



1998

WESTERN AUSTRALIA
LEGISLATIVE ASSEMBLY

**STANDING COMMITTEE ON
UNIFORM LEGISLATION AND
INTERGOVERNMENTAL AGREEMENTS**

CO-OPERATIVES LAW

Twenty-Second Report
In the Thirty-Fifth Parliament

1998

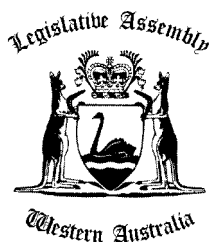
Further copies available from -

State Law Publisher
10 William Street
PERTH WA 6000

Telephone:(08) 9426 0000
Facsimile:(08) 9321 7536

Published by the Legislative Assembly, Perth, Western Australia 6000





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INTERGOVERNMENTAL AGREEMENTS

CO-OPERATIVES LAW

Twenty-Second Report
In the Thirty-Fifth Parliament

Presented by:

Hon. K. J. Minson, MLA
Laid on the Table of the Legislative Assembly
on the 21 May 1998

ORDERED TO BE PRINTED

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Terms of Reference

On Wednesday, 4 August 1993 the Legislative Assembly established the Standing Committee on Uniform Legislation and Intergovernmental Agreements.

On Tuesday, 18 March 1997 the Legislative Assembly re-established the Standing Committee on Uniform Legislation and Intergovernmental Agreements with the following terms of reference -

- (1) That a Standing Committee be established for the duration of the 35th Parliament to inquire into, consider and report on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes involving the Commonwealth, States and Territories, or any combination of States and Territories without the participation of the Commonwealth.
- (2) When considering draft agreements and legislation, the Committee shall use its best endeavours to meet any time limits notified to the Committee by the responsible Minister.
- (3) The Committee shall consider and, if the Committee considers a report is required, report on any matter within three months; but if it is unable to report in three months, it shall report its reasons to the Assembly.
- (4) Each member, while otherwise qualified, shall continue in office until discharged, notwithstanding any prorogation of the Parliament.
- (5) No member may be appointed or continue as a member of the Committee if that member is a Presiding Officer or a Minister of the Crown.
- (6) When a vacancy occurs on the Committee during a recess or a period of adjournment in excess of 2 weeks the Speaker may appoint a member to fill the vacancy until an appointment can be made by the Assembly.
- (7) The Committee has power to send for persons and papers, to sit on days over which the House stands adjourned, to move from place to place, to report from time to time, and to confer with any committee of the Legislative Council which is considering similar matters.
- (8) If the Assembly is not sitting, a report may be presented to the Clerk of the Legislative Assembly who shall thereupon take such steps as are necessary and appropriate to publish the report.
- (9) In respect of any matter not provided for in this resolution, the Standing Orders and practices of the Legislative Assembly relating to Select Committees shall apply.

Chairman's Foreword

This is the twenty-second report of the Standing Committee on Uniform Legislation and Intergovernmental Agreements.

The Terms of Reference of the Standing Committee allow the Committee to inquire into, consider and report to the Legislative Assembly on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes.

This report is a response to the notification to this Standing Committee by the Attorney General of Western Australia of the proposed involvement of Western Australia in a uniform legislative measure for co-operatives.

The Attorney General sought the comments of this Committee on the uniform law proposal and provided the Standing Committee with a draft of the intergovernmental agreement. The Co-operatives Laws Agreement is an agreement between the States and Territories in Australia to enact uniform co-operatives legislation based around a number of “core consistent provisions”. The Victorian *Co-operatives Act 1996* is the model legislation which will be enacted by other jurisdictions.

Uniform co-operatives legislation has already been enacted in most other States and Territories and it is proposed that legislation containing the “core consistent provisions” will be introduced into Western Australia shortly.

A co-operative is a business. In many ways it is like any other business, but in several important ways it is unique and different. A co-operative business belongs to the people who use it, people who have organised to provide themselves with goods and services they need. A co-operative operates for the benefit of its members.

These member-owners share equally in the control of their co-operative. They meet at regular intervals, review detailed reports and elect directors from among themselves. The directors in turn hire management to manage the day-to-day affairs of the co-operative in a way that serves the members’ interests. Members invest in shares in the business to provide capital for a strong and efficient operation.

These uniform legislative measures have been agreed to after extensive consultation with industry who see them as necessary for the future of co-operatives in Western Australia.

The legislative structure chosen to enact this legislation ensures that the model legislation comprising the “core consistent provisions” and other provisions which allow for local differences will be introduced into the Western Australian Parliament and will be subject to the usual parliamentary scrutiny.

On behalf of the Committee I wish to thank the Attorney General for recognizing the work of this Committee and submitting the proposed intergovernmental agreement to this committee for comment.

Finally, I thank my fellow Committee members for their individual and collective contributions to this report and commend the Legal/Research Officer, Melina Newnan, the Clerk to the Committee, Peter Frantom and the Secretary/Stenographer, Pat Roach, for their hard work.

HON. K. J. MINSON, MLA
CHAIRMAN

Executive Summary

This, the twenty-second report of the Standing Committee on Uniform Legislation and Intergovernmental Agreements, considers proposed uniform co-operatives legislation.

This report is in response to notification by the Attorney General for Western Australia of proposed Co-operatives Law Agreement that Western Australia is entering.

In an effort to achieve uniformity of co-operatives laws throughout Australia all States and Territories are enacting new co-operatives legislation. The legislation is based around “core consistent provisions” which will be the same from State to State.

The Co-operatives Laws Agreement sets out a list of the “core consistent provisions” which will be the basis for uniform co-operatives legislation. There are however, a number of general exclusions, particularly in relation to stamp duties and appeal provisions.

Uniform co-operatives legislation has already been enacted in most other States and Territories. It is proposed that legislation will be introduced into Western Australia shortly.

