



LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP
Mr JJ McDonald MP
Mrs MF McMahon MP
Ms CP McMillan MP

Staff present:

Ms R Easten (Committee Secretary)
Ms K Longworth (Assistant Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE CO-OPERATIVES NATIONAL LAW BILL 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 17 FEBRUARY 2020

Brisbane

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The committee met at 10.31 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Co-operatives National Law Bill 2020. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me here today are: James Lister, the member for Southern Downs and deputy chair; Stephen Andrew, the member for Mirani; Jim McDonald, the member for Lockyer; Melissa McMahon, the member for Macalister; and Corrine McMillan, the member for Mansfield, who will be joining us shortly.

On 4 February 2020, the Hon. Yvette D'Ath MP, Attorney-General and Minister for Justice, introduced the Co-operatives National Law Bill 2020 in the Legislative Assembly. The parliament has referred the bill to the committee for examination, with a reporting date of 27 March 2020. The purpose of the briefing today is to assist the committee with its examination of the bill. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website.

Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff, if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. These images may be posted on the parliament's website or social media sites.

Only the committee and invited officers may participate in the proceedings. As parliamentary proceedings, any person may be excluded from the hearing at my discretion or by order of the committee. I ask everyone present to turn mobiles phones off or to silent mode.

MCKARZEL, Mr David, Executive Director, Office of Regulatory Policy, Department of Justice and Attorney-General

REARDON, Mr David, Director, Office of Regulatory Policy, Department of Justice and Attorney-General

WALSH, Ms Anthea, Principal Policy and Legislation Officer, Office of Regulatory Policy, Department of Justice and Attorney-General

CHAIR: I welcome the representatives from the Office of Regulatory Policy within the Department of Justice and Attorney-General. I invite you to brief the committee, after which committee members will have some questions for you.

Mr McKarzel: Thank you for the opportunity to speak about the Co-operatives National Law Bill. The bill repeals the Queensland Cooperatives Act 1997 and in its place applies the Co-operatives National Law, which we commonly refer to as the CNL, as a law of Queensland. The CNL is template legislation—that is, it is contained in the appendix to the New South Wales Co-operatives (Adoption of National Law) Act 2012.

Cooperatives are a legal entity or a business typically created for common economic, social and cultural needs. In Queensland, cooperatives operate in a diverse range of industries: agriculture, retail and water supply. As an example, some of the largest cooperatives include: the Queensland Chamber of Fruit and Vegetable Industries Co-operative; the Goondiwindi Co-operative Society Ltd, which provides a local supermarket; one at Killarney selling fertiliser and farm chemicals; and the NQ Co-op Ltd, based in Mareeba, which sells hardware.

The cooperative business structure is now being used for water irrigation in the Pioneer Valley, with Pioneer Valley Water supplying irrigation to sugar farms. Co-ops can also be smaller community enterprises. Two examples of those are the Folk Art Cooperative Society at Lowood and the Sarina Community Arts and Crafts Cooperative. Co-ops also provide employment opportunities. For example, the Nundah Community Enterprises Co-Operative was formed in 1998 to create sustainable employment and training opportunities for people with mental illness, learning difficulties or intellectual disabilities.

I will give some background on the Co-operatives National Law. The CNL was a result of collaboration between the states and the territories. The Commonwealth is not a party to the scheme. The agreed operation of the scheme is outlined in the Australian Uniform Co-operative Laws Agreement. The aim of that agreement is to preserve uniformity of the Co-operatives National Law by providing that future amendments can only be made with the approval of consumer affairs ministers. That approval is done through a ministerial forum called the Consumer Affairs Forum, which we colloquially call CAF.

Under the agreement, New South Wales is the host jurisdiction of the law and its regulations and states and territories that have adopted the CNL continue to be responsible for administering cooperatives within their jurisdictions, for instance by providing registration services and by having the relevant minister in every state deciding collectively in CAF whether or not amendments should be made to the template legislation. That, in turn, would apply in all jurisdictions.

