

# The Co-operator

Issue 1

Newsletter of Co-operative Development Services Ltd

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## The Co-operator

Welcome to *The Co-operator*, the quarterly newsletter of Co-operative Development Services Ltd (CDS).

The newsletter aims to keep CDS members and Victorian co-ops informed of the activities of CDS and development issues affecting the wider co-operative movement.

CDS welcomes your contributions to *The Co-operator*, either by email or post. Please refer to the last page for contact details.

## About CDS

CDS is a co-operative development agency that specialises in the development of co-operatives.

CDS is a network of consultants and professional advisers with business and co-operative development experience across a broad range of industry and community activities.

The idea for CDS originated from the Co-operative Federation of Victoria, which suggested to its then secretary, Tony Gill, in 1998 that he form a company to provide services to the Federation and its members.

As Tony has been a committed co-operator for 20 years, the idea of a company was rejected as not in keeping with co-operative principles and practice.

Since it was formed in April 1999, CDS has completed a number of projects for a range of government and co-operative clients.

Turn to pages 2 and 3 for a summary of CDS projects and services. •

## Towards consistent legislation

*Co-operative Development Services director, Tony Gill, believes that consistent co-operatives legislation will not be achievable in the short term unless major differences between the states and territories are resolved. Tony puts his case to The Co-operator.*

There has been much talk over the years of the need for consistent co-operatives legislation across Australia.

Ten years after the Australian Agricultural Council recommended uniform legislation, state and territory governments and the commonwealth agreed in 1996 to adopt a national scheme for co-operative legislation.

However, because the states, notably NSW, could not agree on the elements of uniform legislation, the Core Consistent Provisions scheme (CCP) was developed. While not perfect, CCP has achieved over 90% consistency between co-operatives legislation, and recognised interstate co-operatives.

### Main inconsistencies

The main inconsistencies in Australian co-operatives legislation are between the NSW *Co-operatives Act* and the other state/territory co-operatives acts.

While NSW has brought much of its legislation in line with the other states, the state chose to retain a number of provisions that were rejected by the co-operative sector in the mid 1990's, including:

- The NSW Co-operatives Council.
- Co-operative Capital Units (CCU's).
- Disclosure statement for registration of a *non trading* co-operative.
- Ordinary resolution to remove directors.

Another area of inconsistency is between Victorian *Co-operatives Act* and other state acts. The Victorian act allows the state government to execute

a guarantee in favour of a bank or other body guaranteeing the repayment of any loan to a co-operative. This facility has been used by co-operatives to assist raise funds for the development of community infrastructure (e.g. sporting, recreation and school facilities).

There are over 290 of these types of co-operatives operating in Victoria, yet there has been no discussion on the fate of these co-operatives by the Co-operative National Working Party.

Other than CCU's, these inconsistencies don't appear to have been addressed by the working party. The main focus of the CNWP appears to be on CCU's and mutual recognition, which would affect only a small number of Australian co-operatives.

### Achieving consistency

To achieve consistent co-operatives legislation, either the states and territories will have to bring their legislation in line with NSW, or the NSW government will have to repeal its Co-operatives Council and make other amendments to its Co-operatives Act.

Also, the states and territories will have to either adopt the guarantee provisions in the Victorian act, or the Victorian government will have to repeal those provisions, putting at risk many co-operatives in the state.

As there has been no information given by the CNWP about the fate of these differences, and a lack of consultation with co-operatives on these issues, it is difficult to see that consistent legislation will be achievable in the short term. •

Tony Gill was a director of the Co-operatives Council of Australia Inc. from 1994 to 1999, and played a major role in the development of the Victorian *Co-operatives Act* and the Core Consistent Provisions scheme.

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# CDS in action

## Co-ops Legislation

CDS has written to the new Minister for Consumer Affairs, **Christine Campbell**, and the convenor of the Co-operative National Working Party (CNWP), **Brian Given**, expressing concern that Victorian co-operatives have not been given the opportunity to either make suggestions for improving co-operatives legislation or comment on the changes proposed by the CNWP.

