I will also note that there is nothing saying that small societies can't apply the higher standard of reporting if they wish to, so this proposal doesn't affect them.

Question 11: Prescribing additional requirements for the financial statements of small societies.

I whole-heartedly agree with the proposal to make no regulations under §254(1)(k), for the reasons put forward in ¶83 of the discussion document.

Question 13: Setting Infringement Fees

Although it is probably outside the purview of this discussion I am not sure that it is correct for the society to be responsible for the failings of its officers to do their duties, in which I agree with the 1908 Act, which penalises the officers not the society.

I am thinking specifically of small societies where there is not much money to spare to begin with, and so penalising the society does harm to the intended purpose of the society: a sports club not being able to improve their facilities or send a team away to compete. I attribute this to a fault in the drafting of the law, which cannot be changed by this submission, wherein the threat of financial penalties to a profit-making company was assumed to apply equally to a not-for-profit society, when it does not.

I would suggest that the reasoning behind the levels of the infringement fees is satisfactory.

I would suggest that the regulations include, if it is possible, encouragement to the Registrar to not issue an infringement notice unless very strictly necessary to make the society's officers comply. I am again thinking of small societies such as sports clubs, which are established to play the sport, not to administer a business.

Question 15: Removal And Restoration of Societies from the Register

I would like to suggest that the notice of removal be given as widely as possible to the public, for example both in the Gazette and the Registrar's website, and in newspapers in the region that the society operated.

I suggest this so that creditors of the society are able to be made aware of the removal. The creditors of small societies in particular, such as sports clubs, are often very generous with the terms of credit, and those creditors deserve the chance to recover their debts.

For similar reasons I would suggest that the minimum period be extended from 20 days to, perhaps, 28 days.

Question 18: Prescribing how documents must be served on a society.

My first comment on the section of the proposal is that it has taken the Companies Act as too much of a starting point. A society is by its very nature a very different beast to a company, and so the Companies Act is a poor place to start from, especially regarding the length of time for correspondence.

I will also comment again on the use of email. I don't think that email should be forbidden for communication at all; it is a useful tool. It is also un-reliable. For example, I sent an email to a colleague, in the same organisation, using the same email provider and software, that took some 36 hours to arrive. This occurred last week, so is not an historical vignette. It is the very nature of email that it is not time-controlled, which can be verified by considering any of the RFC documents that prescribe the standards for email.

There is also a difficulty with email addresses being assigned to a particular person, for example "firstname.lastname@company.com". This means that, for example if that person leaves or is incapacitated for whatever reason the email may very well arrive but there is no way to for the remaining officers of the society to access it. This is especially true for personal email accounts used for the purposes of the society.

Contrast this scenario with a letter posted to the society or a fax sent to the society. In both cases the correspondence may be addressed to a particular, absent, person, but can be read by those left to administer the society.

I do support the idea in ¶146 of the discussion document, where the intended recipient can show the document was not served or sent or delivered through no fault of the intended recipient. I would suggest that the word "proved" be replaced with the less stringent "demonstrate," because prove is a very strong word.

Question 19: Prescribing how documents must be served on a person.

I have the same points to make about the use of email and the basis of the Companies Act as a basis for the regulations as I made for question 18 above. Please apply that response to this question as well.

Question 20: Prescribing matters relating to the incorporated societies register

I will ask, not that it has bearing on the regulations, if the Society Number will be kept between the old and new register, or alternatively if there will be provision to keep the original registration number available for reference on re-registration of a society. This is a useful parameter, because heretofore the NZBN has not been used extensively for societies, and there are many records that have reference to the old society number.

Question 21: Conversion to a Society

I would suggest that in relation to ¶166 that a simple majority is insufficient for a change of this magnitude, and that a two-thirds majority be inserted.

Question 22: Setting Fees for the performance of functions or exercise of powers

I am in favour of the fees being set as low a possible for societies. It is important to remember that, unlike companies and partnerships, there is no ability or desire to make money in a society, and the regulations should reflect that.

Although not mentioned in the discussion document, and I suspect not considered, I will say that societies should not have to pay for their annual returns to be processed.

That said, it is not unreasonable to have some fee to cover the cost of incorporation, almagamation, and conversion. Of these three cases, amalgamation is most likely to happen with one or both of the involved societies are struggling, and so perhaps the amalgamation fee should be set as low as possible.

Question 23: Setting Late Fees

While I agree that the cost to the Companies Office is the same for both companies and societies, I do not think that the Companies Act Regulations are a good starting point, because they are two very different types of entities. Especially for smaller societies, the "staff" rare often volunteers with other pressures on their times.

I would propose that no regulation be made under §251(1)(b) of the Act, which I believe is the same as the current state of affairs. There is provision for punishment, which is enough to encourage the filings to be made on time.

Failing that, I propose that the amounts and deadlines be changed from the proposal. Perhaps for the first three months (or 90 days) instead of 25 days do not charge at all, and thereafter have a lesser amount: perhaps $40 or $50 instead of $100. This reflects the voluntary nature of societies, especially the smaller ones, and that societies are generally created to do good rather than to be administered.

Perhaps the definition of "Small Society" used for the preparation of financial statements could be used here to set the time-frames and amounts payable to be different for small societies.

Question 27:Prescribing matters for the purposes of Part 1 of Schedule 1

I am opposed to a fee for re-registration. Parliament should be asked for the money. Even if all 24000 societies re-register, that is a total of $1,200,000, which I am sure Parliament considered when the law was passed.

I am also, for the reasons given in response to question 2 above, opposed to the registration being solely through an internet site. My response to question 2 above should be read again as answer to this question.

Other comments on the discussion document

I am afraid that my comments here are generally vague rather than precise, but will present them anyhow to give an idea of my thoughts on the matters discussed.

I am concerned that the regulations and administration of companies under the Companies Act 1993 has been taken as a starting point a little too much. That societies are different from companies is evident in the existence of a separate Incoporated Societies Act, and I do not think it is possible to over-estimate just how different the two types of entity are.

I am concerend that the new Incorporated Societies Act is not well though out itself. The discussion document says that even in similar juristictions with similar laws for societies there are not comparable regulations to consider. This of course is entirely outside the ability of this submission to change, but I think it is useful for you to know about.

I suggest that the sheer amount of detail in these proposed regulations goes against the stated purpose of the Act which include minimusing government interference and making the law more accessible. Certainly the Act itself is some three and a half times longer than the 1908 Act, and it seems that the proposed regulations will be themselves longer than the old Act and the 1972 Regulations combined.