The object of the bill is to apply the law in Queensland. Its aim is to modernise and improve the regulatory framework that we have in Queensland for the formation, registration and management of cooperatives. All other states and territories have adopted the CNL, with Western Australia enacting legislation that corresponds with the CNL. Feedback at officer level from other jurisdictions at our Public Service working party level is that the law has been working reasonably well and the transition that has occurred in other jurisdictions has been relatively smooth. If the bill is passed, Queensland will complete the national scheme.

The law that will be applied if the bill goes through is based on the Queensland Cooperatives Act 1997—the act that we already have in Queensland. It is consistent with the objective of promoting a series of cooperative principles and it protects the interests of cooperatives and their members in the operation of their activities. However, the adoption of the CNL via this bill will simplify financial reporting and audit requirements and reduce costs for the small cooperatives and provide a new way for cooperatives to raise funds. That is something that is unique to the CNL. It is not in place under the act that Queensland currently administers. That is the advantage of moving to the national scheme. Adoption of the CNL has another advantage. It will allow for automatic, cross-border mutual recognition which means lower costs and reduced paperwork and removes the competitive disadvantage for Queensland cooperatives that wish to trade across the border.

Other specific key reforms include updating directors' duties to the modern standard of corporate governance. By adopting the CNL we will hopefully also have as accurate references as we can to the Commonwealth Corporations Act. That relates to liquidation and winding up. When the legislation relating to cooperatives is disbursed amongst all the states and territories, as other legislation is, references to the Corporations Act fall behind. If the Commonwealth changes their act you end with different requirements in different states.

Both this bill and the Co-operatives National Law have been consulted on comprehensively. We started back in 2009. Between 2009 and 2011 there was a regulatory assessment process undertaken, which included stakeholder engagement and feedback. In late 2011, because as a matter of policy the various states and territories thought that the reduced reporting requirements ought to be a central part of the reform, specific consultation was done on the reporting requirements. That was led by the New South Wales fair trading office, but done nationally on behalf of all jurisdictions and all jurisdictions had input into that process. That included a discussion paper and submissions.

In September 2019, Queensland cooperative stakeholders were consulted on an exposure draft for this bill that will apply the CNL to Queensland. In terms of feedback, there seemed to be support for the bill as well as the fact that when the bill applies the CNL it also applies a transition process for existing cooperatives which is as seamless as we can make it. Stakeholders seem to be reasonably okay with that transition process. There were a few issues which I am happy to explain.

The bill also provides for specific jurisdictional arrangements to enable the operation of the CNL in Queensland. For instance, it makes provision for particular Queensland registry processes, prescribes the relevant Queensland court and QCAT for various matters to be heard and some other minor consequential references to other acts. In terms of subordinate legislation, the bill contains provisions to apply the cooperatives national regulations, which are the regulations that deal with matters that are common to all the jurisdictions, and then we have our local regulations which will need to go to the Governor in Council, taking into account the timing of the commencement of the bill, if it is passed.

The Business Council of Co-operatives and Mutuals had one issue with the local regulations. That was to do with fees. They noted that the fees in the exposure draft version of the local regulation for the formation of a cooperative were higher than the fees in other jurisdictions. They were concerned

about the impact of that fee difference in terms of discouraging the formation of cooperatives in Queensland. That has been accepted and as a result the local regulation will be amended to address the concerns that the council raised, specifically reducing certain fees so they are more aligned with the other jurisdictions.

The other bit of feedback I wanted to draw to the committee's attention was from the Co-operative Federation of Queensland. They identified a discrepancy between the current fee structure in the current act and the exposure draft version of the local regulation. This was in relation to the fee for lodging an annual report. The current fee structure is a nil fee for a lodgement of report and a late fee for late lodgement. The exposure draft that went out provided for a lodgement fee and a late fee. That was an error on our part and we have corrected that. There are no change to fees in terms of reporting.

The other issue that I need to draw to your attention—and this was also raised by the Co-operative Federation of Queensland—is that they submitted that the threshold definition for a 'small cooperative' should be higher to match small proprietary companies. However, the definition of a 'small cooperative' is actually contained in the national law. The bill that you are considering will adopt that national law and therefore adopts the current 'small cooperative' definition.

There are two things that we can say about that. The first is that at the national level we will raise the issue of the definition of a 'small cooperative'. Ultimately, it will be up to consumer affairs ministers to decide at CAF, the Consumer Affairs Forum, whether or not to vote to change the definition. The other thing to say is that the current definition of a 'small cooperative' picks up 90 per cent of the cooperatives that operate in Queensland.