The Attorney General sought the comments of this Committee on the uniform law proposal. Consultation has taken place with Western Australian industry.

The Victorian legislation is the model for the rest of Australia, harmonising and updating the ten pieces of Commonwealth, State and Territory legislation which governs the co-operative sector. The *Co-operatives Act 1996* (Victoria) legislation will be enacted by other jurisdictions.

The report sets out the background to co-operatives law in Australia and the development and growth of co-operatives in Australian society. The activities of co-operatives are discussed generally outlining that co-operatives are involved in a wide range of economic and social activities. Membership is voluntary, usually based upon a specific group of persons who have a unifying interest. The prime objective of a co-operative is to provide mutual benefits to its members. Ownership and democratic control of a co-operative is vested in the membership, which may comprise individuals and/or other corporate entities. Democratic control means the final authority to control the affairs of the co-operative rests with the members who use it. Every member has one vote only, irrespective of the capital contributed or the use of the co-operative by them. The report then outlines the push for change in co-operatives law and the reasons for the drive for uniform co-operatives legislation.

The report briefly outlines the background to the agreement to enact nationally consistent legislation. The intergovernmental agreement which sets out the Co-operatives Laws Agreement is discussed as well as the “core consistent provisions” which make up the model uniform co-operatives law. The Agreement facilitates interstate activity by co-operatives through the adopting of “core consistent provisions”. These provisions are subject to the intergovernmental arrangement. Under existing legislation, co-operatives are subject to the *Corporations Law* if they wish to have members or issue securities across State borders.

The model legislation provides the framework for the formation, registration and management of co-operatives. It also enables some flexibility in the operation of co-operatives to promote their development. The legislation provides for greater flexibility in capital raising. The duties and liabilities of directors, officers and employees of co-operatives are spelt out and have been expanded to reflect contemporary corporate law. The seven principles of co-operation have been included in the legislation. The legislation also makes it difficult for co-operatives to be taken

over through active membership provisions. A co-operative will have the legal capacity of a natural person and other powers applicable to an incorporated body.

The report then outlines the position of Western Australia and the commitment of this State to enact the “core consistent provisions” of the model co-operatives law. The report outlines the objectives of the legislation and its interface with the *Corporations Law*. The “core consistent provisions” will comprise approximately 90 per cent of the proposed Western Australian legislation and will allow for local differences.

The report concludes that the co-operatives industry have consulted widely with government and have urged changes that will ensure the future of co-operatives. The response to the changes have been positive and the proposed uniform model act will provide improvements to co-operatives law.

Recommendations

The Standing Committee on Uniform Legislation and Intergovernmental Agreements makes the following recommendations -

Recommendation One

That uniform co-operatives legislation be enacted in Western Australia.

Recommendation Two

That relevant amendments to the co-operatives legislation that have been agreed to, be enacted promptly to ensure that the Western Australian legislation is up to date, so as not to disadvantage Western Australian co-operatives.

Ministerial Response

Pursuant to Standing Order 378(c) of the Legislative Assembly of Western Australia, this Standing Committee directs that the Minister representing the Attorney General, within three months, or at the earliest opportunity after that time, if Parliament is in adjournment or recess, report to the House as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Chapter 1. Co-operatives Law

1.1 Introduction

The last few years have witnessed major changes to the legislative environment for co-operatives in Australia.

A new national structure for the regulation of credit unions and building societies has been developed by Government with industry input in response to some failures in the market place. Legislative arrangements to regulate other financial co-operatives, such as friendly societies are also under review.

Legislation regulating the operation and development of general co-operatives has been redrafted in a number of Australian States and Territories.

These changes are taking place against the background of increased competition for co-operatives. Deregulatory policies of various governments, within Australia, along with greater competition both domestic and international, are presenting major challenges for co-operatives and Government policy makers.

In Australia general co-operative legislation covers co-operatives operating as agricultural marketing and supply co-operatives, trading and consumer co-operatives, worker co-operatives and a wide variety of community and nonprofit organisations incorporated as co-operatives.

Recent trends in general co-operative legislation include -

- reconciling the provision of a facilitative legislative framework, that enables co-operatives to effectively adapt to increased competition, while maintaining co-operative identity;
- examining and enacting legislative provisions which can promote capital mobilisation within co-operatives;
- requiring greater skills, accountability and responsibility of co-operative directors and management;
- reducing direct involvement of Government in the day to day affairs of co-operatives;
- resolving interface issues between co-operative and other legislation, particularly *Corporations Law*, both within States and at a national level; and
- seeking greater consistency between the States' co-operative legislation with the view to establishing a national co-operative framework.

1.2 Australian Legislative Environment

Australia has a federal system of Government with responsibilities being spread between three levels: national, State/Territory and local (council or shire). The legislative responsibility for general co-operatives in Australia resides with the State and Territory Governments.

Each State and Territory have Co-operative Acts under which their States' co-operatives are registered.

Apart from co-operatives registered under discrete co-operatives legislation a number of co-operatives are registered under the *Corporations Law*.

The Commonwealth Government of Australia, other than its involvement in *Corporations Law* has no direct role in the registration and regulation of co-operatives. There is no Ministerial responsibility for co-operatives at the commonwealth level.

1.3 Definition of Co-operatives

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise.

A co-operative is an incorporated body, generally registered under State or Territory law. The majority of co-operatives are set up for the purpose of community advancement and trading, with a number engaged in community development and primary production activities. Apart from rural industries, general co-operatives activities range across areas as diverse as child care, housing, taxis, community radio and many other groups that provide services to the community.

Co-operatives are member-based organisations operated for the benefit of their members. The factors which distinguish co-operatives from other forms of organisation are their mutuality, their democratic structure and character (each member is entitled to one vote only, regardless of the size of their shareholding), and the fact that capital in the co-operative services the activity rather than providing individual benefit.

