

The Co-operator

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Federation restructures again!

For the second time in three years, the Co-operative Federation of Victoria has been restructured. The responsibility for day-to-day operations of the federation has been transferred to its chairman, David Griffiths, after the federation board abolished the Executive Officer's position in February. The position was created in 1999 after the board discarded the 6 year contractor arrangement.

Financial pressures and rumoured tensions over workload has seen the duties of the Executive Officer progressively withdrawn over the past year and given to the chairman, who was appointed secretary in 2001.

However, instead of reviving the contractor model which produced record results for the federation in 1999, the board has opted for a governance model that is more commonly found in companies - the executive chairman.

In his book, *Reinventing Co-operation*, Edgar Parnell stressed that the ways in which power and control are exercised in a co-operative are critical to its success and continued existence. He warned that for a co-operative to remain under member control, the functions of the chief executive/secretary and chairman must always be kept separate to avoid the concentration of power in the hands of one individual.

The federation appears not to have heeded Parnell's warning. Together with the use of proxy votes to influence the outcome of resolutions and election of directors, the federation's chairman has attained power unprecedented in the history of the co-operative.

Only time will tell if the federation's new system of governance will hasten its demise or return the federation to the strong position it was in at 30 June 1999.

British mutual to expand in Aust.

United Kingdom's largest health-care provider, the British United Providence Association (BUPA), is set to expand its operations in Australia.

The sale of AXA's health insurance business to Macquarie Bank opens the way for the entry of BUPA in the Australian health insurance market.

According to a recent report in *The Age* newspaper, BUPA is likely to end up with a controlling ownership of Macquarie's private health insurance division after the creation of a new ownership structure for the division.

AXA was the third largest health insurer in Australia, and traded as HBA in Victoria and Mutual Community in South Australia. BUPA would continue the dominance of mutuals in Australia's health insurance sector.

BUPA began in 1947 from a merger of 17 British Provident Associations. Over 50 years later, BUPA is still the UK's leading independent health and care organisation, with over four million members in 190 countries worldwide.

In the UK, BUPA provides a range of health care and other services, including:

- medical insurance
- hospitals
- health screening centres
- nursing and retirement homes
- home care and nursing services
- child care

As a mutual, BUPA has no shareholders to pay, with any profits reinvested in better schemes and health services.

BUPA runs a successful international division, with offices in Hong Kong, Spain, Thailand and Saudi Arabia.

BUPA Health Care Asia established operations in Australia in late 1999, with the acquisition of Hurstville Community Private Hospital, a 72 bed facility located in the southern suburbs of Sydney.

The hospital provides extensive surgical, outpatient and obstetrical services, and operates a medical centre which includes specialists in orthopaedics, gynaecology, sports medicine, and a reproductive medicine clinic. •

Employee decision flawed

The recent decision by the Co-operative Federation of Victoria to axe its Executive Officer position has focused attention on the decision in 1999 to restructure the federation.

Back then, the federation board replaced its self-employed secretary with an employee. Since the hiring of the Executive Officer, the federation has lost over 30 members and incurred operating losses totalling over \$19,000 in the last 2 financial years.

These results and the axing of the position has cast doubt on the wisdom of the board in replacing the contractor with an employee.

The contractor arrangement began in July 1993 when the federation was revived after the collapse of the Australian Association of Co-operatives earlier that year. At the time, the federation had \$6,000 in the bank, little income, no services and 14 active members.

The federation could not afford an employee so the board engaged a secretary on a fixed term, task-based contract for an agreed fee.

The new secretary began in 1993 working 8 hours per week. The growth of membership from 14 to 84 members over the next 6 years resulted in the secretary working up to 40 hours per week and more during 1999, performing his contracted tasks and serving members. The record results of that year reflects the effort made by the secretary.

Despite the workload, the board decided in June 1999 that it wanted its secretary to do more, by forcing him to accept instructions for work from directors, for no payment. This conflicted with his contract, which required that any work additional to the tasks specified in the contract, and fee, was to be negotiated between the board and secretary.

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CDS in action

Co-operative formations

CDS has assisted in forming the following co-operatives in recent months.

Omeo Fine Fibres Co-operative Ltd was formed by 9 fibre growers to pool their fibre products to gain sufficient volume to make it viable for a fibre processor to manufacture knitting yarn for sale by the co-operative.

