

COMMISSIONER'S SPEECH¹

NATIONAL LAUNCH INTERNATIONAL YEAR OF CO-OPERATIVES

PARLIAMENT HOUSE, CANBERRA

22 NOVEMBER 2011

¹ The NSW Commissioner for Fair Trading is Mr Rod Stowe. This copy of the speech has been posted on the **Co-operatives National Law web page** of the NSW Fair Trading website for interested readers. Please note that the Commissioner did not mention the summary of the co-operatives sector when giving the speech, as a summary been provided by earlier speakers on the launch day. Topic headings are included in the speech to assist readers. (Reference No. MO M11/4391 Tab D)

- Distinguished guests, ladies and gentlemen, I thank the Australian International Year of Co-operatives Secretariat for the opportunity to speak to you today. I do so on behalf of the NSW Minister for Fair Trading, the Honourable Anthony Roberts, and extend the Minister's apologies for not being able to share this occasion with you.
- I have been specifically asked to speak about the NSW Government's host role in the passage of the proposed Co-operatives National Law through the NSW Parliament in 2012.

[Clarifying Co-operatives Laws]

- The co-operative laws I will be talking about are relevant to the "non-banking" co-operatives, which are sometimes called "general co-operatives".
- This distinguishes them from the "banking" or "financial co-operatives", such as credit unions or building societies.
- The current law for "general co-operatives" in NSW is the *Co-operatives Act 1992*. The other States and Territories have similar laws.

[Co-operatives Sector Overview]

- But before I go on to describe the move to a national uniform template law, I think it is worth putting the role of the co-operative sector into context.
- There are currently about 1,700 co-operatives registered under State and Territory legislation in Australia.
- About 680 of these co-operatives are registered in NSW.
- Co-operatives Australia publishes a list of Australia's top 100 co-operatives, credit unions and mutuals by annual turnover on its website.
- Most States and Territories, including NSW, have several "general co-operatives" on this list, which contribute significantly to the regional or national economy.
- Some of this contribution can be gauged from the 2010 financial year statistics on for registered co-operatives in NSW. These show:
 - total turnover of about \$2.9 billion;
 - total assets of around \$2 billion;

- employee numbers at around 9,700 people; and
- Total co-operative membership of about 1.8 million people.

- Co-operatives also have a significant impact at the local level.

- Some of the services that they provide to their members include housing, child care, food, medical, taxi and club services.

- The NSW Government is also aware of the distinctive co-operative business and services model that is guided by the co-operative principles.

- These principles form part of the current co-operatives law in all States and Territories.

- These existing regulatory arrangements have for a number of years provided the legal framework for the formation, registration, operations and management of co-operatives.

[AUCLA, CNL and NSW Host Role]

- However in discussions between the stakeholders and the regulators it was acknowledged that further reforms were required to ensure the continuing viability of the co-operatives sector in the context of a national marketplace.
- This led directly to the development of the Australian Uniform Co-operatives Laws Agreement (AUCLA) between the States and Territories.
- This Agreement provides for the national uniform template co-operatives legislation, known as the Co-operatives National Law (CNL).
- Under the terms of the Agreement, NSW is the host jurisdiction for this National Law. In this role, NSW is responsible for leading the project's development and arranging the passage of the legislation through its Parliament.
- This will occur once the Law has been unanimously approved by the responsible Ministers, who are now

constituted as the COAG Legislative and Governance Forum on Consumer Affairs,

- NSW is also responsible for developing and making the initial National Regulations to support the Co-operatives National Law.
- Development of the Law and the Regulations is undertaken through an inter-jurisdictional working party.
- Other States and Territories are required to arrange the passage and commencement of their legislation within 12 months of the NSW legislation being assented to.
- When that happens, either the Co-operatives National Law and National Regulations, or the alternative consistent co-operatives legislation, will apply in each State or Territory.

[What will the National Law Reforms mean for Co-operatives?]