In forming a co-operative, members agree to make use of its services and contribute capital to fund the enterprise, usually by purchasing shares. Funds are contributed not for capital gain, but for service or trading benefits. Members may receive dividends on capital contributed, but these are secondary to the benefits derived.

It is an enterprise which operates within a market economy with the aim of integrating social and economic objectives through the provisions of mutual benefits. Co-operatives are a product of our market economy, often established in response to market failures or imbalances.

Democratic control is exercised by members electing a board or directors charged with management of the co-operative, by approval of the rules by which the co-operative operates, and by the passing of resolutions at general meetings.

A co-operative may raise capital from its membership and from sources external to the membership. Offering fair market rate returns. However control of the co-operative is exercised solely by the membership and is unrelated to the source or level of capital.

1.4 Activities of Co-operatives

Co-operatives are involved in a wide range of economic and social activities. The activities include providing services to agriculture, manufacturing meat products, manufacturing dairy products, milled rice, raw or unrefined sugar, processing fish or other seafood, ginning cotton, processing wool, manufacturing garments, printing and publishing books, distribution of water or operating irrigation systems, in the wholesale and retail industries, in freight transport services and taxi services, in housing, legal services, providing business or management consultancy services, marketing arts and crafts, providing hospital facilities and medical services, in pre-school

education and post-school education, providing welfare and charitable services, radio broadcasting and in the recreation industry.

The diversity of co-operative enterprises is the product of a flexible form or organisation that is held together by a common sense of tradition and commitment to democracy and service, rather than by a rigid set of prescriptive rules or practices.

1.5 Growth of Co-operatives

The growth in the number of co-operatives has been steady over the years. Apart from increases in the number of co-operatives, co-operative formation activities have also been significant as many strategic co-operatives have been formed. Co-operatives were formed for value added production, export development, for wool processing, for marketing and promotion of major commodities, as well as for self-regulation of industries. Another significant factor has been the joint ventures undertaken on a co-operative basis with overseas co-operatives.

1.6 Competition and the Need for Change

Co-operatives are facing increased competition not only at the level of the individual firm, but also as an organisational type. Many co-operatives have converted to a corporate structure, often citing the reason that the co-operative legislation does not enable them to be competitive with other modes of business.

The pressure for legislative change has recently increased as co-operatives, particularly those in deregulating industries, need to quickly respond to market conditions. These previously regulated industries have often been the areas of most successful co-operative operation in Australia.

The trends in co-operative legislation are based to a large extent on enabling co-operatives to respond to these changing circumstances.

Chapter 2. Harmonisation of Co-operatives Law

2.1 Reasons for the Uniform Co-operatives Law

Co-operatives have for some time been agitating for modern co-operatives legislation. They had argued that existing legislation was antiquated and did not provide a suitable framework in the current commercial and social environment. The co-operatives submitted that their activities were hamstrung by the inadequacies of the legislation. They recommended the establishment of uniform co-operative legislation. They proposed that the legislation be less regulatory and interventionist and that standards of financial accountability be included.

Another major problem with the existing co-operatives legislation was that co-operatives were subject to the *Corporations Law* if they wished to have members or issue securities across State/Territory borders. This was recognized as an impediment to co-operatives trading interstate.

2.2 Review of Co-operatives Legislation

Several attempts have been made to review legislative arrangements for co-operatives. General consideration as to consistency of co-operatives legislation around Australia had been discussed at Ministerial level since 1990. Consultation has also been wide-ranging.

In recent years the States have to varying degrees undertaken review of their co-operative legislation. New South Wales undertook a comprehensive review and new legislation was enacted by State Parliament in 1992 and commenced in 1993. Victoria drafted a new Co-operatives Bill based on the New South Wales model. Queensland issued a discussion paper as did South Australia.

2.3 Uniform Co-operatives Law

It was recognised at a national level that there was a lack of consistency between the legislation of the States and Territories in the co-operatives area. As a result, a working party of the Standing Committee of Attorneys General (SCAG) was established which recommended that co-operatives legislation of each State and Territory should contain an “interstate division” which would provide for the interstate registration of co-operatives wishing to carry on business outside their “home State”. There would also be uniform regulatory provisions for those co-operatives. This would enable co-operatives to act nationally and trade freely across State/Territory borders. It was also recommended that each State and Territory enter into a Consistent Co-operatives Laws Agreement whereby each jurisdiction would agree to enact co-operatives legislation containing the “core consistent provisions”. Each jurisdiction would then be free to enact additional provisions in the legislation covering their particular local circumstances.

In October 1996 SCAG agreed that the best way of achieving substantially uniform co-operatives legislation throughout Australia was to have an intergovernmental agreement incorporating “core” legislative provisions which would be consistent across all jurisdiction, and would apply to all inter State and intra State trade by co-operatives.

The Standing Committee of Attorneys General, (SCAG) and the Ministerial Council for Corporations, (MINCO) agreed, on the basis of the “core consistent provisions” model to roll back the *Corporations Law* for the interstate operation of co-operatives.

Any changes to the “core consistent provisions” would require the approval of a simple majority of members of the Ministerial Council for Co-operatives Laws.

2.4 Uniform Legislative Change

All States and Territories throughout Australia have agreed to enact new co-operatives legislation in an effort to achieve uniformity of co-operatives laws. The legislation will be based around “core consistent provisions” which will be the same from State to State.

The States and Territories have entered into a Co-operatives Laws Agreement. The terms of which are discussed in Chapter 3.

The national co-operatives law was developed in consultation with the industry, the States and the Commonwealth.

