



Co-opsInfo

Member newsletter published by The Consumer Protection Division of Department of Commerce



Welcome to the second edition of *Co-opsInfo*. We encourage all co-operatives to circulate this newsletter to members and shareholders so that everyone benefits from the information in it.

State of play

Though the *Co-operatives Act 2009* has been passed by Parliament, the Regulations that will accompany the legislation are still being drafted. It is not until these Regulations are finalised and a commencement date set that you may finalise plans to transfer across to this new law.

However, now is an opportune time to familiarise yourself with the legislation so that when the commencement date comes around the transition process is as simple as possible.

IN THIS ISSUE

- Applying yourself for the future
- State of play
- Get your copy!
- Meeting the board's obligations
- Repurchasing power
- Stay active or perish
- We will convert you

Applying yourself for the future

The *Co-operatives Act 2009* is likely to commence mid year so it may be wise to turn your thoughts to what needs to be done during transition to the new law. Existing co-operatives will need to submit an application for registration under the new legislation within 21 months of the commencement date. But there is more to it than simply lodging an application.

Before the application can be submitted, members of the co-operative must hold a formation meeting. At this meeting the co-operative should pass special resolutions approving:

- any alterations to its existing constitution necessary to ensure the co-operative complies with the new Act;
- the proposed registration;
- the proposed rules of the co-operative; and
- if a co-operative intends to register as a distributing co-operative (so that it may give returns or profits to members) it must also pass a special resolution approving of the proposed disclosure statement.

Prior to holding the formation meeting and passing the special resolutions, the co-operative must have the proposed rules and draft disclosure statement approved by the Registrar. These documents must be lodged with the Registrar, along with the appropriate forms, at least 35 days before the formation meeting is due to be held.

For co-operatives currently registered under the old Act, the application needs to contain two copies of the proposed rules of the co-operative and a prescribed form. Copies of this form will be available from our website at: www.commerce.wa.gov.au in the not-too-distant future.

The Registrar may request the co-operative to submit additional documentation with the application if further clarification or elaboration is needed. However, a lot of the steps that a new co-operative must go through to register have been eliminated for existing co-operatives. The process is much simpler and easier for existing co-operatives transitioning to the new legislation. The best news of all is that no application fees apply to co-operatives making the transition!

If you have any questions on the application process, please do not hesitate to contact the Co-operatives Unit. We would like to help you through the transition process.

Get your copy!

If you wish to obtain a copy of the new legislation to better understand your obligations as a co-operative, electronic copies are available from the State Law Publisher website at: www.slp.wa.gov.au

Alternatively, if you would prefer a hard copy, you may contact the Co-operatives Unit on (08) 6364 3070 or send an email to cooperatives@commerce.wa.gov.au to request one.

Meeting the board's obligations

Being a member of a board of directors for a co-operative can be very fulfilling, however the position comes with many responsibilities. One such obligation involves holding adequate board meetings.

Board meetings must be held at least once every three months. The meeting may be called by any director, but individual notice must be given to every other director of the co-operative. To meet a quorum, at least 50 per cent of the directors, or a greater number of directors if specified in the rules, must be present. Additionally, member directors must outnumber independent directors by at least one or as stated in the rules of the co-operative.

Draft minutes of board meetings must be completed and available for inspection by any member of the co-operative within one month after the meeting. The minutes must then be confirmed and signed by the chairperson at the next board meeting.

The board of directors is also required to hold Annual General Meetings (AGMs) and general meetings when a prescribed number of members request one, in accordance with the Act.

Finally, the board may choose to hold special general meetings if issues arise that need to be discussed, such as proposing a special resolution to change the rules. Further information on the obligations of the board will be provided in future issues of this newsletter.

Stay active or perish

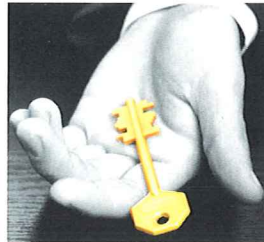
Under the current Act, many co-operatives faced difficulties when members became inactive or could no longer be located because they had moved. How should the situation be handled? What happens to the member's shares? How do we send them notice for meetings when we do not have a current mailing address?

The old legislation provided no answers or solutions to the above questions. However, the new legislation has an active membership provision which will help co-operatives avoid some of these pitfalls of the past.

Put simply, an active member is a member that maintains an involvement in the primary activity of the co-operative. The co-operative's rules will specify the ways in which a member needs to be involved in order to be an active member.

If a member is inactive for the required period, the co-operative may initiate action to remove the member from their register. The required period of inactivity is three years; however, this may be shorter if specifically addressed in the rules of the co-operative.

Once the required period has expired, notice of the co-operative's intention to cancel the membership must be issued to the member and the shares held by that member forfeited. The active membership provision is just one of the many ways that the new legislation may help your co-operative.



We will convert you

Unsure whether to register as a distributing or non-distributing co-operative? Worried that your circumstances might change? The good news is that the new Act will help you avoid these worries. It offers flexibility in allowing co-operatives to easily convert from one form to another.

More specifically, a co-operative may convert from:

1. a distributing co-operative to a non-distributing co-operative;
2. a non-distributing co-operative to a distributing co-operative;
3. a co-operative with a share capital to a co-operative without a share capital; or
4. a co-operative without a share capital to a co-operative with a share capital.

To convert, a co-operative must first pass a special resolution to alter its rules. This special resolution may only be passed by means of a postal ballot. Please keep in mind that you need to give members sufficient notice of the proposed special resolution and of the ballot. A member must be given 21 days notice of the intention to pass a special resolution, the reason behind doing it and the effect it will have on the co-operative.

If the conversion is number 3 or 4 (as listed above), the co-operative must also ensure that it gives at least two weeks notice of the proposed rules alteration via advertising in a newspaper circulating locally to the registered office.

Repurchasing power

One of the hardest things about introducing new legislation is getting people out of old habits. Some outdated practices will need to be cast aside, as the new legislation introduces new practices that will help make co-operatives more effective and efficient. One example of this is the repurchase of shares by a co-operative. Let's compare the requirements of the current and new legislation.

Current Act: The co-operative may purchase the shares of a member of the co-operative, but the shares purchased shall not exceed ten per cent of the paid-up capital of the company.

New Act: The co-operative may purchase the shares of a member of the co-operative, but the shares purchased may not be more than five per cent of the nominal value of issued share capital AND the amount of any additional share capital of the co-operative subscribed for during that year.

The new provision in the Act will ensure a greater majority of shares is held by members. This allows the finances of the co-operative to be better used to achieve its objects. However, this clause will not apply when a member resigns, is expelled or has their membership cancelled. In these instances, the shares will automatically be transferred back to the co-operative.

Important News: You can now follow us on Twitter @ConsumerWA or become a fan of our Facebook page - Consumer Protection WA.

Department of Commerce Associations and Charities Branch

Unit 4
321 Selby Street North
Osborne Park WA 6017

Postal Enquiries:
Locked Bag 14,
Cloisters Square
Perth WA 6850

Email cooperatives@commerce.wa.gov.au
Phone (08) 6364 3070
Fax (08) 9282 4337

This publication is available on request in other formats to assist people with special needs.

Disclaimer: The information contained in this newsletter is not intended to be legal advice and should not be relied upon as giving legal advice.