The action follows comments attributed to Warrnambool Co-operative Society chairperson, **Shirley Harlock**, in the September/October 2001 edition of *National Co-op Update*, that neither she nor the co-op has been contacted by either the Co-operatives Council of Australia or the CNWP about the legislation issues under review.

CDS has suggested that the Minister facilitate a consultative process that enables Victorian co-operatives to put forward comments on the operation of the 1996 *Co-operatives Act* and make suggestions for improvement. •

## Co-ops formed by CDS

CDS has assisted in forming a number of co-operatives in Victoria, including:

**Corrong Development Co-operative** was formed to acquire land to build and lease industrial premises to agricultural related businesses to service grain growers and other primary producers in the Hopetoun district of Western Victoria.

**National Agricultural Data Co-operative** was formed to provide data management services to Australian primary producers and other agricultural chemical users to assist them meet the requirements of government regulations.

**Networking Communities Co-operative** was formed to provide Information and Communication Technology services to co-operatives and other organisations, including internet access, registry services, and education and training.

**Skills.net Association Co-op** was formed to provide advocacy and support services to community and education based Skills.net centres to assist their communities understand and use Information and Communication Technology.

## Southern Agricultural Producers

**Co-operative** was formed by a group of lamb producers in south-west Victoria after becoming disillusioned with the erratic prices and mixed quality signals from the sale yard auction system.

Meat processors can now buy quantities of lambs on specification from the co-operative, rather than relying on visual appraisal at sale yards. •

## CDS saves Federation from potential disaster

At the special general meeting of the Co-operative Federation of Victoria in October 2001, CDS successfully argued for the withdrawal of 8 rule changes proposed by the Federation's board.

One withdrawn rule would have disqualified co-operative companies from membership of the Federation, if it had been passed. CDS argued that co-operative companies are an important part of the co-operative sector and contribute over a third of the subscription income to the Federation per annum. •

## Low risk model for rural fuel co-operatives

A feasibility study into rural fuel co-operatives has found the most efficient and least risk option for the supply and delivery of fuel to primary producers and other bulk fuel users is for a co-operative to act as a fuel broker.

The study, conducted by Co-operative Development Services for **Ararat Rural City Council**, analysed 8 options for the supply, storage and delivery of fuel to primary producers and other rural businesses in its municipality.

A fuel broker co-operative uses the combined volume of its members to tender for the supply and delivery of fuel. The advantages of this model include:

- Simple business structure.
- Very little capital required for establishment and ongoing operation.
- No financial risk.
- Guaranteed supply of product.
- Create price competition based on combined volume.

## Trends in the oil industry

The study also reviewed current and future trends for the provision of fuel to rural and regional communities. The oil industry analysis found:

- The industry has shrunk from 8 major oil companies to 4 in the last 20 years.
- Most wholesale petroleum product sales in country areas are undertaken through fuel distributors.
- Pressure on fuel margins has led to the rationalisation of distributors, from 1700 in Australia in 1975 to around 180 today.
- In Victoria, BP, Shell and Mobil have around 10 distributors and this number is likely to be reduced by 50% over the next few years.
- The rationalisation of distributors, together with an increase in fuel delivery direct from seaboard and city terminals to customers, has led to a rationalisation of inland fuel depots.

## Implications for fuel co-operatives

Developments in the oil industry have important consequences for rural fuel co-operatives.

- Recognition that many factors affecting the price of fuel are outside the control of a co-operative.
- Petroleum products are likely to remain more expensive in country areas compared to cities.
- The risks in price volatility must be borne by the supplier not the co-operative.
- In pursuit of logistical savings, distributors may in future change delivery patterns to small consumers.

CDS has formed a working party with **Co-operative Purchasing Services Ltd** to investigate whether fuel co-operatives could use CPS fuel contracts with oil companies to supply primary producers and other rural businesses. •

## Webb wrong on co-operatives legislation

Co-operative Development Services director, **Tony Gill**, rejects **Tom Webb's** claim in the May/June 2001 edition of *National Co-op Update* that Australian co-operative legislation is not friendly to the development of the sector.