Uniform co-operatives legislation has already been enacted in most other States and Territories. The model legislation for the national scheme has been enacted by Victoria in the form of the *Co-operatives Act 1996*. It is intended that legislation will be introduced in Western Australia very soon.

Victoria, the Northern Territory, South Australia, Queensland and New South Wales have enacted legislation. The “core consistent provisions” legislation for the regulation of co-operatives commenced in Queensland on 1 September 1997 and in Victoria on 1 October 1997. The Northern Territory and South Australia commenced their “core consistent provisions” legislation on 1 December 1997 and New South Wales amending legislation commenced on the same day.

Tasmania, Western Australia and the ACT are proceeding to implement the legislation.

The *Corporations Law* will be amended to implement the interface between the *Corporations Law* and the “core consistent provisions” legislation for the regulation of co-operatives.

Chapter 3. Intergovernmental Agreement

3.1 Co-operatives Laws Agreement

The new legislative arrangements will be underpinned by an intergovernmental agreement. The Co-operatives Laws Agreement is an agreement made among all the Australian States and Territories. The Agreement acknowledges that in the interest of the public and persons and authorities concerned with the administration of laws regulating co-operatives that there should be uniformity of both the laws and their administration as far as possible.

The Governments of the States and Territories of Australia agreed that such uniformity would be achieved by establishing and implementing a co-operative scheme which ensured that -

- the legislation is, and continues to be consistent throughout Australia;
- the legislation is administered on a uniform basis; and
- changes in the legislation are proposed for consideration as appropriate from time to time and amendments made when the need for reform arises.

3.2 Parties to the Agreement

A party to the agreement means a State or Territory that is a party to the Agreement.

The parties agree to achieve the objects of the agreement by enacting and proclaiming “core consistent legislation”. The parties must use their best endeavours to ensure that the administration of legislation remains reasonably consistent.

3.3 Cease to be a Party

A State or Territory will cease to be a party to the Agreement if it -

- fails within 18 months or such further time as approved by unanimous resolution of the other parties to pass and proclaim the “core consistent provisions” legislation;
- withdraws from the Agreement by notice in writing to the other parties; and
- breaches the Agreement by -
 - amending the legislation; and
 - introducing legislation which would conflict or negate the operation of the “core consistent provisions” or regulations without the approval of the majority of the parties.

3.4 “Core Consistent Provisions”

Each State and Territory agrees to enact legislation which is either uniform with the “core consistent provisions” or such that an act or thing which would be lawful under the “core consistent provisions” would also be lawful under the legislation of the State or Territory.

A State or Territory cannot amend, alter or modify the “core consistent provisions” in its application except if the provision refers to another law, so as to reflect differences in the jurisdiction in the law or amendments necessary because of different procedures within jurisdictions, or manner of expressing a monetary penalty for an offence, or amendment approved by a majority vote of the parties.

3.5 Representation of the Parties

A party will be represented by its Minister responsible for the regulation of co-operatives.

3.6 Amendments to the Agreement

The agreement may only be amended by the unanimous resolution of the parties.

3.7 Exclusions from the Core Consistent Provisions

There are a number of specified exclusions from the “core consistent provisions”. They include stamp duty which is to be determined by each jurisdiction. Appropriate penalties and appeal processes are also a matter for each jurisdiction. There are also other specified exclusions in the “core consistent provisions”.

Chapter 4. Model Uniform Co-operatives Law

4.1 Introduction

The *Co-operatives Act 1996* (Victoria) is the model legislation. The purpose of the legislation is to provide a framework for the formation, registration and management of co-operatives which enables flexibility in the operation of co-operatives and promotes the development of co-operatives.

The legislation updates the standards of accountability of co-operatives and creates an interface with the *Corporations Law* which will allow co-operatives to operate across State borders that has until now been a significant limitation on the growth of the co-operatives sector.

4.2 Core Consistent Provisions

The new legislation will provide for -

- the incorporation of a body as a co-operative;
- co-operatives to have the powers of a natural person;
- member control through one member one vote principle;
- standards on activities and directors to be similar to general standards that apply to corporations;
- the recognition specifically of the separate registration and operation of interstate co-operative organisations; and
- the strengthening of investigation and enforcement powers.

4.3 Corporations Law

The proposals which form the basis of national “core consistent provisions” adopted by all participating States and Territories will enable the “roll back” of the application of the *Corporations Law* to allow co-operatives to operate under State and Territory legislation.

The application of the *Corporations Law* to co-operatives, whether they operate intra or interstate, is defined. The legislation has either by direct reference or by inclusion adopted many of the provisions of the *Corporations Law*.

4.4 Co-operatives Principles

The co-operatives principles are set out in Part 1 of the Act. The principles include voluntary association and open membership; democratic control; member economic participation; autonomy and independence; education, training and information; co-operation among co-operatives and concern for the community.

4.5 Objects of the Act

The first part of the Act deals with preliminary matters including objects of the legislation. The objects are -

- to enable the formation, registration and operation of co-operatives;
- promotion of co-operatives;
- protection of the interests of co-operatives;
- to ensure directors of co-operatives are accountable;
- to encourage self-management and self-regulation; and
- to encourage the development, integration and strengthening of co-operatives at local, regional, national and international levels.

4.6 Co-operative Identity

The legislation includes provisions which define a co-operative and give it a legislative sense of identity.

The legislation provides for the formation of co-operatives, associations and federations of co-operatives. There is a division of types of co-operatives to facilitate different levels of compliance in relation to disclosure in fundraising activities. A co-operative may either be trading or non-trading.

Non-trading co-operatives are traditionally not-for-profit organisations which exist for the purposes of community benefit rather than individual profit. A non-trading co-operative may trade, but the benefits to members flowing from the activities of the co-operative are not direct financial returns. Surpluses must be retained by the co-operative and must not be distributed to members. A non-trading co-operative is one that does not give returns or distributions on surplus or share capital other than the nominal value of shares (if any) at winding up. The investment in the co-operative does not result in a financial return and therefore a modified disclosure regime will operate.

