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THIRTY-EIGHTH REPORT

of the

LAW REFORM COMMITTEE

of

SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

PROPOSED AMENDMENTS TO THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1923-1974

1977

The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19th September, 1968. The Members are:

THE HONOURABLE MR. JUSTICE ZELLING, C.B.E., *Chairman.*

THE HONOURABLE MR. JUSTICE JACOBS, *Deputy Chairman.*

THE HONOURABLE MR. JUSTICE KING, *Deputy Chairman.*

B. R. COX, Q.C., S.G.

D. W. BOLLEN, Q.C.

J. F. KEELER.

K. T. GRIFFIN.

The Secretary of the Committee is Miss J. L. Hill, c/o Supreme Court, Adelaide, South Australia 5000.

THIRTY-EIGHTH REPORT OF THE LAW REFORM COMMITTEE OF SOUTH AUSTRALIA ON PROPOSED AMENDMENTS TO THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1923-1974

To:

The Honourable Peter Duncan, M.P.,
Attorney-General of South Australia.

Sir,

We have the honour to report on a reference by you to us of certain matters arising out of the report of Inspectors on the investigation of Co-operative Travel Society Ltd. and associated companies and societies. This investigation dealt with the activities of an interconnected chain of companies incorporated under the Companies Act and societies incorporated under the Industrial and Provident Societies Act.

The inspectors say:—

"There were so many societies and companies that no-one was clearly able to appreciate their separate identities."

They go on to say later—

"Unravelling the multitude of entwined transactions has been very difficult. We do not believe that the group of societies, in the manner in which they were set up and interlocked between themselves, and associated with the companies which Mr. Gunnarsson-Wiener controlled, were a workable entity by which to carry out the project of the group. The manner in which they were interlocked created so many difficulties and complexities that we believe they would never have been likely to have carried on any business successfully."

We have quoted these extracts from the report of the inspectors to show that this was a highly complex group of bodies corporate being used for the purposes of this particular group of investors. We do not believe that this is a typical case in relation to societies incorporated under the Industrial and Provident Societies Act and it would be very unfortunate if it were. We have borne this in mind in considering the various recommendations of the inspectors which you referred to us. We have also borne in mind the long history of industrial and provident societies without which one cannot understand some of the provisions as we have them today.

Small unincorporated industrial and provident societies for the carrying on of cottage and craft industries and for the investment of the small savings of members, normally to provide funeral and like benefits, have been known to the law for a long time. There were statutes dealing with some aspects of their affairs from the time of George III's reign. In the same year as the Act was assented to which authorised the founding of the province of South Australia, the Imperial Friendly Societies Act, 1834, authorised the registration of societies for friendly society purposes, and "any other purpose which is not illegal": see 4 & 5 Wm. IV c.40 s.2. Industrial and provident societies were regarded as coming within this definition.

An amending Act of 1846, 9 & 10 Vict. c.27, extended the purposes referred to in the Act of 1834 by authorising registration for the purpose of "the frugal investment of the savings of the members for the better

enabling them to purchase food." The first Act expressly dealing with industrial and provident societies was passed in 1852: 15 & 16 Vict. c.31. However registration under the Acts of 1834, 1846 and 1852 did not confer corporate status nor did the Acts operate so as to limit the liability of members. Accordingly industrial and provident societies registered under these Acts remained ordinary partnerships at law and this continued to be the position until the Act of 1862 was passed: 25 & 26 Vict. c.87.

Industrial and provident societies are two species of the genus co-operative society and the difference between the two is that an industrial society is usually regarded as being principally concerned with the growing making or manufacturing of a product whereas a provident society is principally concerned with the purchasing of goods and chattels on the account of its members and the making of profits by distributing the goods so acquired by way of sale among the members according to their requirements.

The Act of 1852 was amended in 1854 and again in 1856 and these Acts were consolidated and amended by the Industrial and Provident Societies Act, 1862 to which reference has been made. This latter Act authorised the establishment of societies for "the purpose of carrying on any labour, trade or handicraft, whether wholesale or retail, except the working of mines and quarries, and except the business of banking". Societies registered under the 1862 Act became bodies corporate and existing societies were authorised to be registered under the Act.

The Act of 1862 together with the amending Acts of 1867 and 1871 were once more consolidated by the Industrial and Provident Societies Acts, 1876: 39 & 40 Vict. c.45. At the time of the passing of our Act of 1923, the consolidating Act in force in Great Britain was the Industrial and Provident Societies Act, 1893: 56 & 57 Vict. c.39 and our Act of 1923 is in general modelled on the English Act of 1893.

