



THE CO-OPERATIVE FEDERATION OF SOUTH AUSTRALIA INC.

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President T. Schmidt
Secretary D. Osgood FCIS

Co-operatives National Law Review
Policy Branch
NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124

Letter Emailed to
cooperatives_national_law@services.nsw.gov.au

17th February 2010

Dear Sir,

The Consultation Regulatory impact statement on the Co-operatives National Law (CNL) spells out very clearly the reasons behind the proposed Law and that this will replace the separate co-operative legislation in each State and Territory but will still be under State or Territory jurisdiction with NSW enacting this law.

Appendix two of the Consultation Regulatory impact statement was most useful in comparing the draft Law with the current South Australian Co-operatives Act 1997 as amended.

With reference to Item 6, the Impact Analysis and the options detailed on pages 14 through to page 21, the Co-operative Federation of South Australia (CFSA) supports item 6.3 to implement the proposed *Co-operatives National Law*. However, CFSA strongly believes that the familiarisation cost to co-operatives will be far more than \$250 as estimated in the statement.

CFSA notes that certain sections in the SA Co-operative Act have been included under other sections in the CNL eg membership, rules, shares etc and agree that including these under Formation, Powers and Constitution of co-operatives would seem the right place.

CFSA supports that the CNL provides ongoing exemptions for small co-operatives to be recognised and released from some of the statutory reporting as larger co-operatives, in the same way as small proprietary companies under the Corporations Law.

CFSA has two amendments that we feel should be included in the CNL these are as follows:

Item 1

CNL S2441 (6) should include the word **'resigned'** to mirror the wording currently in Section 171 (5) of the SA Co-operative Act. CFSA are of the opinion that Subsection (6) should read:

'This section does not apply if the member has resigned or has been expelled from the Co-operative or the member's membership has been otherwise cancelled under Part 2.6'

CFSA believes this change is essential to exclude members who voluntarily resign from a co-operative because of personal reasons such as requiring to redeem their investment for private purposes, because they may have left the district and are no longer able to utilise a co-operatives services. Any request for purchase of a member's shares would always be subject to the Board's approval.

Item 2

In Schedule 6, clause 1, Part 1, Preliminary there are two definitions of "prospective liability". CFSA believe that the second "prospective liability" should read "registrable charge".

Yours faithfully,

The Co-operative Federation of SA Inc.

David M Osgood
Secretary



Co-operatives Australia is the national body of the Co-operative Federations of New South Wales, Queensland, South Australia, Victoria and Western Australia.



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24th February 2010

Dear Sir,

Further to our letter dated 17th February, the Co-operatives Federation of South Australia (CFSA) would like to add the following comment following a further review of the Consultation Regulatory impact statement and the proposed *Co-operatives National Law*.

The SA Co-operatives Act contains 2 provisions relating to loans by members to a co-operative:

- (a) a member can be compelled to lend money (without his consent) in the circumstances referred to in section 262 of the SA Co-op Act (there is an equivalent provision in section 3413 of the CNL);
- (b) a loan by a member may arise under section 268(2)(b) of the SA Co-op Act (there is an equivalent provision in section 3428(2)(a) and (b)(i) and (3)(a) and (b)(i) of the CNL) – it is the view of CFSA, that only with the specific consent of that member (and not where e.g. the members resolve that the amount of any rebate or dividend be applied as a loan).

The SA Co-op Act does not contain the equivalent of section 3428(2)(b)(ii) and (3)(b)(ii) of the CNL pursuant to which a member can be compelled to lend without that member's specific consent. Arguably, these provisions are not fair. In any event, the rules of the co-operative must merely "authorise the amount... to be applied as a loan to the co-operative" without any requirement for the rules to specify any of the terms of the loan or the parameters within which the terms must be specified – this is to be contrasted with the detail required by section 3413 of the CNL (section 262 of the SA Co-op Act) in a compulsory loan scenario.

It is suggested that where the rules authorise a loan for the purposes of section 3428(2)(b)(ii) and (3)(b)(ii), it should be on the basis that the loan is at call. With the specific agreement of a member, the cooperative could then negotiate a different loan arrangement i.e. not at call.

CFSA has also been made aware that the hyphen in co-operative has been deleted in the CNL, the hyphen is recognised worldwide as part of the co-operative movement and therefore should be used in the CNL, see name above in this letter

Yours faithfully,
The Co-operative Federation of SA Inc.

David M Osgood
Secretary



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