Trading co-operatives, however, exist for the purpose of maximising the financial position of the member through the services offered. A trading co-operative is one that gives returns or distributions on share capital. Trading co-operatives, therefore, have a higher level of disclosure.¹

There is also provision for the transfer or incorporation of a body corporate to a co-operative.

4.7 Legal Capacity

Part 3 of the Act provides for the legal capacity and powers of co-operatives. It sets out the general powers which a co-operative has as a body corporate.

¹ Part 2 *Co-operatives Act 1996* (Victoria).

Co-operatives will be given the legal capacity of a natural person. Similar to the regime that exists in the *Corporations Law*. This means that they are no longer required to pursue a restricted range of objects as specified for their particular type of co-operative. It places co-operatives on the same footing as corporations. However, co-operatives are still required to have stated primary activities.

4.8 Membership

In Part 4 the Act deals with membership of the co-operative. The rules of a co-operative must provide for a grievance procedures in relation to disputes under the rules of the co-operative. Remedies in relation to oppressive conduct of affairs and statutory derivative actions are also provided for.

The rules of a co-operative constitute a contract between the co-operative and each member. There is also provision for the alteration and registration of these rules.²

The active membership provisions of the Act provide that only those members actively participating in the co-operative control the co-operative. The active membership provisions make it difficult for a co-operative to be taken over.³

4.9 Capital Mobilisation and Disclosure

Australian co-operatives like their counterparts throughout the world are trying to reconcile the de-emphasised role of capital within co-operatives with the need to obtain sufficient funds to remain competitive.

General co-operative legislation throughout Australia varies in regard to the options available for fund raising. The legislation provides flexibility to enable individual co-operatives to use the legislation and tailor a capital structure which meets their members' needs, satisfies particular industry or commodity requirements and is consistent with co-operative principles.

Part 7 of the Act deals with co-operatives' share capital. It provides for the issue of shares, the disclosure of beneficial and non-beneficial interests in shares and the procedures involved in the transfer of shares, as well as the repurchase of shares. Part of the interface arrangements with the *Corporations Law* requires that shares may not be held by non-members.

4.10 Co-operative - Member Relationship

Each co-operative is required to state a primary activity for the purposes of determining its active members.

The legislation provides that voting rights attach to membership and not shareholding in a co-operative. It also provides for the holding of meetings and the passing of resolutions. The liability of a member in a co-operative is limited.⁴

² Part 5 *Co-operatives Act 1996* (Victoria).

³ Part 6 *Co-operatives Act 1996* (Victoria).

⁴ Part 8 *Co-operatives Act 1996* (Victoria).

4.11 Accountability and Responsibility

The legislation sets out the duties, responsibilities and penalties for directors of co-operatives. It clarifies that co-operative director's responsibilities are generally comparable to those of directors of corporations under the *Corporations Law*.

The standard of disclosure for annual reporting is generally equivalent to that applying in the *Corporations Law*. New provisions, modelled on *Corporations Law*, dealing with oppressive conduct of affairs have also been introduced in the legislation.

Part 9 deals with the management and administration of co-operatives. In particular it provides for the election of directors. It also deals with the duties and responsibilities of directors, and the keeping and auditing of accounts and returns.

4.12 Increase Scope of Activity

The legislation has provisions dealing with foreign co-operatives. A foreign co-operative may be either a participating co-operative or from a non-participating jurisdiction. A participating co-operative is a co-operative registered under co-operatives legislation enacted by a participating jurisdiction in accordance with the Intergovernmental Agreement. A non-participating co-operative operates under the laws of another jurisdiction.⁵

The Act also enables co-operatives from outside the State to register as foreign co-operatives. Once registered these co-operatives have the same powers as local co-operatives. The legislation enables co-operatives to more easily merge across State borders.

4.13 Other Provisions

Part 10 of the Act deals with the funds and property of co-operatives. Part 11 provides for disclosure requirements in relation to relevant interests in the voting rights or shares of members and Part 17 provides for offences and proceedings.

⁵Part 14 *Co-operatives Act 1996* (Victoria).

Chapter 5 Co-operatives Legislation - Western Australia

5.1 Introduction

The proposed Western Australian co-operatives legislation will repeal the two statutes governing co-operatives in Western Australia; the *Co-operatives and Provident Societies Act 1903* and the *Companies (Co-operative) Act 1943* and replace them with modern legislation adopting the “core consistent provisions” found in the Victorian *Co-operatives Act 1996*, which all States and Territories in Australia have agreed to adopt.

The legislation will introduce the co-operative principles and active membership requirements. It will enable co-operatives to have wider corporate powers and will facilitate co-operatives engaging in interstate membership and cross-border fundraising. An enforcement regime and enhanced directors’ duties will be established. It will allow for winding-up and charges and will introduce requirements for disclosure to members when co-operatives are formed and where shares and debentures are issued.

5.2 Objectives of the legislation

The objectives of the legislation will be achieved by adopting “core consistent provisions” which -

- Require any group forming a co-operative to abide by the co-operatives principles.
- Enable co-operatives to have wide corporate powers, by providing them with the powers of a natural persons, a situation equivalent to corporations. These powers are to be exercised within the traditional co-operative principles.
- Maintain the principle of active member control of co-operatives, including one member one vote which is central to the operation and control of co-operatives.
- Ensure co-operatives have similar general standards to those applying to corporations in regard to dealings with, or reporting on, activities concerning third parties. For example, disclosure statements are required to be given to members when co-operatives are formed and shares and debentures are issued.
- Provide co-operatives with a clearer range of alternatives with regard to determining the optimal capital structure to best service the needs of members, thereby ensuring co-operatives remain competitive with other forms of incorporation. For example, debentures and subordinated debt are to be available to members and non-members.
- Recognize the separate registration and operation of interstate and international co-operative organisations and allow co-operatives to undertake business interstate, such as recruiting members or issuing securities across State/Territory borders, without the unnecessary restrictions of the *Corporations Law*.
- Distinguish co-operatives clearly from companies and hence make them accountable under their own legislation for the issue of securities. This will allow co-operatives to accept members across State borders without a prospectus being issued, subject to meeting adequate disclosure requirements.