This lastmentioned Act and all amending Acts down to 1965 have been once more consolidated in England by the Industrial and Provident Societies Act, 1965, 1965 Chapter 12. That Act has in its turn been amended by a number of Acts of which the two principal ones are the Friendly and Industrial and Provident Societies Act, 1968, 1968 Chapter 55 and the Industrial and Provident Societies Act, 1975, 1975 Chapter 41.

As we have had specific problems under the Act referred to us in this reference, we have not dealt with the wider question of whether it is now time to update our 1923 Act so as to conform more closely with the latest Acts in Great Britain to which we have referred. We draw your attention to this matter but regard it as outside our terms of reference. Similarly we have not dealt with matters falling under the heading of credit unions as legislation governing this topic has recently been passed by Parliament.

The history of industrial and provident societies can be found in *Lloyd*: *Law of Unincorporated Associations* pages 62-3 and in *Fuller*: *Friendly Societies and Industrial and Provident Societies, 3rd Edition,* 1910, pages 263-265.

Turning now to the individual recommendations which we have been asked to consider, they are as follow:—

1. That some restriction be placed on the use which can be made of societies registered under the Industrial and Provident Societies Act, 1923. The section regulating registration of societies in our Act of 1923 is Section 5 which reads:—

> "5. (1) A society which may be registered under this Act (in this Act called an industrial and provident society) is a society for carrying on any industries, businesses, or trades specified in or authorised by its rules, whether wholesale or retail, and including dealings of any description with land: Provided that—
>
> I. no member, other than a registered society, shall have or claim any interest in the shares of the society exceeding ten thousand dollars;
>
> II. no society shall carry on the business of banking.
>
> (2) The taking by a society of deposits repayable in the manner provided by the rules of such society, shall not be included in the business of banking within the meaning of this Act, but no society which takes such deposits shall make any payment of capital unless every claim due on account of any such deposit is satisfied or the money to satisfy all such claims has been appropriated for the purpose."

This section, except for the extension of the total interest in the shares of a society held by a member due to the difference in value of money over the period follows very closely the wording of Section 4 of the Imperial Industrial and Provident Societies Act, 1893.

The equivalent section in the English 1965 Act is section 1. The relevant parts of that section for this purpose are subsection (1) (*a*) under which it has to be shown to the satisfaction of the appropriate Registrar that one of the conditions specified in subsection (2) of that Section is fulfilled and (2) which provides that the conditions referred to in subsection (1) (*a*) are:—

(*a*) the society is a *bona fide* co-operative society; or

(*b*) that, in view of the fact that the business of the society is being, or is intended to be, conducted for the benefit of the community, there are special reasons why the society should be registered under this Act rather than as a company under the Companies Act.

The only other Australian legislation which we have been able to find which has been amended in the recent past is the Co-operative Societies Ordinance, 1939-1975 of the Australian Capital Territory. That Ordinance deals with this problem in a slightly different way by dividing the types of co-operative society which can be registered into co-operative trading societies, co-operative building societies, co-operative credit societies, and co-operative housing and service societies. We do not recommend this division in this report as it would require extensive redesigning of our Act but we mention it because it does make for simplicity in following the legislation, and if at some time you consider the redrafting of the whole Act of 1923 it would, we think, be worthwhile bearing in mind this division in the Australian Capital Territory Ordinance. However if it is desired to amend only those

sections which have been the subject of report by the inspectors, we would recommend the use of a section equivalent to Section 1 of the English Act of 1965 in substitution for our present Section 5. If this recommendation is adopted, it will be necessary to provide for a transitional period during which societies which are registered when the amending legislation comes into force can consider their position and if they find that they are outside the limiting conditions of the new Section, apply to be registered as companies under the Companies Act, 1962.

2. The second recommendation of the inspectors was "the extension of further provisions of the Companies Act, 1962-1974 to societies incorporated under the Industrial and Provident Societies Act, 1923."

(*a*) The inspectors recommend first that directors or persons exercising powers of control in relation to an industrial and provident society be under the same duties and restrictions as the directors of a limited company. We agree that that should be so. At common law a director had practically no fetters on what he could do. He could be a director at the same time of companies which were in direct competition with one another and he could give as much or as little attention to the business of the company as he thought fit. A summary of the position before the present stringent provisions as to directors were inserted in 1962 can be found in the very illuminating discussion of the problem by the late Sir Douglas Menzies in an article headed "Company Directors" found in 33 *A.L.J.* 156. We recommend that directors or persons holding an equivalent position (however called) in a society registered under the Industrial and Provident Societies Act should be placed under the same duties and restrictions *mutatis mutandis* as are contained in Sections 122-127 of the Companies Act, 1962.