South Gippsland Herd Improvement Co-operative Ltd was converted from an incorporated association to a co-operative to enable its merger with two other dairy herd improvement services co-operatives in the Gippsland region of Victoria. •

Fuel study well received

Co-operative Development Services has received a very positive response to its feasibility study into fuel co-operatives.

The study, conducted by CDS for **Ararat Rural City Council**, analysed 8 options for the supply, storage and delivery of fuel to businesses in its municipality.

CDS put together a consortium of business, co-operative and oil industry experts to conduct the study.

The study was well received by the council, with the findings and recommendations being accepted by the Buangor community.

The study, which was funded by the Victorian Department of State and Regional Development, also assessed the viability of fuel co-operatives in other parts of the state.

The Victorian Minister for Small Business, **Marsha Thomson**, distributed the study to other Victorian rural councils to promote fuel co-operatives in their shires, and posted the report on the website of the Department of Consumer and Business Affairs.

The study was also used by the Victorian Government as background information for its response to the *Petroleum Products (Terminal Gate Pricing) Bill*, introduced to the Victorian Parliament in 2000 by independent MP, **Russell Savage**. •

The Co-operator

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Co-operative Development Services Ltd

PO Box 24, Hepburn Springs, Victoria, 3461
Telephone: (03) 5348 1544
Email: cds@netconnect.com.au
Website: www.coopdevelopment.org.au

Fuel co-operatives in Victoria

In 2000, the Victorian Government reacted to concerns over high fuel prices for primary producers and other rural businesses by funding the Ararat Rural City Council to determine the feasibility of establishing a rural fuel co-operative within its municipality in particular and fuel co-operatives generally.

Two findings from the study prompted the government to commission Co-operative Development Services to undertake further research into fuel co-operatives in the state.

1. Negotiating deals with fuel suppliers requires expertise. Rural communities should carefully evaluate the benefits of utilising existing co-operatives that arrange fuel supply as opposed to developing their own co-operative.
2. The rationalisation of distributors means that a distributor can service large areas of the state, enabling an existing co-op to supply fuel in other areas removed from the location of the co-operative.

The research therefore was to identify:

- Existing co-operatives in Victoria that arrange fuel supply to their members;
- Victorian co-operatives that could add fuel supply to their services; and
- Municipalities which are not currently serviced by a fuel co-operative.

CDS identified 16 co-operatives in Victoria that arrange fuel supply for their members - three taxi co-operatives, four fishing co-ops, one local government purchasing co-op and eight rural co-operatives.

The taxi, fishing and local government co-ops were not investigated further as their membership is restricted to specific types of businesses (which excludes farmers).

Of the eight known rural co-operatives (listed below) that arrange fuel supply to farmers, three* operate retail fuel outlets in country towns and regional centres.

- Cannie Ridge Co-operative Ltd
- Central Highlands Co-operative Ltd
- CEPA Co-operative Ltd
- Mildura Co-operative Fruit Co.*
- Murray Goulburn Co-operative Co.*
- Rupnorth Co-operative Ltd.
- Tatura Milk Products Co.
- Warrnambool Co-operative Ltd*

Most of these co-operatives have the potential to expand their services to primary producers in municipalities not serviced by a fuel co-operative.

CDS contacted a number of other rural co-operatives to establish interest in fuel supply to farmers in their areas.

Only three expressed an interest in exploring a fuel service. The others were not interested due to a reluctance to expand into activities outside their core business, and concerns about the effect on the economy of small towns if the co-operative competed against a local fuel supplier.

CDS identified 29 municipalities without a fuel co-operative presence, 24 with a fuel co-operative presence and 8 that could be serviced by an existing rural co-operative.

The report concluded by outlining assistance that local government could provide in promoting and facilitating fuel co-operatives within their municipalities.

Copies of the Rural Community Fuel Co-operative Feasibility Study and the Fuel Co-operatives in Victoria report can be obtained from CDS. •

Employee decision flawed

After the secretary terminated his contract, the board proceeded to discard the contractor arrangement and appointed an employee to act as secretary of the federation.

However, instead of appointing a full-time employee to match the hours worked by the previous secretary and to meet the expected work demands from directors, the board hired a part-time employee for 2 days per week, to match the fee paid to the contractor.