Mr Webb, a Canadian co-operative expert who toured Australia last year, was critical of Australian parliaments for a public policy failure towards supportive co-operative legislation.

According to Mr Gill, Mr Webb's claims are not supported by the facts. "Current co-operatives legislation was developed by the Australian co-operative sector, and it was the sector that went to government wanting new legislation."

"Through the efforts of state federations and the Co-operatives Council of Australia, 8 state and territory governments and the commonwealth agreed in 1996 to adopt a national scheme for co-operative legislation based on the Victorian *Co-operatives Act*."

Mr Gill said this was a major public policy achievement that the Australian co-operative sector should be proud of.

Mr Gill added that Mr Webb's own government contradicts his claim. "The Victorian *Co-operatives Act* was described by the Canadian Government as one of the best two co-operatives acts in the world in 1997. The government benchmarked its proposed national co-operatives act against the Victorian act and the Colorado Co-operatives Act."

The major impediment to developing new co-operatives, said Mr Gill, is the inconsistent approach by state registrars to the requirements of formation, particularly disclosure statements for trading co-operatives.

"With NSW and Queensland requiring much more detail about the proposed business than does Victoria, it is little wonder that a company would be a more attractive business entity to form than a trading co-operative in those two states,"

## Cloud over Federation future

The future of the Co-operative Federation of Victoria is uncertain following a mass exodus of members and a worsening financial position. Over the past 2 financial years, the Federation has:

- lost over 30 members.
- incurred operating losses totalling \$19,337.
- seen its net assets fall from \$28,643 at 30 June 1999 to \$10,177 at 30 June 2001 (was \$12,387 at 30 June 1994).
- had 5 directors resign, with 3 withdrawing their co-operatives from membership.

Up until mid 1999, the Federation was travelling well. It had a record 74 members, 8 member services, a healthy balance sheet, growing income and respect for its achievements in public policy, particularly co-ops legislation.

Despite these achievements, the Federation board decided in June 1999 to fundamentally change the way the Federation operates. The board wanted its secretary to act as an employee rather than a contractor.

The board passed a resolution to the effect that if the secretary did not accept instructions from directors, the board would take steps to terminate his contract with the Federation.

As the decision breached his contract and ATO tax rulings, the secretary was forced to resign from the Federation, allowing the board to appoint an employee in September 1999.

The board justified its new system of governance on the grounds that the Federation needed "to move from an operational-based piecemeal and ad hoc approach to a strategic value-added approach." (CFV 2000 annual report)

It is clear from the results of the past 2 years that the board's strategy to reinvent the Federation has failed. Unless the board takes urgent action to review its system of governance, control costs and halt the exodus of members, the Federation may not survive beyond the end of 2002. •

## CDS Services

### Co-operative formations

CDS and its members have assisted in forming over 50 co-operatives in Victoria, ranging from child care, housing and health to agricultural and business services co-ops.

CDS provides a range of formation services, including co-operative education, feasibility studies, implementation plans, disclosure statements, rules and start up assistance.

### Director education

CDS recognises that director education is critical to the good governance and success of a co-operative. CDS has developed a short course that introduces directors to legislation and other issues relevant to their duties.

CDS has conducted director courses for 16 Victorian co-operatives over the past 2 years.

### Legal services

CDS has retained Stone & Partners solicitors to advise and prepare documentation for co-operative formations, fundraising, member contracts, joint ventures, rule changes, tax, mergers, trade practices and other co-operative law issues. They have provided legal advice to co-ops in NSW, Victoria and Queensland for over 30 years.

### Insurance

Wickett Insurance Broking has arranged insurance for Victorian co-operatives for over 7 years. They specialise in:

- Directors and officers liability insurance.
- Public liability insurance.
- Business insurances.