(*b*) The inspectors next recommend under this head that the provisions of the Companies Act, 1962 relating to holding and subsidiary companies should be inserted. We think that this matter raises a question in limine whether holding and subsidiary societies should be permitted at all in relation to bodies registered under the Industrial and Provident Societies Act. It is obvious that the group of inter-related companies and societies and their related activities as described in the report of the inspectors were an abuse of the privilege of incorporation as bodies corporate under this Act. The true industrial and provident society as we have known it in this State, has been a group organised for one particular process of production or distribution and we would recommend that before dealing with the problem posed by the inspectors, consideration should be given to the question whether or not it would not be better to provide that, if societies are to be linked together in the same way as holding and subsidiary companies are linked together, they should be required to register under the Companies Act and not have the privileges of being a co-operative society. Alternatively if it is preferred to leave the present position stand, namely that it is possible to have groups of societies and companies linked in a holding or subsidiary position, then we think that provisions analogous to Section 6, the Ninth Schedule to the Companies Act, Section 67 of the Companies Act, 1962

and also the relevant parts of Divisions I and II of Part IV, inserted in the principal Act by the Companies Act Amendment Act, 1971-1972, should *mutatis mutandis* be enacted as part of the Industrial and Provident Societies Act.

(*c*) Their third recommendation under this head is that consideration should be given to other provisions of the Companies Act which could usefully be made applicable to societies incorporated under the Industrial and Provident Societies Acts. They believed that one of the advantages which societies registered under the Industrial and Provident Societies Act at present possess for unscrupulous people is that they may be able to use many of the abuses which have not been corrected under the Industrial and Provident Societies Act but which have been blocked by the Companies Act, 1962, as amended. One amendment which has already been made in England by the Friendly and Industrial Provident Societies Act, 1968, 1968 Chapter 53 is to provide in lieu of the generalised provisions as to audit and accounts contained in Sections 15 and 16 of our Act of 1923, a very detailed regulation contained in Sections 1-15 of the English Act of 1968. We recommend that Sections 1-12 of the English Act be incorporated in our Act in lieu of our present provisions as to audit in any event, and also Sections 13, 14 and 15 if it is decided as a matter of policy that industrial and provident societies may be used in the same way as holding companies or subsidiary companies.

(*d*) We also draw your attention to the fact that there is no specific provision in the Industrial and Provident Societies Act for the registration of charges and debentures given by a society. Now that industrial and provident societies are clearly entering into business in a large way in some cases, it should be possible for any person to search at the Companies Office and obtain the same details as to charges as one can now do in respect of charges given by a company under the Companies Act. Similarly there should be a register of holders of debentures of a registered society kept at the office of the society which should be open to the inspection of the registered holder of any such debentures or any member of the society. Those provisions are contained in the Industrial and Provident Societies Act Amendment Act, 1952 of the Parliament of New Zealand (in Volume 6 of the New Zealand Statutes Reprint pages 427-440). We have not troubled to set these out in detail in this report to you as they are the standard clauses found in Companies Acts with regard to registers of debentures and registers of charges.

3. The third general recommendation of the inspectors is that in lieu of the provision in Section 12 of our Act that it be enacted that instead of each member of a society having only one vote at a general meeting, irrespective of how many shares he holds, there should be substituted a provision that each share shall carry one vote, or alternatively that if the shares do not carry equal voting rights this fact shall be brought clearly to a subscriber's attention before he takes up shares in a society. Another alternative would be to limit the maximum amount which a member including another society could invest in a registered society to an amount suggested at $3 000 or $4 000.

The difficulty with the first part of this suggestion is that it overlooks recent Parliamentary activitiy in relation to this subject. The Act of 1923 had no restriction on voting except such restriction as might be imposed by the rules of the society concerned. It is true that in a majority of societies but not in all societies, the rule was: one member one vote, but there were a number of societies to which that simple rule did not apply. In 1966 the position was amended in South Australia by the Industrial and Provident Societies Act Amendment Act No. 45 of 1966 which inserted at the end of Section 12 a new subsection reading as follows:—

> "(8) Notwithstanding anything in this Act, the rules of a society registered under this Act after the commencement of the Industrial and Provident Societies Act Amendment Act, 1966, shall provide that each member of such society shall be entitled to one vote only at any meeting of the society, and no amendment of the rules of any society existing at the time of such commencement shall provide that any member of the society shall be entitled to more than one vote only at any meeting of the society. Provided that in the case of any particular society registered after the commencement of the Industrial and Provident Societies Act Amendment Act, 1966, the Minister may, upon application by that society, approve in writing any different scale of voting in which event the rules of the society may provide for such different scale of voting."

