



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

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Cooperatives National Law Review
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Dear Mr Murphy

Proposed cooperatives national law

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, it is focused on improving organisational performance and transparency. Our members are all involved in governance, corporate administration and compliance with the Corporations Act (the Act). Our members work in both public listed and public unlisted companies and private companies, and many serve as officers of not-for-profit organisations, or cooperatives, or manage the affairs of subsidiary companies.

We commend the federal and state governments for proposing to introduce a harmonised cooperatives national law and welcome the opportunity to comment on the proposal. In this submission CSA does not attempt to provide detailed comment on the draft legislation, but seeks to raise issues of governance and risk management that apply generally to the proposed reforms.

Cooperatives are a form of mutual organisation that have existed in Australia since the mid-19th century. A central feature of a cooperative is that it is democratically controlled by its members. Voting is based on membership rather than on the number of shares held or the value of capital invested. A cooperative can be set up as a profit-making organisation or as a not-for-profit organisation.

All states and territories in Australia have legislation that enables a cooperative to register and to become incorporated as a legal entity. Cooperatives' legislation is similar across jurisdictions and is based on a set of standard provisions developed in 1996 by the Standing Committee of Attorneys-General. However, differences exist between jurisdictions.

Support for harmonisation of the law

CSA strongly supports the proposed national legislation that will replace separate cooperatives' legislation in each state or territory in Australia. As reform of company law for private and public

companies' has progressed, no such similar reform for cooperatives has occurred. The proposed harmonisation program will progress much-needed reform.

CSA notes that many cooperatives deal with organisations in states other than the one in which they reside and that compliance with one set of laws assists both the cooperative and those dealing with the cooperative, as each party has clarity as to the regulatory framework in which the cooperative operates. As a risk management issue, it is preferable that all parties need respond to one law only, as it is less likely that compliance issues will arise.

Furthermore, many cooperatives maintain a structure that includes other cooperatives operating as part of a group. Those other cooperatives could be operating in other jurisdictions, and CSA is of the view that harmonisation of the legislation improves the administration of such structures.

CSA also notes that harmonisation of legislation will in turn improve fundraising and trading. At present, under various cooperatives legislation across different jurisdictions, a cooperative can only trade with and purchase from members.

Need to harmonise administration

CSA notes that the aim of the Ministerial Council on Consumer Affairs in agreeing to establish a regulatory scheme which applies uniform legislation for cooperatives throughout Australia is to overcome the problem of separate legislation in each state and territory. CSA also noted that the Ministerial Council's announcement of this proposed reform stated that the harmonisation of legislation would, as far as is possible, be administered on a uniform basis.

Given that the aim is to provide a nationally consistent legislative framework, CSA strongly recommends that both the regulations attaching to state and territory legislation and the administration of state and territory legislation are also harmonised under the different state departments administering the legislation. If different departments interpret and administer the legislation differently, the aim of harmonisation will be defeated.

Alignment with the Corporations Act

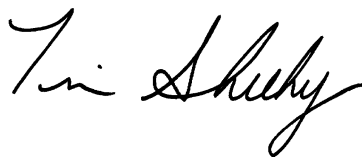
CSA supports aligning the proposed national cooperatives legislation as much as possible with the Corporations Act, to ensure certainty for all those dealing with cooperatives and the administration of cooperatives. CSA is of the view that the optimal outcome is to minimise the differences between the proposed national cooperatives legislation and the corporations law.

Conclusion

In preparing this submission, CSA has drawn on the expertise of the members of our national policy committee, the Corporate and Legal Issues Committee.

CSA would welcome further contact during the consultation process and the opportunity to be involved in further deliberations.

Yours sincerely



Tim Sheehy
CHIEF EXECUTIVE