This substantially reduced the time available to serve members, which in turn has led to growing dissatisfaction by members with the level of service from the federation.

One member has told *The Co-operator* that they had written to the federation 5 times

in 2001 seeking information on member services, but had received no response. Many others have expressed dissatisfaction by not renewing membership.

The change to an employee also added extra costs to the federation. The expenses the contractor was previously responsible for such as workcover, superannuation and travel was shifted to the federation, adding over \$5,000 to expenses during the 2000/01 year. These extra costs have contributed to the record losses of the federation since 1999.

The exodus of members, record financial losses and the axing of the Executive Officer's position less than two and a half years after it was created, demonstrates that the decision by the board in 1999 to discard the contractor arrangement in favour of an employee was flawed. •

Australian Co-operative News

Capricorn wins national IT award

Western Australian co-operative, Capricorn Society Ltd, has won a national award for its interactive website, www.capricorn.com.au.

The website was the winner under the Australian Information Technology and Telecommunications Awards presented at the Australian Telecommunication Users Group Annual Conference in 2001.

Judged the National Champion in the Infrastructure/Best Communication and/or Information Service category for 2001, Capricorn won the award after the judging of eight finalists from each Australian state.

Capricorn Society is the largest independent automotive parts buying co-operative in Australia, with a turnover of \$260 million in Australia and New Zealand.

Developed in conjunction with Perth online business experts, Internet Business Corporation, the highly interactive website allows Capricorn's 5,500 members to perform product searches, request quotations, place orders and track invoices. •

(Reprinted from WA Co-operative News, Summer 2001/02)

Green light given to co-op merger

Members of the Herd Improvement (Maffra) Co-operative Ltd, South Gippsland AB Co-operative Ltd and South Gippsland Herd Improvement Association Inc have overwhelmingly voted to merge into a new entity, the **Gippsland Herd Improvement Co-operative Ltd**.

The merger was a complicated affair, with the association having to convert to a co-operative before the merger could proceed.

The new co-operative will have over 850 dairy farmer members and an annual income of over \$6 million.

Surge in new co-ops

Victoria has experienced a resurgence in co-operative activity since the new *Co-operatives Act* became law in 1997.

Over 165 co-operatives have been registered in the state since 1 October 1997, with 132 formed in the 3 year period from 1 July 1998 to 30 June 2001. This compares to 65 co-operatives formed in Victoria over the preceding three years. •

Federation misleads co-operatives over new members

The Co-operative Federation of Victoria has misled its members by claiming in its 2001 annual report and newsletter (VCN Nov/Dec 2001) that 10 co-operatives joined the federation during the 2000/01 financial year.

The federation was caught out after CDS discovered in the federation's balance sheet that only 6 co-operatives purchased shares during the year ending 30 June 2001.

After an unsuccessful attempt at seeking an explanation for the discrepancy from directors at the federation's 2001 annual meeting, CDS wrote to the federation's Executive Officer, Graeme Charles, seeking clarification of the issue.

Mr Charles confirmed that only 6 co-ops purchased shares during the year, and the annual report listed 2 co-ops that joined the federation after 30 June 2001. •

Call for inquiry into dumping of secretary

A number of co-operatives have called for an inquiry into the circumstances behind the sudden resignation of the secretary of the Co-operative Federation of Victoria in 1999.

They were responding to an article in the last edition of *The Co-operator* that referred to the then secretary, Tony Gill, being threatened with dismissal if he did not breach his contract and act like an employee.

The co-operatives expressed dismay at the human resource practices of the federation. "For an organisation that aspires to and promotes co-operative values, forcing the secretary to resign for upholding the integrity of his contract is the antithesis of what co-operatives stand for," one co-op said.

Tony Gill welcomed the call for an inquiry. "The June 1999 board meeting was a terrible experience for me," Mr Gill said. "Only one year earlier, the board renewed my contract for a further two years, and it was a surprise when the motion to change the relationship between directors and the secretary was tabled and passed at the meeting."

"The Tax Office made it clear to me after the meeting that if I could not refuse a direction, they would deem me to be an employee. The directors put me in a very difficult position, either accede to their demand and put the Federation and myself at risk from action by the ATO and WorkCover, or terminate my contract to enable the board to appoint an employee," he said. •

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.
- Export and product protection insurances.

