



Department of Justice

Consumer Affairs Victoria

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Our ref: CD/10/128084

Dear Sir / Madam,

13 May 2010

CO-OPERATIVES NATIONAL LAW

I am writing to update you on the progress of the development of the proposed new Co-operatives National Law (CNL). As you may be aware, in 2005 the Ministerial Council on Consumer Affairs (MCCA) agreed to develop a national co-operatives law for each state and territory to adopt. This will replace separate co-operatives legislation in each state and territory with a single national law.

In December 2009, MCCA agreed to the release of a draft CNL for a period of national public consultation until 26 February 2010. The CNL was developed by a national working party led by New South Wales (NSW) with representation from all states and territories.

NSW coordinated public comment on behalf of all states and territories and a total of 20 written submissions were received from across Australia. The submissions received can be viewed on the NSW Office of Fair Trading website (www.fairtrading.nsw.gov.au), and the draft legislation can be viewed on the Consumer Affairs Victoria website (www.consumer.vic.gov.au) under 'Public Consultation and Reviews – Closed Consultation'.

The proposed CNL aims to:

- simplify financial and auditing requirements for small co-operatives;
- reduce restrictions on co-operatives operating across borders;
- introduce nationally consistent provisions for the supervision of co-operatives; and
- provide clear guidance for directors on their duties and responsibilities.

The majority of the provisions of the Victorian *Co-operatives Act 1996* will be carried over into the CNL. However, there will be some significant changes. Importantly, the new law will recognise the concept of a "small co-operative" for the purposes of financial reporting, removing the requirement that these co-operatives have their annual accounts audited automatically. It is expected that a "small co-operative" will be defined in regulations by reference to consolidated gross annual revenue, consolidated gross assets and number of employees. It is intended that the regulations will be developed following the passage of the CNL by NSW. The accompanying attachment outlines the main changes.

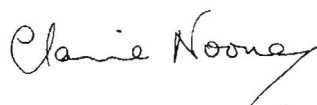


It is anticipated that NSW will enact the national law in 2010, with other states and territories applying the national law or enacting consistent legislation within 12 months. NSW has a subscription service for co-operatives to automatically receive updates on the progress of the CNL. You can subscribe to this service on the NSW Office of Fair Trading website (www.fairtrading.nsw.gov.au).

The Co-operative Federation of Victoria Ltd has advised Consumer Affairs Victoria that it is available to provide advice and information to co-operatives on the proposed changes. It can be contacted via email (cfv@australia.coop) and phone ((03) 9785 6542).

Consumer Affairs Victoria will notify you prior to any amendments to legislation to ensure that you have adequate information and time to prepare for changes. Consumer Affairs Victoria can be contacted by phone (1300 55 81 81) or email (consumer@justice.vic.gov.au).

Yours sincerely

A handwritten signature in cursive script that reads "Claire Noone". The signature is written in dark ink and is positioned to the left of the typed name and title.

Dr Claire Noone
Registrar of Co-operatives

Co-operatives National Law (CNL)

Summary of Changes

1. The definition of “officer” of a co-operative will be amended to be consistent with the definition of “officer” of a corporation as set out in section 9 of the Corporations Act 2001 (Cth). This means that “officer” will include a director or secretary of a co-operative, receivers, administrators and liquidators and persons who are significant or influential in making decisions that affect the whole or a substantial part of the business of a co-operative.
2. Currently, where the members of a co-operative are individual persons, a co-operative is required to have a minimum of five active members. The CNL provides that the Registrar will have discretion to approve a co-operative being formed with less than five members.
3. Provisions relating to the rules of a co-operative have been revised:—
 - a. A co-operative will be able to choose whether to adopt some model rules “as in force from time to time” and automatically accept any changes made to the model rules – or choose to adopt the model rules as in force at a specified time; and
 - b. The Registrar will be allowed to specify categories of rules that a co-operative can change without requesting approval. For those rules, a co-operative will simply be required to notify the Registrar that a rule has been changed.
4. A co-operative will be able to satisfy requirements to give information to prospective members by making the information available for inspection – this will include information available via its website.
5. Co-operatives will be required to repay a member’s shares within 12 months if the member is expelled.
6. The required majority to pass all special resolutions will be increased to 75% (the *Co-operatives Act 1996* requires a “two thirds majority”).
7. Financial reporting requirements will be set out in full in the CNL (rather than by reference to applied *Corporations Act* provisions). Tiered reporting arrangements will be introduced for co-operatives.
8. A small co-operative will be required to prepare a financial report and a director’s report *only* if directed to do so by five percent of members or by the Registrar. A directive to prepare a report may also specify whether the report is to be audited.
9. The financial reporting requirements for “small co-operatives” will be equivalent to those applying to small proprietary companies¹ under the *Corporations Act 2001*.

¹ A small proprietary company is defined in s45A(2) of the *Corporations Act 2001* as a company which, in the relevant financial year, had two or more of the following:

- Consolidated gross operating revenue less than \$25M
- Value of consolidated gross assets less than \$12.5m
- It employed fewer than 50 employees