### Unclaimed monies

Attention is directed to the requirements of the *Unclaimed Monies Act 1962*, which provides that each March:

- Every business including co-operatives must record unclaimed monies in a register.
- Every business must advertise all entries of \$100 or more in the Government Gazette.
- After a further 12 months, the balance of any unclaimed monies still held by a business, and a register thereof, must be forwarded to the Registrar of Unclaimed Monies.

**Unclaimed monies** are defined as: all principal and interest, dividends, salaries and wages, unrepresented cheques and all sums of money whatsoever, that have remained unclaimed for at least 12 months.

# Developing directors of co-operatives

The Plunkett Foundation, with the financial assistance from the U.K. Department of Trade and Industry, undertook a study in 1994 on developing directors of co-operatives. Part of the study focused on investigating competency based standards for directors. Outlined below are the conclusions of the study on minimum competencies for directors of co-ops.

The directors of co-operatives are usually non-executive and elected, or at least selected, from among the membership. They may be described as amateurs, although they are required to act in a professional capacity, and they are often volunteers who may have accepted the post of director reluctantly.

Co-operative directors carry all the same legal responsibilities and risks shouldered by the directors of any other business.

As with other types of business, the scale of operations of a co-operative ranges from the very small to the large enterprise. This variation in size influences the way in which systems of corporate governance operate, as well as the way in which the director carries out his/her functions.

Many of the competencies necessary to successfully direct the affairs of any type of business are equally required to function effectively within a co-operative. However, for the co-operative director the presence of more traditional business skills is not enough.

Without the additional competencies required, in terms of understanding the co-operative business model and possessing the related complementary skills, it is very unlikely that they will be able to function successfully. •

## Basic Competencies

### *Required of All Co-operative Directors*

All directors should be able demonstrate:

- an unequivocal understanding of the purpose and prime objectives of the co-operative which they serve as a director;
- an understanding of the structure of the market in which the co-operative operates, as well as the key factors which are critical to its survival;
- an awareness of their legal and functional responsibilities as a director of the co-operative;
- the personal skills required to function effectively at meetings;
- the ability to comprehend the financial and control information necessary for the management of their co-operative including the key result areas and key result indicators for that business;
- the ability to take an active role in the business planning process and in monitoring progress against such plans.

## Additional Competencies

### *Which Improve the Effectiveness of Co-operative Directors*

- leadership and communication skills;
- an appreciation of the background and setting for the co-operative business activity; and
- an awareness of the latest developments and trends within the relevant business area.

*Source: Developing Directors of Co-operatives, Plunkett Foundation, 1994*

## Role of the chairperson of a co-operative

The chairperson plays a key role in maintaining an effective system of governance in a co-operative. How the chairperson carries out their role will influence the success of the board.

A chairperson should:

- Know the rules and procedures relating to conducting meetings.
- Ensure that all directors are enabled and encouraged to play a full role.
- Seek to draw from directors their thoughts and experience so that the diversity found among directors supports effective decision making.
- Ensure meeting discussion content will only be those issues which, according to board policy, belong to the board to decide, not the manager.
- See that all directors receive timely and relevant information so they can make proper decisions and monitor performance.

In carrying out his/her duties outside board meetings, the chairperson should:

- Act in a manner consistent with the board's policies.
- Not override the board's delegation to the manager to manage the operations of the co-operative.
- Not personally supervise or direct the manager.
- If agreed, be available to provide support or act as a sounding board to the manager within board policy.

### Limitations on authority

The chairperson is bound by the rules of the co-operative, and has no special power or authority other than presiding at meetings. The chairperson performs no other functions and duties other than outlined in the rules or those that have been delegated to them by the board.

It has been known for some chairpersons to assume greater authority than has been delegated to them, and make decisions or take actions on behalf of the co-operative that may bind or embarrass the board.

It is important to prepare a position description for the chairperson so that he or she clearly understands whom they're accountable to, duties, responsibilities and authority, relationships, and duration of term. •

### *The Co-operator*

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