This section was further amended by the Statute Law Revision Act 77 of 1973 and the Second Schedule which amended the 1966 amending Act by inserting a new Section 2a—

> "The amendments made by the Industrial and Provident Societies Act Amendment Act, 1966, apply and shall be deemed always to have applied in relation to societies existing at the time of the commencement of that Act and to matters in force or pending at that time as well as to societies and matters existing or in force after that time: But, unless the Minister in writing on the application of a society so approves, those amendments do not entitle, and shall be deemed never to have entitled, any member of a society existing at the time of that commencement to any greater number of votes at any meeting of the society than that member was enitled to at the time of such commencement, whether or not such member increased his interest in the shares of the society to an amount exceeding four thousand dollars."

The 1973 amendment caused trouble and Parliament again turned its attention to this matter in the Act No. 6 of 1974 which repealed the then Section 8 and inserted two new subsections (8) and (9) reading as follows:—

> "(8) Subject to subsection (9) of this section—
>
> (*a*) the rules of a society registered under this Act after the commencement of the Industrial and Provident Societies Act Amendment Act, 1974, shall provide that each member of the society shall be entitled to one vote only at a meeting of the society;
>
> and

(*b*) no amendment shall be made to the rules of a society registered under this Act either before or after the commencement of the Industrial and Provident Societies Act Amendment Act, 1974, under which the voting rights of any member of the society are expanded.

(9) The Minister may, by instrument in writing, authorise—

(*a*) the registration of a society whose rules do not conform to the requirements of paragraph (*a*) of subsection (8) of this section;

or

(*b*) an amendment to the rules of a society that does not conform with the requirements of paragraph (*b*) of subsection (8) of this section,

and the society may be registered, or the amendment made, in accordance with the terms of that authorisation."

It is obvious from a perusal of 1974 *Hansard* that the general policy of the Government was one member one vote and indeed the Attorney-General of the day stated that the principle of one member one vote was regarded as fundamental: see 1974 *South Australian Hansard* page 3173. The whole question of one member one vote was extensively canvassed, particularly in the Legislative Council, and we do not feel that after a matter has so recently received the attention of Parliament, that we should recommend the enactment of the opposite of what has been laid down as the norm in these matters. However we do agree with the second recommendation of the inspectors, namely that because people are used to the principle of shares in a company limited by shares under the Companies Act having one vote for each one share, that it would be a proper protection for intending subscribers to a society registered under the Industrial and Provident Societies Acts that a society must bring clearly to a subscriber's attention before he takes up shares in the society, that the shares do not carry a vote for each share and also what the voting rights contained in that Society's rules do in fact provide as to voting in relation to the holding of shares.

4. The inspectors point out that the sections in the Criminal Law Consolidation Act, 1935 which deal with untruths and frauds in relation to bodies corporate vary, in that Section 188 by its terms applies only to public companies whereas Sections 189-192 apply on their terms to "any body corporate or public company". The difference in the drafting is because Section 188 is taken from the English Companies Act, 1929, 19 & 20 Geo. v c.23 s.362 and therefore on the terms of the statute it applied only to companies, whereas Sections 189-192 are taken from the Imperial Larceny Act, 1861: 24 & 25 Vict. c.96 ss. 81-84 which are expressed in the wider form. The difference between Section 188 of our Criminal Law Consolidation Act and the subsequent sections is purely a matter of drafting in that the sections were copied from different exemplars in England. We agree with the inspectors that there is no reason at all why Section 188 should not like the other sections refer to "any body corporate or public company" and that Section 188 should be amended accordingly.

5. Recommendation (5) breaks away from the general recommendations relating to Industrial and Provident Societies Acts and recommends that a power should be given to investigate associations incorporated under the Associations Incorporation Act, 1956 similar to that contained

in the Companies Act. This follows a previous report of Deputy Master Lunn (as he then was) that the recommendations which we have discussed in the second recommendation under this report should apply also to associations under the Associations Incorporation Act. These raise two quite different points. It is always, we think, wise for a power of investigation to be given in terms as wide as reasonably may be in order to facilitate investigations into the affairs of any body corporate and we would agree with the first of the two recommendations.