5.3 Corporations Law

One major problem with existing legislation is that co-operatives are subject to the *Corporations Law* if they wish to have members or issue securities across State borders. Those provisions of the *Corporations Law*, which previously regulated cross-border membership and fund raising, will be “rolled back” so that fundraising by co-operatives will now be regulated under the new co-operatives legislation. The new legislation will provide for the following -

- the provision of adequate disclosure statements to members when co-operatives are formed and when securities are issued;
- the issuing of *Corporations Law*-style prospectuses where debentures and subordinated debt are issued to persons who include non-members;
- a clear distinction between co-operatives and companies; and
- enhanced directors’ duties.

Fundraising from non-members in the form of debentures and subordinated debt will be regulated by this legislation by applying relevant provisions of the *Corporations Law*. However, prescribed interests will continue to be regulated by the *Corporations Law*.

5.4 Western Australia Model Legislation

Work has commenced to draft a new Co-operatives Bill to cover co-operatives registered under both current Western Australian Acts and to repeal those Acts. The Bill will have national effect and will be based around a number of “core consistent provisions” which will be of the same effect in all States and Territories. The “core consistent provisions” comprise about 90 percent of the proposed Bill allowing for local differences.

Interstate operation of co-operatives is increasing. In Western Australia, for example, schemes operate across the border with other jurisdictions. Consultation has occurred with the industry.

5.5 National Scheme

The model legislation was prepared by a working party of officers under the Standing Committee of Attorneys General. The legislation has been driven largely by the need to arrange an “interface” with the *Corporations Law*. The problem is that co-operatives are only exempt from the *Corporations Law* while they operate within State borders. As soon as they move across State borders they are subject to the *Corporations Law*.

A co-operative will now not be caught by the prospectus provisions of the *Corporations Law* for an issue of shares to new or old members. Rather the matter will now be regulated by State law which will be the relevant provisions of the *Corporations Law* modified as required to fit the co-operative structure, that is, lower disclosure requirements will apply.

The only case when the *Corporations Law* will apply in full is if the co-operative issues a “prescribed interest”: - basically, a contractual right to participate in any profits or undertaking.

Under the new national scheme, each jurisdiction will be primarily responsible for the regulation of interstate activities by its registered co-operatives.

5.6 Conclusion

Western Australian will enact the “core consistent provisions” legislation. There are jurisdictional differences. The States and Territories have agreed to adopt “core consistent provisions”. However, there are differences in other provisions of the legislation to account for regional, structural and administrative differences.

Certain provisions of the co-operatives legislation are not core provisions and are not part of the Agreement. They can be changed by each jurisdiction at will. There are also certain exemptions from the “core consistent provisions”. For example, those relating to stamp duty.

Unlike the model Victorian legislation Western Australia will not provide for a Registrar of Co-operatives. The Commissioner for Consumer Affairs will administer the Western Australian Act.

Chapter 6 Conclusions

6.1 Facilitative Legislative Framework

Co-operatives in Australia range in size from for profit organisations of over half a billion dollars down to a large number of non profit community groups with little turnover. The new legislation will adequately deal with all kinds of co-operatives including accountability and disclosure provisions aimed specifically at commercial co-operatives who require greater accountability and disclosure with much less onerous provisions for non-profit co-operatives.

6.2 Greater Consistency

Each Australian State and Territory has had separate and inconsistent co-operative legislation. A working party of state and commonwealth government officials began examining this in 1990 and after extensive consultation the model legislative measure was agreed to. The “core consistent provisions” address the inadequacies of the previous co-operatives regime and ensure the competitive development of co-operatives.

6.3 The Response in Other States and Territories

Other States and Territories are party to the intergovernmental agreement and have enacted the “core consistent legislation”. Victoria, New South Wales, the Northern Territory, Queensland and South Australia have enacted model co-operatives legislation. Western Australia, the Australian Capital Territory and Tasmania are currently drafting new model co-operatives legislation.

6.4 Improvements Offered by the Model Act

The model legislation offers three kinds of improvement on the existing position. These are -

- superior formulation of existing statutory provisions;
- the inclusion of almost all of the law previously governed by the two separate Acts; and
- the reform of unsatisfactory aspects of the existing law.

6.5 Advantages

The new uniform co-operatives legislative model provides a number of advantages -

- it reduces existing barriers to co-operatives merging or expanding across State boundaries;
- it makes it easier to raise capital;
- it makes more difficult to be taken over;
- it introduces more flexibility in compliance and disclosure requirements; and

- it facilitates a number of big interstate mergers.

The current laws did not reflect that co-operatives had different missions, cultures and capital needs from other corporate bodies.

The key advantage of the complementary legislation is that it gives greater ability to co-operatives to expand interstate, in line with the emerging demands of both the domestic and international markets.