The reason why the issue of being a small cooperative is important is that under the CNL small cooperatives have a significantly reduced reporting requirement, so there is a reduction in red tape for them. That is why the definitional issue of 'small cooperative' has probably become an issue for the Co-operative Federation of Queensland. That is where we have landed at this point on those definitional issues.

Finally, in terms of transitioning cooperatives to the new CNL if the bill passes, those who are currently registered in Queensland will transition to a new registration system automatically. Existing co-ops will be able to use their own rules, but we will be suggesting to them that they might review their rules if they take advantage or avail themselves of additional instruments that are available under the new national law.

To give you a quick example, under the new national law you can raise money through issuing what is called cooperative capital units. You cannot do that under the Queensland law, but under the national law you can. If the law passes, if you are a cooperative and you are inclined to issue those units in order to raise some money then obviously you will have to look at your rules to make sure that your rules reflect a process that is appropriate to do that. Short of that, your rules should be fine in terms of an immediate transition from the current system to the new system.

The bill will commence on a day to be fixed by proclamation. There will be significant engagement between the Office of Fair Trading and the affected stakeholders in terms of any implementation or transitional issues. Thank you for the opportunity to address you. We are happy to take any questions.

Mr LISTER: Mr McKarzel, thank you for your briefing. I was very pleased to hear the consultation that you have had over a long period of time and how that has resulted in changes and benefits to the stakeholders. Thank you for mentioning the Goondiwindi Co-op and the Killarney Co-op. I will add one more to that—that is, Go Vita in Stanthorpe and Warwick, with John Bylicki and his wife, Linda.

CHAIR: Do you have a question?

Mr LISTER: You mentioned that one of the effects of this national law will be to bring the duties of directors in line with common corporate practice. Can you expand on that and contrast it with the way directors' responsibilities were structured before?

Mr McKarzel: The current act is pretty light on in terms of what the duties are. I can quote directly: to 'act honestly' and with 'care and diligence'. The CNL tries to align the duties closer to what is in the Corporations Act. Under the CNL, directors have a duty to act in good faith in the interests of the cooperative, to act with reasonable care, to act for a proper purpose, to retain discretions and to avoid conflicts of interest. It is a bit more detailed, and there is case law that would fill out the detail of those requirements.

The other thing is that in exercising those duties directors also have to have regard to the principles behind cooperatives which underpin the relevant legislation: voluntary and open membership; democratic member control; member economic participation; autonomy and

independence; education, training and information; cooperation among cooperatives; and concern for the community. It is a more holistic sophisticated set of responsibilities but it reflects the fact that co-ops are now in an environment where there is greater complexity that they have to deal with. This aligns more with other business structures.

Ms McMILLAN: I note that New South Wales have already been down this path. Since this national law came into force in New South Wales in 2014, what amendments have been made and what were the nature of those amendments? What are our learnings from New South Wales?

Mr McKarzel: I might ask my colleague Anthea, who is our guru when it comes to the detail of cooperatives, to answer that. If we cannot give you a detailed answer, we will take it on notice, with your permission.

Ms Walsh: I am on the Co-operatives National Law working party. We are at policy officer level. As far as we are aware, it has been all good news from New South Wales. It has been working quite well. There have been some minor amendments, but I would have to take that on notice. They have made some very minor technical amendments. From a policy officer's perspective, the transition has been smooth for cooperatives, as David mentioned, because there is a seamless transition where their registration and rules automatically transition. For a cooperative running a business there will be very little that they will need to do. Their day-to-day business operations will continue.

Mr ANDREW: Are we adopting the amended law from New South Wales and the other states? Since it has been in place for such a long time in other states, rather than going back to the original legislation, are we getting the updated version of it, because everything has been amended and it is ready to go?

Ms Walsh: Yes. The bill would adopt the national law as it is in force now.