- So, what are these national reforms about?
- Importantly, the Co-operatives National Law will reduce the regulatory costs and red tape associated with co-

operatives **doing business across state or territory borders.**

- Co-operatives will no longer be required to register as foreign co-operatives in order to carry on business in another jurisdiction.
- Their boards and legal advisers will have certainty in the knowledge that the legal requirements and their administration will be the same regardless of which jurisdiction they are operating in.
- This will mean that requirements for co-operatives who want to operate throughout Australia will be similar to those now applying to companies.
- Co-operatives in all jurisdictions will have the power to issue specialised fundraising instruments called **co-operative capital units.**
- These units are designed to improve access to financial markets, while maintaining the democratic principles that are at the heart of the co-operative model.

- Significantly, the Co-operatives National Law will also deliver cost savings to smaller co-operatives by **reducing their financial reporting requirements**.
- Small co-operatives will continue to be required to report to members.
- However, the proposed National Regulations will deliver a financial reporting system that balances the needs of co-operative members against business imperatives.
- To progress this particular reform, the NSW Government prepared the discussion paper, “Financial Reporting Obligations for Small Co-operatives”, on behalf of all the States and Territories.
- The paper has been released for consultation with a closing date of 7 December 2011. I would certainly encourage anyone who is interested to obtain the paper from the NSW Fair Trading website and to submit your comments.

- The Co-operatives National Law also updates and makes consistent **referencing of *Corporations Act* provisions** to assist co-operatives and their advisers.
- Co-operatives legislation has for a long time “picked up” the *Corporations Act* laws where they were appropriate for co-operatives - for example, in dealing with insolvency, liquidation, wind-ups, or disclosure of information when raising funds from the public.
- Under the National Law, **directors’ duties** are to be expressed in the same terms as company directors’ duties, but with the additional acknowledgement that the interests of a co-operative and the co-operative principles may differ from the interests of a company.
- **Democratic principles** which are fundamental to co-operatives such as “one member, one vote” continue to be preserved in the Co-operatives National Law, making it legislation that is truly specific to the needs of the co-operative sector.

- NSW and the other States and Territories see these regulatory improvements as important public policy measures that recognise and support the co-operative model of business and community service enterprise.

[Working Towards the 2012 Implementation of the CNL]

- The NSW Minister for Fair Trading, the Hon Anthony Roberts MP, has indicated his support for the commencement of the Co-operatives National Law in 2012.
- Accordingly, NSW Fair Trading is making arrangements to meet this timeline.
- A critical step will be receiving final approval for the Co-operatives National Law from all States and Territories and we are confident that this approval process will be completed before the end of the year.
- This will mean that the NSW Government will be likely to take the Law to its Parliament early in its first parliamentary session of 2012.

- Of course achieving a set of national laws for co-operatives is one thing. Ensuring that they are interpreted and applied consistently is quite another.
- Certainly, the National Co-operatives Agreement requires States and Territories to use their best endeavours to administer the Co-operatives National Law uniformly - but this is easier said than done.
- But the good news is that the responsible State and Territory agencies, particularly those in the fair trading/consumer protection area, have now had considerable experience in the development and implementation of co-operatively administered national laws.
- We have clearly come a long way from our first efforts in this field with the Uniform Consumer Credit Code in the mid-1990s.

- This has largely come about through the Council of Australian Governments work to develop a seamless national economy and projects like the Australian Consumer Law and National Occupational Licensing System.
- These projects have resulted in unprecedented levels of co-operation between jurisdictions and a real level of maturity in relationships between the agencies charged with the administration of these laws on a day to day basis.
- Consequently, I have every confidence that this goodwill and constructive approach will be emulated with the administration of the Co-operatives National Law.
- It is understood that all States and Territories are aiming to commence the Co-operatives National Law in their jurisdictions during 2012.
- Ladies and Gentlemen, I can think of a no more fitting way to mark the significance of the UN International Year of Co-operatives in 2012 than the successful completion of the National Legislation Project.

- The Project is particularly relevant to the third goal of the International Year of Co-operatives.
- That goal is “to encourage Governments to establish policies, laws and regulations conducive to the formation, growth and stability of co-operatives”.
- The National Law certainly will do this, as well as equipping the sector to operate in today’s evolving national marketplace.
- In closing, I would like to wish the International Year of Co-operatives Secretariat and the co-operatives sector every success with their activities and plans for 2012 - the UN International Year of Co-operatives.

This document must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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