Important notice

Registering a motor vehicle

When registering a motor vehicle with **VicRoads** or a car dealer, co-operatives are advised to take a copy of the co-op's certificate of registration and its registration number to verify its corporate status.

If an Australian Company Number (ACN) is requested, you will need to explain that the co-operative is registered under state law and is not required to have an ACN number. If you experience problems in registering a motor vehicle, contact CDS on 5348 1544.

Contractors vs employees - the ATO position

One of the most important positions in a co-operative is that of secretary. All co-ops are required to have a secretary, who is an officer under the *Co-operatives Act*.

Co-operatives have a number of options for appointing a secretary. A co-operative may simply appoint a secretary to undertake administrative tasks such as minute taking and keeping records. In this case, the position may be voluntary or some payment may be made in consideration of services performed.

Alternatively, the secretary may be engaged either as a consultant under an independent contract arrangement or an employee, if additional services are required such as member liaison and recruitment, and bookkeeping services. In larger co-operatives, the CEO or manager usually acts as secretary.

The *Income Tax Assessment Act* provides different systems for the collection of tax from employees and contractors. Therefore, it is important for co-ops to understand the factors that determine whether the secretary would be a contractor or an employee.

Important Disclaimer

This article summarises a number of key issues that need to be taken into account when deciding whether to appoint the secretary as an employee or contractor. Your co-operative should seek advice about its own situation from the relevant Federal, State or Territory government department, or from an appropriately qualified person.

The question of whether an engagement to perform services should be by way of employment or independent contract largely depends on the level of supervision and control which is required.

If the nature of the service can be clearly defined, and there is no requirement for the co-operative to retain a right to control the manner and time of performance of work, the arrangement can usually be one of independent contract.

Where there is present a right to control how, where, when and who is to carry out the work in question points strongly (and usually conclusively) to employee status. If the 'control test' is inconclusive, other tests are used to determine the status of engagement.

The following table sets out key factors that the **Australian Taxation Office** uses to distinguish an employee from a contractor.

For small co-operatives, the benefits of engaging the secretary as a contractor are:

- The co-operative is able to engage help without having the resources to rent office space and supply plant and equipment.
- A contractor is normally responsible for costs of superannuation, workers compensation, office equipment and rental and utilities.
- The contractor's fee is agreed between the parties and is not subject to an award.
- The contractor is independent from the board and has no authority other than to perform the tasks specified in the contract.

Table: Factors bearing on whether a Master and Servant relationship exists (Income Tax Ruling IT 2129)

Key factors	Master & Servant relationship	Independent contractor relationship
Is the arrangement in writing?	Any written agreement will usually relate to the employee rather than the particular work to be performed.	Any written agreement will usually relate to the particular work to be performed.
Who provides the plant and equipment, floor space, power etc.	Plant, equipment, floor space and power are normally provided by the employer.	The contract will specify who is required to provide plant, equipment etc, but this is usually the responsibility of the contractor.
How is the work performed?	An employee will usually be engaged to work on a continuing basis and at the direction of the employer.	The agreement will require the performance of specified task(s).
Where is the work performed?	The work is normally performed at the place of business of the employer or wherever the employer otherwise directs.	The work is usually performed at a place identified in the contract or otherwise agreed by the parties.
Who is responsible for scheduling work?	The employer will determine the time-frame within which work is performed.	The work will be executed in accordance with agreed schedules under the contract.
Who is responsible for exercising control over the manner in which the work is performed?	The employer will normally direct, or have a right to direct the manner in which the work is performed.	The work may be subject to inspection and supervision as provided for in the contract.
Obligation to obey directions?	There is an obligation on the employee to obey the directions of an employer.	The contractor normally has freedom in the way the tasks are performed.
Does the person performing the work have the right to refuse the performance of a particular task or job?	There is generally no right as such to refuse the performance of an allocated task, and refusal to perform the task may be grounds for dismissal.	The tasks to be performed are normally agreed prior to entering the contract. The principal may seek to execute remedies for failure to perform tasks under the contract but cannot otherwise control or direct the tasks to be performed.
What is the arrangement with respect to leave of absence from work?	The granting of leave of absence is subject to the discretion of the employer, and may be subject to an award or contract of service.	A contractor does not require leave of absence. Arrangements would be made to ensure that the relevant work is performed within the time specified in the contract.