



# Co-opsInfo

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



Welcome to the third 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.

## Help us help you

Immediately following transfer of registration from the 1943 Act to the *Co-operatives Act 2009*, a co-operative will be required to lodge details of certain charges with the Registrar, who will maintain a register of these charges.

To help us establish the new register, please contact the branch by emailing [cooperatives@commerce.wa.gov.au](mailto:cooperatives@commerce.wa.gov.au) to advise whether your co-operative has registrable charges, and if so how many?

## IN THIS ISSUE

- Update your rules
- Help us help you
- Your latest update
- Q & A

## Update your rules

The proclamation of the *Co-operatives Act 2009* (the Act) is fast approaching. This is a perfect time to modernise your co-operative's documentation and rules. It is also a great opportunity for business improvements. As you are probably aware co-operatives presently incorporated do not automatically become registered under the new Act. Instead you need to take action to transfer to the new regime. The new Act allows co-operatives 21 months after proclamation to lodge their application to transfer to the new legislation. *Every co-operative will need to modify its rules to comply!*

The new Act introduces some new matters that will need to be addressed in a co-operative's rules. In order to develop rules that are compliant with the new Act, co-operatives will need to consider and determine the following significant matters.

### Define your co-operative type.

A decision about the type of co-operative you are is an important first step to establishing the new rules. The Act recognises two types of co-operatives: **distributing co-operatives** and **non-distributing co-operatives**. Distributing co-operatives always have share capital while non-distributing co-operatives may or may not have share capital. The rules for each of these types will have some differences. A majority of co-operatives in WA are distributing co-operatives.

### Determine the primary activity (or primary activities) of the co-operatives.

What is your Primary Activity? The Act states that a co-operative must have at least one primary activity. The primary activity/activities form the basic purpose for which the co-operative exists.

### Decide on the active membership criteria that will relate to a primary activity.

Under the new Act members are expected to actively participate in a primary activity of their co-operative and the rules are required to spell out what active membership will involve.

Currently, it is not uncommon for co-operatives to maintain on their books members who have not used the services of the co-operative for many years. Under the new Act, the rules need to state how a member uses or supports a primary activity of the co-operative. These provisions in the rules are called active membership provisions.

## Your latest update

The Department of Commerce has consulted with key stakeholders in relation to Regulations that are to be prescribed under the Act. Feedback on a range of issues has been received and as a result, the draft Regulations have been further amended by the Office of Parliamentary Counsel. Our aim is to ensure best practice provisions are included in the Regulations and in the Model Rules for both distributing and non-distributing co-operatives.

Commencement of the Regulations will be timed to closely coincide with proclamation of the Act. At this stage, proclamation is planned for the end of the third quarter of 2010.

# Q & A

As a result of recent workshops held with some co-operatives from across Western Australia, we are following up on a suggestion to develop a **Q & A** section within this newsletter. The aim is to provide answers to some of the questions about the new Act being raised by co-operatives. This **Q & A** will also be displayed on the Department of Commerce website at [www.commerce.wa.gov.au/co-ops](http://www.commerce.wa.gov.au/co-ops) with any additional **Q & A** points from future newsletters being added to the site, along with electronic copies of the newsletter. If you have a question you would like answered, please contact us using the email address or phone number listed at the bottom of this page.

## Q. When do we have to submit our application for registration under the new legislation?

- A. Co-operatives will have 21 months from the date of proclamation to submit an application for registration under the *Co-operatives Act 2009*. You will be informed when the date of proclamation is known.

## Q. Do the minutes of board meetings need to be made available to members for inspection?

- A. No. Minutes of board meetings must be recorded and then entered into the appropriate records within one month of the meeting. While the record of board meetings provided by minutes must be retained, there is no requirement for them to be made available for inspection.

## Q. We are having difficulties getting members to nominate themselves as directors. Can we recruit non-members to be on the board of directors?

- A. Yes – provided your rules address the minimum requirements set out in the new Act, including who is qualified to be an independent director and how they are appointed. However there must always be more member directors than independent directors.

## Q. Our co-operative has several major activities it wants to focus on. Do we have to decide which of these will be our primary activity?

- A. No - a co-operative may have more than one primary activity.

## Q. One of our members is no longer active. Can we keep the person on the membership register anyway?

- A. Under the Act, the board must cancel the membership of a member if they have been inactive or their whereabouts have not been known for at least 3 years, or a shorter period if specified in the rules of a co-operative. Importantly, whatever period is adopted by your co-operative, time will not start to count until your co-operative is registered under the new Act.

## Q. Is there a minimum number of members that my co-operative needs to maintain?

- A. Yes. The current requirement for mainstream co-operatives is to have at least 5 members at all times. A co-operative must cease carrying on business within 28 days if the number of members falls below this level, unless a longer period is approved by the Registrar. A director commits an offence and can be fined if the director fails to satisfy the minimum membership requirement. A director also becomes personally liable for any obligations incurred by the co-operative after the date on which business was to cease.

## Q. When do I need to lodge details of my co-operative's charges?

- A. Co-operatives will need to lodge with the Registrar details of certain charges created by the co-operative. Lodgement must occur immediately after the co-operative becomes registered under the Act. If you create any charges after registration, you will need to lodge details of the new charges within 45 days of the creation of the charge. Some charges do not need to be lodged with the Registrar, please see Section 267 and Schedule 3 of the Act for further information regarding charges.

Don't forget 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](mailto: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.