We are, however, much more doubtful about the second recommendation. Associations under the Associations Incorporation Act vary from quite substantial bodies down to small local sporting clubs, such as tennis and cricket clubs, and we cannot think that the elaborate apparatus of directors, consolidating accounts, audit and the like would be in any way suitable to the needs of a very large number of associations incorporated under that Act. The virtue of that Act is simplicity. It may well be that the criteria for registering as an association under the Associations Incorporation Act might be looked at to see whether associations which are really carrying on some sort of commercial function should cease to have the privilege of registering under the Associations Incorporation Act but we should hesitate long before recommending that a local church or a local tennis club should be required to comply with the duties of a limited company in relation to such things as accounts, audit and similar matters. To do so would be to place on their members a burden which in most cases they could not discharge and would require the expenditure of money in paying auditors and other necessary officers which could well be outside the financial strength of a very large number of such associations. We accordingly do not recommend the second of the two suggestions in the fifth paragraph of the Inspectors' report.

6. The sixth suggestion relates to the prospectus provisions of the Companies Act. The suggestions of the inspectors are as follows:—

"(*a*) Where it is intended that subscribers for shares pursuant to the prospectus should contemporaneously be invited to enter into other transactions with parties other than the company whose shares are being offered, and where this is done with the implicit or explicit approval of the company whose shares are being offered, the prospectus should contain a full disclosure concerning these other transactions. In the case of the offering of the shares of CTS, this would have meant that full details of the proposals of AT Travel to the members of CTS and details concerning membership of the League would have had to have been contained in the prospectuses. In the case of the offering of the shares of CPD, it would have meant that details of membership of the Guild would have had to have been contained in the prospectuses. As we have stated in paragraphs 45 and 47, we consider that these transactions, which were effected by the salesmen employed by Mutual Trustee at the same time as they sold the shares, allowed the managers of the societies to attempt to make personal profits which were not disclosed by the prospectuses.

(*b*) Where a prospectus contains a "guarantee", such as that which was contained in the prospectuses of CPD (see paragraph 50), we consider that full details of the financial position of the guarantor and of its associations with the society whose shares are being offered should be contained in the prospectus.

(*c*) The provisions of the Companies Act, 1962-1974 and its Fifth Schedule should make it clear that all material inducements held out to prospective subscribers and representations made to them must be contained in the prospectus. We consider that in fairness to the subscribers, details of the concessions which were offered at the resort and the plans and model of the report should have been included in the prospectuses of CTS.

(*d*) The size of the print used in the statutory information sections of the prospectuses was so small as to be almost unreadable. We are confident that presentation of large masses of relevant material in this size print would deter most people from reading and attempting to comprehend it. The use of this size print in consumer transactions is now forbidden by the regulations under the Consumer Transactions Act, 1972-1973. We consider that prospectuses should also only contain print which is of sufficient size to be easily readable."

As to the matters in subrecommendation (*a*), we assume that what is sought is a widening of paragraph 15 of the Fifth Schedule to the Companies Act. That paragraph at present requires particulars of every material contract to be disclosed and presumably some point was or could be taken in the instant case that the contracts referred to were not with the company issuing the prospectus or that the representations were not contractual in form but were merely designed to induce persons to enter into the main contract with the principal company. We agree that this does appear to disclose a loophole in paragraph 15 which ought to be the subject of legislative correction and we recommend accordingly.

As to (*b*), we take it that this refers to Part II of the Fifth Schedule of the Companies Act which refers throughout to "guarantor company", i.e. a company under the Companies Act giving a guarantee, whereas the guarantee given here was given (assuming it was a guarantee at all) by individual members of one company to purchase shares in the other company at a future date for a particular price. In addition the document was probably not a guarantee as that word is known in the law, but was an irrevocable offer, not the assumption of secondary liability to answer to a creditor on default by the debtor in his primary liability. Equally of course we see that the guarantee provisions in Part II of Schedule Five could be overreached by making the guarantor a society under the Industrial and Provident Societies Act because that would not answer the description of "guarantor company". However we should have thought that any such contract would have been a material contract, because although it was to operate in the future, it must if it had any binding significance at all, be a present contract. Nevertheless if there is any way in which rogues can get round the terms of the present Fifth Schedule, then we recommend that the term "guarantor company" include any other body corporate as well as a company registered under the Companies Act. Where there is either a guarantee strictly so called, or a promise to do something in future as part of the inducement to enter into the principal contract for the issue and purchase of shares, then the giving of full details as suggested by the inspectors should be compulsory and the Fifth Schedule should be amended accordingly.

