

CO-OPERATIVES (ADOPTION OF NATIONAL LAW) BILL 2012

PROOF

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Bill introduced on motion by Mr Anthony Roberts.

Agreement in Principle

Mr ANTHONY ROBERTS (Lane Cove—Minister for Fair Trading) [3.26 p.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Co-operatives (Adoption of National Law) Bill 2012. The Co-operatives National Law is the proposed new national uniform template legislation for the regulation of cooperatives in all States and Territories, as provided for in the Australian Uniform Co-operative Laws Agreement. The main purpose of this bill is to enable the uniform Co-operatives National Law and the national regulations to be applied in New South Wales from the date of commencement of the Act. The law is set out in schedule 1 to the bill. The law will apply to the non-banking cooperatives, which are also known as general cooperatives. The banking cooperatives are sometimes called financial cooperatives, such as credit unions, building societies and friendly societies. They are regulated under separate legislation administered by the Australian Prudential Regulation Authority. Cooperative housing societies will also continue to be dealt with under the authority's separate laws.

Cooperatives are people-centred businesses and organisations. Cooperatives continue to be a significant part of the New South Wales, Australian and world economies. Australia wide there are approximately 1,700 registered cooperatives. Co-operatives Australia maintains a list of Australia's top 100 cooperatives and other mutual organisations on its website. New South Wales has several cooperatives on this list that make a significant contribution to the State's economy. About three-quarters of cooperatives are established as not for profit in that they have rules that prevent them from distributing any surplus to their members. Yet these cooperatives may provide crucial services to their members, such as health and medical care, job searching, training, housing or child care.

According to the New South Wales Registry of Co-operatives and Associations, for the financial year ending in 2010 there were approximately 680 cooperatives registered in New South Wales. They operate in a diverse range of industries, such as book sales, clubs, dairy produce, fishing and fruit marketing, rural grocery and petrol supplies, grain handling, cotton growing, labour hire, plumbing supplies, property sales, recycling, sugar milling, tourism and wine sales. New South Wales cooperatives have a total turnover of approximately \$2.9 billion, total assets of approximately \$2 billion, employ approximately 10,000 people and have a membership of about 1.8 million people. Cooperatives provide an organisational structure for individuals and small businesses through which to acquire goods and services in economies that increasingly are dominated by large corporate organisations.

Cooperatives are also important to rural communities. Cooperatives enable those communities to retain and develop services that have been eroded by the withdrawal of other corporate businesses, which seek to maximise profits for investors and so relocate elsewhere for bigger profits. Investor-oriented firms, member-oriented cooperatives and other types of organisations have a role to play in providing services in a modern, balanced economy. Governments continue to have a role in providing a legislative framework to assist with the operation of cooperatives and other forms of organisation. The International Co-operative Alliance, which is the worldwide representative body for cooperatives, developed seven cooperative principles to guide the operation of cooperatives, which gives them their distinctive member-owned, member-controlled and member-used focus.

Current States and Territories cooperatives legislation provides for those laws to be interpreted in a way that would promote the cooperative principles. The Co-operatives National Law will continue that approach. The objects of the Co-operatives National Law are the same as those in the current cooperatives legislation of New South Wales and include enabling the formation, registration and operation of cooperatives; promotion of cooperative principles; and protection of the interests of cooperatives, their members and the public in the operations and activities of cooperatives.

I would now like to outline the major reforms in the Co-operatives National Law for members of the House. First, there is the consistency of laws. The reforms will ensure consistency of content and administration of laws across all States and Territories. This will be achieved by jurisdictions either directly applying the uniform template Co-operatives National Law or making their own legislation consistent with the law. All jurisdictions will use their best endeavours to administer the Co-operatives National Law uniformly, in line with the agreement. This improvement in the consistency and administration of the cooperatives laws will provide greater certainty to all parties with rights, duties and powers in relation to cooperatives and assist in lowering costs and red tape with cross-border operations.

Automatic mutual recognition of cooperatives by other jurisdictions, once they are registered in one jurisdiction, will facilitate cooperatives conducting operations across State and Territory borders. Currently, a cooperative needs to apply separately to each jurisdiction in which it wishes to operate. If a trading cooperative wishes to operate in all eight States and Territories, it would pay an average of about \$1,700 in registration and compliance fees to do so, as well as lodging reports annually to those jurisdictions. By comparison, the corresponding fee for a company registered under the Corporations Act is about \$450. Under the Co-operatives National Law, costs will be lowered and paperwork requirements simplified, which is similar to company requirements in this context.

Simplification of the financial reporting and auditing requirements for small cooperatives by using a risk assessment based system will reduce costs and red tape for those cooperatives. Responsibilities and duties for directors and officers of a cooperative have been updated and made consistent with those requirements applying to directors and officers under the

Corporations Act. This will mean that directors and officers in similar circumstances in a cooperative will be treated similarly to those in a company. Director liability for corporate fault under the Co-operatives National Law has been revised according to the Council of Australian Governments director liability reform. As a result, blanket liability provisions have been removed and directors face liability where there is a clear link between the director's responsibility and action or inaction and the contravention of the law.

More flexibility for a cooperative to raise funds from both members and the public has been created by the introduction of the option to use cooperative capital units by cooperatives in all jurisdictions. A more restricted use of these units has been available under the New South Wales Co-operatives Act, as a result of New South Wales legislative reform in the 1990s. To save reinventing the wheel, cooperatives laws have for some time referenced Corporations Act laws where appropriate—for example, in dealing with disclosure of information for fundraising from the public, insolvency, liquidation and winding up situations. The referencing of the Corporations Act has been updated and made consistent across jurisdictions.

The introduction of enforceable undertakings is a cost-effective method of facilitating compliance with the law. For example, the registrar may accept a written undertaking from a cooperative to take action to prevent contravention of the law. This can be reinforced with a court order, applied for by the registrar, provided there is agreement from the cooperative. The adoption bill and the law have been approved by all States and Territories via the Council of Australian Governments Consumer Affairs Forum out-of-session process. With these milestones having been met, it is now timely for the bill and law to be considered by this House in keeping with the terms of the agreement.

The Australian Uniform Co-operative Laws Agreement requires States and Territories to secure the passage and proclamation of their laws within a set time of 12 months from the assent of the New South Wales Co-operatives (Adoption of National Laws) Act, or such further time as may be unanimously approved by the Council of Australian Governments Consumer Affairs Forum. However, as the United Nations has declared 2012 to be the International Year of Co-operatives, the States and Territories, including New South Wales, are working towards the commencement of the Co-operatives National Law during 2012, to coincide with this international year. One of the three goals set by the United Nations for this international year is to encourage governments to establish policies, laws and regulations conducive to the formation, growth and stability of cooperatives. Commencement of the Co-operatives National Law in 2012 would meet that goal and is therefore a fitting tribute to the celebration of the International Year of Co-operatives in New South Wales and in the other States and Territories.

In concluding, I urge all State and Territory governments and sector participants to remain committed to the implementation and ongoing uniform administration of this national template cooperatives legislation, for the benefit of all in the cooperatives sector and the

economy. The making of these laws will assist all cooperatives in New South Wales and in all the other States and Territories. I commend the bill to the House.