

[Act 1997 No 39]



New South Wales

# Co-operatives Amendment Bill 1997

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are:

- (a) to enact certain core consistent provisions for the regulation of co-operatives found in the *Co-operatives Act 1996* of Victoria that all States and Territories in Australia have agreed, in principle, to adopt, and
- (b) to re-enact certain provisions, renumber certain provisions and repeal other provisions currently contained in the *Co-operatives Act 1992* to eliminate inconsistencies with other core consistent provisions.

This Bill also makes other miscellaneous and consequential amendments.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** is a formal provision giving effect to the amendments to the *Co-operatives Act 1992* set out in Schedule 1.

## Schedule 1 Amendments

The *Co-operatives Act 1992* (*the 1992 Act*) regulates, among other things, the formation, operation, administration and supervision of co-operatives in New South Wales. The 1992 Act was enacted after an extensive review of the previous legislation governing co-operatives in this State, and has been the basis for legislative reform elsewhere in Australia. In particular, the 1992 Act was drawn on extensively by the *Co-operatives Act 1996* of Victoria (*the Victorian Act*) with modifications being made in the light of experience with the operation of the 1992 Act as well as comments from other jurisdictions and detailed input from the co-operative sector. The Victorian Act has, in turn, become the base document for the core consistent provisions that all Australian States and Territories have agreed, in principle, to adopt.

The adoption of a uniform national approach to legislation in this area is necessary and important for at least 2 reasons.

Firstly, the lack of consistency between the legislation of the States and Territories covering co-operatives has been recognised as a problem, particularly in respect of co-operatives that wish to carry on business outside the jurisdiction in which they are initially registered. To address this problem, a working party of the Standing Committee of Attorneys-General recommended that the co-operatives legislation in each State and Territory should:

- make provision for the interstate registration of co-operatives outside their own State or Territory, and
- contain uniform regulatory provisions for those co-operatives, and
- include core consistent provisions.

It was also recommended that each State and Territory should enter into an agreement by which each jurisdiction would agree to enact legislation containing the core consistent provisions. Each jurisdiction would also be free to enact additional provisions in the legislation to cover their particular

local circumstances and matters not dealt with by the core consistent principles. This Bill makes provision for the matters referred to above. Notes are to be inserted at the beginning of each Part of and each Schedule to the 1992 Act to identify the core consistent provisions.

A second 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 or Territory borders. This has been recognised as a major impediment to the ability of co-operatives to carry on business outside the State.

To resolve this difficulty, it has been agreed, in principle, by the Standing Committee of Attorneys-General and the Ministerial Council for Corporations that the provisions of the *Corporations Law* that previously regulated these matters should be “rolled back”. The Commonwealth is to introduce amendments to the *Corporations Law* to enable this to be done.

As a result, it is proposed, in conformity with the core consistent provisions, that fund raising by co-operatives from members or prospective members will be governed by the 1992 Act as amended by this Bill. Fund raising from non-members in the form of debentures and subordinated debt will be governed by the proposed legislation by applying relevant provisions of the *Corporations Law* and will also be regulated by relevant State and Territory Registrars of Co-operatives. However, prescribed interests will continue to be governed by the *Corporations Law* and regulated by the Australian Securities Commission.

Other notable features of the legislation include:

- the introduction of the concept, as contained in the Victorian Act, of trading and non-trading co-operatives. The separation relates mainly to fund raising and takeovers and requires that trading co-operatives comply with higher disclosure and reporting standards than those normally applying to non-trading co-operatives, and
- again as in the Victorian Act, the making of provision for different classes of shares for members of co-operatives. This will enable co-operatives to offer a range of equity forms to active members.

The New South Wales co-operatives legislation will continue to make provision for certain matters that are not covered by the core consistent provisions (or the Victorian Act). The 2 most important of these matters involve retention of provisions relating to certain advisory functions of the Co-operatives Council and to co-operative capital units (*CCUs*) (instruments that enable co-operatives to access funds from outside their membership base).

The Bill also contains a number of non-core provisions. These include:

- (a) amendments relating to and consequential on the operation and enforcement of the national scheme concerning such matters as the curing of procedural irregularities, double jeopardy, civil liability arising under the co-operatives laws of this and other jurisdictions, offences committed partly in and partly outside the jurisdiction and reciprocity in relation to offences, and
- (b) minor amendments by way of statute law revision, and
- (c) various savings and transitional regulations to be inserted in Schedule 6 to the 1992 Act relating to such matters as:
  - (i) the saving of the registration of foreign co-operatives registered before the commencement of the new provisions, and
  - (ii) pending amalgamations, transfers of engagements and applications of certain kinds, and
  - (iii) saving of rules for an interim period while they are brought into conformity with the 1992 Act and the regulations (as proposed to be amended by this Bill), and
  - (iv) applications to the Supreme Court for the resolution of transitional difficulties, and
  - (v) enabling (if necessary) the adoption of regulations made under the Victorian Act with respect to the core consistent provisions (with appropriate modifications) on an interim basis so that the State will be in the position to commence the proposed Act on the same date as legislation for the operation of the national is commenced in other jurisdictions.