As to their third recommendation, we should have thought that what was described in paragraph 45 of their report was without doubt a material inducement and that the present legislation was sufficient, because if the details complained of were not given, then no proper disclosure was made in the prospectus.

As to the fourth recommendation, the size of the print, we have no doubt that all modern consumer-type legislation requires print which is of sufficient size to be legible by the person to whom it is addressed and we recommend the amendment.

7. Turning now to recommendation (7), the position was that under the 1962 Act Section 173 (3), the Governor could *inter alia* direct that the expenses of an investigation or any portion thereof should be paid by the company or any person who requested the appointment be made. Under the substitute sections inserted by Act 52 of 1972 Section 27, the new Section 169 (3) (*b*) set out that where the Governor required an investigation on application made to him, the applicants should give security of such amount and in such manner as was determined, for payment of the expenses of and incidental to the investigation, but there does not appear to be any right to recover these from a delinquent company. Speaking in general terms we would recommend that a company, if it is proven by investigation to be in the wrong, should have to pay the costs of the investigation but as the section has been repealed and inserted in a different form it may well be that there is some question of Government policy involved. However if this is not so, we would think it right that there should be power to compel delinquent companies to pay the whole or some part of the costs of investigations and in a proper case to compel directors of that company to pay as well. However we agree with the inspectors that it would be wise that such a power, which is punitive in nature, should be exercised upon application to the Supreme Court so that those against whom such an order is sought have a right to be heard and to put their side of the case before any order is made.

8. As to paragraph (8) of the Inspectors' report—the period of investigation—we agree that it would be useful if power were given to extend the period of time during which inspectors are to investigate the affairs of a company or in this case a society under the Industrial and Provident Societies Acts. The provisions for investigation are valuable and although the inspectors do not deal with it, it is clear that if the policy of the Government is to permit the continuance of interlocking companies and societies, then there should be power in the Industrial and Provident Societies Acts, similar to that in the Companies Act Amendment Act, 1971-1972, to provide for investigations into the affairs of societies under the Industrial and Provident Societies Act. We should perhaps add that as investigations are quite frequently very time consuming and very costly, many of the matters which come up by way of investigation could also come up by way of dispute and in our experience have done so in the past. However the present section in the Industrial and Provident Societies Act relating to disputes, Section 41, prevents in this type of case an airing of the grievance by way of dispute, because the rules of most societies provide for internal resolution of disputes and accordingly not much satisfaction is going to be gained by an aggrieved party using the internal machinery of the society in this type of case, where those with whom he is in dispute are also his judges. Section 41 subsection (2) provides that the parties to a dispute may by consent refer the dispute to the Registrar. This of course means that both sides to the dispute have to agree and in the type of dispute that we are talking about, it is clear that those holding the whip hand in the society will never consent. Whether the dispute be one of this type or any other type, we feel that an aggrieved party should always have the right to an impartial tribunal whenever he has reasonable cause to suspect that an internal tribunal might be biassed against him.

We think that the first four lines of subsection (2) of the present Section 41 should be deleted and in lieu thereof there should be inserted the provision which now stands as Section 58 (3) of the Co-operative Societies Ordinance of the Australian Capital Territory which reads:—

> "Notwithstanding the provisions of subsection (1) of this section, any party may refer a dispute to the Registrar unless the dispute has in pursuance of the rules been referred to arbitration, or if the dispute has been so referred to arbitration unless an award has been made within one month after the date of reference. If a dispute has been so referred to the Registrar, he shall have power to order the expenses of determining the same to be paid either out of the funds of the society or by such parties to the dispute as he thinks fit, and such determination and order shall have the same effect and be enforceable in like manner as a decision made in the manner directed by the rules of the society."

It may be that the Registrar may be unable, through press of business or from some other circumstance, to hear a particular dispute or disputes and provision should be included to enable him to nominate another person to hear and determine such disputes in his stead.

We have the honour to be

HOWARD ZELLING
S. J. JACOBS
L. J. KING
B. R. COX
D. W. BOLLEN
JOHN KEELER
K. T. GRIFFIN

The Law Reform Committee of South Australia

Dated this 12th day of May, 1977.

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