Other advantages of the new co-operatives structure are -

- that incorporation as a co-operative is a right available to any group wishing to have the benefits of co-operation and willing to abide by traditional co-operative principles.
- to enable co-operatives to have wider corporate powers, by providing them with the powers of a natural person, similar to corporations but exercised within traditional co-operative principles.
- to maintain the principle of active member control of co-operatives, including one member one vote as central to the operation and control of co-operatives.
- to provide for co-operatives to have similar general standards to those applying to corporations in regard to dealings with or reporting on activities concerning third parties. This includes providing for similar general standards for directors of co-operatives as those applying to directors of similar size corporations.
- to provide co-operatives with a clearer range of alternatives in regard to determining the optimal capital structure to best service the needs of members. This will ensure that co-operatives remain competitive with other forms of incorporations.
- to enable co-operatives to merge, transfer engagements or be wholly acquired, but only if the substantial majority of active members, when fully informed, desire such a course.
- to recognise the separate registration and operation of interstate co-operative organisations.
- to strengthen the investigation and enforcement powers to ensure that the interests of co-operatives, their members and the public generally, are protected.

6.6 Corporations Law Roll Back

Once the proposals which form the basis of national “core consistent provisions” are adopted by all participating States and Territories the Commonwealth will roll back the application of the *Corporations Law*.

The *Corporations Law* presently applies of its own force to the interstate operations of co-operatives registered in the States and Territories.

In effect, this means that co-operatives need to comply with different legislative requirements depending upon the State or Territory in which they operate. Additionally they must comply with

the overlay of *Corporations Law* to their interstate activities. This is particularly problematic and costly for co-operatives in the areas of interstate fund raising and mergers.

6.7 Differences Between Co-operative and Investor Enterprises

A co-operative which is a member-owned enterprise differs from an investor-owned enterprise in the following ways -

Co-operative	Investor Owned Enterprise
Provides mutual benefits to its members	Maximises the return on the capital invested in the business
Each member has one vote only	Voting and control is related to the number of shares held
Profits are either distributed to members in proportion to use of its services, or retained in the co-operative and not distributed	Profits are usually distributed as a return on capital invested
Ownership is based in a group of people with a unifying interest and tied to long-term objectives	Ownership can be traded and capital is footloose

6.8 Structures Identified by the Standing Committee

The Standing Committee has so far identified and classified eight legislative structures which are used to promote varying degrees of uniformity in legislation. A brief description of each is provided in Appendix 2.

The Commonwealth has no constitutional powers over co-operatives except under the *Corporations Law*. Consequently Structures 1 and 2 which relate to State laws covering the gaps in Commonwealth legislative authority by either complementing or mirroring Commonwealth legislation respectively, are clearly inappropriate.

In the area of co-operatives law there is no legislative constraint on each of the States and Territories passing mirror legislation. There is no need for the Commonwealth to be involved except its agreement to rolling back provisions of the *Corporations Law* as they apply to co-operatives. The advantage of mirror legislation is that each Parliament retains a high degree of control over the legislation.

The disadvantages of such a scheme is that if after its initial establishment one or more States or Territories do not mirror any amendments the advantages of the scheme may be lost.

Structure 4, which refers to situations in which one or more of the States refer power, under section 51(xxxvii) of the Australian Constitution, to the Commonwealth Parliament to legislate in an area which would otherwise be outside its constitutional authority. This structure is theoretically relevant but seems unnecessary as it can be dealt with under other structures.

Structure 3 which involves a model law being adopted by all other jurisdictions is appropriate where a high degree of consistency in terms of both the ends and the means of the law is required. Since the majority of co-operatives still operate at a local level the “core provisions” in each State Act will provide for the recognition and registration of inter State co-operatives.

The need for a high degree of consistency makes legislation under Structure 5 less desirable than under Structure 3. There appears to be little reason to create a national authority as contemplated by Structure 8.

6.9 “Core Consistent Provisions”

The “core consistent provisions” model for uniformity provides for model legislation to be enacted separately by each State and Territory Parliament. Agreed to core provision will be uniform in each jurisdiction and will require agreement by the parties for amendment. Other non core provisions will be drafted separately and will be subject to change by each jurisdiction at will.

6.10 Uniform Act with Additional Western Australian Provisions

The proposed Western Australian “core consistent provisions” co-operatives legislation will in fact be uniform Act which will “mirror” the “core consistent provisions” as per the model Victorian Act but will have additional Western Australia provisions to reflect the administrative procedures pertaining to Western Australia.

6.11 Preserving Uniformity

Over time, new reforms to the model legislation are bound to be proposed. It is most likely that these will tend to be enacted in some jurisdictions earlier than in others. It can be expected that the initial level of uniformity, will be subject to drift over time. This is the disadvantage of enacting legislation under the model proposed.

6.12 Conclusion

There has been extensive consultation with the co-operatives sector who have been the motivating force for changes.

There would be disadvantages for the growth of Western Australian co-operatives if they could not be part of the national scheme. They would be unable to expand their operations into other States and Territories and it would produce financial costs for the organisations.

APPENDIX 1

State Legislation for Co-operatives in Australia⁶

State/Territory	Legislation	New, Amending or Proposed Core Consistent Provisions Legislation
Australian Capital Territory	<i>Co-operative Trading Societies Ordinance Act 1939</i>	
New South Wales	<i>Co-operatives Act 1992</i>	<i>Co-operatives Amendment Act 1997</i>
Northern Territory	<i>Co-operatives Societies Act 1980</i>	<i>Co-operatives Act 1997</i>
Queensland	<i>Primary Producers' Co-operative Associations Act 1923-1986</i>	<i>Cooperatives Act 1997</i>
South Australia	<i>Co-operatives Act 1983</i> <i>South Australian Co-operatives and Community Housing Act 1991</i>	<i>Co-operatives Act 1997</i>
Tasmania	<i>Co-operative Industrial Societies Act 1928</i>	
Victoria	<i>Co-operatives Act 1981</i>	<i>Co-operatives Act 1996</i>
Western Australia	<i>Company (Co-operatives) Act 1943 - 1976</i> <i>Co-operatives and Provident Societies Act 1903</i>	

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Co-operatives Legislation in Australia, <http://www.peg.apc.org/-coopsnsw/coopleg.htm>.

APPENDIX 2

Previously Identified Structures for Uniform Legislation

The Standing Committee has so far identified and classified eight legislative structures relevant to the issue of uniformity in legislation. A brief description of each is provided below. (A fuller account of these models can be found in Annexure 1 to the Standing Committee's Censorship Bill Report, tabled 28 November 1995).

Structure 1: *Complementary Commonwealth-State or Co-operative Legislation.* The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's Constitutional powers.

Structure 2: *Complementary or Mirror Legislation.* For matters which involve dual, overlapping, or uncertain division, of constitutional powers, essentially identical legislation is passed in each jurisdiction.

Structure 3: *Template, Co-operative, Applied or Adopted Complementary Legislation.* Here a jurisdiction enacts the main piece of legislation, with the others passing Acts which do not replicate, but merely adopt that Act, and subsequent amendments, as their own.

Structure 4: *Referral of Power.* The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51(xxxvii) of the Australian Constitution.

Structure 5: *Alternative Consistent Legislation.* Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation.

Structure 6: *Mutual Recognition.* For example, where goods or services comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

Structure 7: *Unilateralism.* Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.

Structure 8: *Non-Binding National Standards Model.* Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.

Structure 9: *Adoptive Recognition.* Where one jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.

APPENDIX THREE

Bibliography

- Bolt, Cathy, "Agricultural co-ops rank highly in drive for export sales", *Australian Financial Review*, 11 November 1996, p. 46.
- Co-operative Development and its Economic Purposes", *The Co-op Home Page - Economic Development*, 30/4/98, (<http://www.cooperative.org/economic.htm>).
- Co-operatives Act 1996 (Victoria).
- Co-operatives Act 1992 (New South Wales).
- Co-operatives Act 1997 (South Australia).
- Co-operatives Amendment Act 1997 (New South Wales).
- Co-operatives Bill (Victoria) 1996, Second Reading Speech.
- Co-operatives Bill (Victoria) 1996, Explanatory Memorandum.
- Co-operatives Bill (Victoria) 1996.
- Co-operatives Laws Agreement.
- Co-operatives Bill (Queensland) 1997.
- "Co-operatives Legislation in Australia", *Australian Co-operatives Sector*, 30/4/98, (<http://www.peg.apc.org/-coopnsw/coopleg.htm>).
- "Co-operatives in New South Wales", *Co-operatives Sector*, 26/3/98, (<http://www.peg.apc.org/-coopnsw/nswcoops.htm>).
- "Cooperatives Are...", *The Co-op Home Page - Co-op Primer*, 30/4/98, (<http://www.cooperative.org/primer.htm>).
- Cooperatives Bill (Queensland) 1997, Explanatory Notes.
- Cronan, Garry, "Trends in Cooperative Legislation in Australia", *Department of Fair Trading*, 26/3/98, (<http://www.peg.apc.org/-coopnsw/legtrend.htm>).
- "Cutting Edge for National Co-operative Legislation", *Co-operative Issues*, 30/4/1998, (<http://www.coop.org/en/vleg.htm1>).
- "Cutting Edge for National Co-operative Legislation", *ICA*, 26/3/98, (<http://www.coop.org/en/vtleg.htm1>).
- "Five Good Reasons for Co-operatives", *International Co-operative Alliance*, 13 September 1995, 26/3/98, ([gopher://gopher.adp.wisc.edu:70/00/info-source/.coop/.def-hist/def/.five](http://gopher.adp.wisc.edu:70/00/info-source/.coop/.def-hist/def/.five)).
- Griffiths, David, "Co-operatives Legislation", 26/3/98, (<http://csf.colorado.edu.co-op/coop-bus/0525.htm1>).
- Hon. The Attorney-General and Minister for Justice, Cooperatives Bill (Queensland) 1997, Second Reading Speech, May 1997.
- Hon. Caroline Schaefer MLC, Parliamentary Report, week ended 4 July 1997, 26/3/98, (<http://www.camtech.net.au/bright/bills.htm>)
- "Law Society Online", *Law Society of New South Wales*, 26/3/98, (<http://lawsocnsw.asn.au/search/iatoc>).
- "Links to Australian Co-operatives", *Australian Co-operatives Sector*, 30/4/98, (<http://www.peg.apc.org/-coopnsw/auslinks.htm>).

Opportunities for Co-operatives in Electricity Industry Restructuring”, *Co-operative Federation of Victoria Ltd*, Discussion Paper No 2, 30/4/1998, (<http://www.wisc.edu/uwcc/links/elech.html>).

Parliament of Victoria - Bills 1996, Co-operatives Bill, *Parliamentary Documents*, 26/3/98, (<http://www.dms.dpc.vic.gov.au/archieve/1996/bills/B00177/status-report.html>).

“Statement on the Co-operative Identity”, *ICA News*, No. 5/6, 1995, 26/3/98, (<http://www.coop.org/en/enprinciples.html>).

“Statutory Bodies and Representative Co-operative Organisations in Australia”, *Australian Co-operatives Sector*, 26/3/98, (<http://www.peg.apc.org/-coopnsw/statbody.htm>).

“Tenant Involvement in Community Housing”, *OCHC Services*, 30/4/1998, (<http://www2.eis.net.au/-qchc/involve.html>).

“What is a Co-operative”, *International Co-operative Alliance*, 8 January 1996, 26/3/98, (<gopher://gopher.adp.wisc.edu:70/00/info-source/.coop/.def-hist/def/.what-is>).

“What is a Housing Cooperative?”, *National Association of Housing Cooperatives*, 30/4/98, (<http://www.coophousing.org/what.html>).