Mrs McMAHON: The data I have says that there are about 165 cooperatives in Queensland at the moment. I am familiar with co-ops from an England point of view where they are very much a public entity that is known. Notwithstanding the list of cooperatives that you read out and that the member for Southern Downs added to, for our benefit and for the benefit of the community more broadly, could you give some examples of what day-to-day Queenslanders, notwithstanding those on the Southern Downs, might encounter as a cooperative and in what spaces cooperatives are operating in Queensland?

Mr McKarzel: It is extraordinarily broad. In Queensland it can range from sugar harvesting to milk supply, water supply, fishing, child care, health, fruit marketing, grocery supplies, hardware supplies, rental housing, recycling, Indigenous arts and housing. Collectively, cooperatives in Queensland have a gross revenue of \$250 million, they have total assets of over \$376 million, we think there are approximately 916 people employed, and membership is at the 19,000 mark. As a quick fact, we think the largest ones are those in Mareeba, Mackay and Killarney. The idea of the bill, of course, is to encourage more of them and to remove any barriers to individuals coming together to use this particular business structure.

Mrs McMAHON: With that in mind, what gap does a cooperative meet? In terms of provision of goods and services, where does a cooperative get its support from? What is the advantage of cooperatives operating in Queensland as opposed to our current market systems?

Mr Reardon: Probably a key thing to be aware of with cooperatives is that they are quite a different entity to a corporation, which is primarily profit driven. What a cooperative structure enables an entity or an organisation to do is to act in the interests of its members. That might not necessarily be through profit. It might be through other social goals and initiatives. The cooperative might provide particular services to its members or access to goods and services that they might otherwise find difficult to obtain or impossible to obtain. I think the best way to describe it is that the cooperative structure allows a much broader picture to be taken in terms of what the objectives and goals of the particular organisation might be when compared to a corporation.

Mrs McMAHON: I note the feedback around the definition of 'small cooperative' and I note that the definition proposed under the CNR is consolidated revenue of less than \$8 million, assets less than \$4 million and employees fewer than 30. There was an approach from the CFQ to raise those figures respectively to \$50 million, \$25 million and 100. Given what you said earlier that of the 165 registered co-ops in Queensland 90 per cent would fit under that proposed definition of 'small cooperative' and notwithstanding the statistics you quoted to me earlier that total revenue of those 165 co-ops I think you said was roughly \$300 million, could you outline to the committee what the average co-op size is in Queensland, what its revenue would be and where it would fit within that definition of 'small cooperative'? For those who would be over the size stated in the definition of 'small cooperative', what size are we talking about in terms of assets and revenue?

Ms Walsh: The size of Queensland cooperatives vary quite significantly. Each year when they do their annual financial return is when a cooperative would be able to determine the assets, revenue and employee numbers. Looking at the definition of a 'small cooperative' and comparing it to the definition of the small proprietary company, that 90 per cent figure would rise significantly. I think there would probably be a handful of cooperatives in Queensland that would fit under that higher definition. In terms of the size of an average Queensland cooperative, it varies. There are very small ones but also very large ones.

Mr McDONALD: I thank you all for coming; I appreciate the presentation. I am interested in knowing why Queensland is the last state to join up to this. I am informed that in 2015 Queensland withdrew from the national agreement. Is that the reason why?

Ms Walsh: Yes, it is. That was a decision made by the former government.

Mr McDONALD: Have we since re-signed to the agreement?

Ms Walsh: Yes.

Mr McDONALD: That is a formal process that we have been through?

Ms Walsh: Yes. Under the intergovernmental agreement, the Australian Uniform Co-operative Laws Agreement, there is a process that governs the administration and governance of the template law and participating jurisdictions. The CAF ministers took a vote on this and it was a unanimous vote for Queensland to rejoin the agreement and they also, as part of the agreement, have reviewed the bill and the exposure regulation to ensure its compliance with the technical aspects of the template law, and that was a unanimous vote that it is compliant.

Mr McDONALD: Just to follow up on that, when was that agreement re-entered into?

Ms Walsh: Effective 1 January 2020.

Mr McDONALD: Thank you.

Ms McMILLAN: I am just interested in why Queensland withdrew from the Australian Uniform Co-operative Laws Agreement under the Newman government in 2015. I note that we have re-signed the agreement, but why did we initially withdraw?

Mr McKarzel: That process predates me and it is a decision of the previous government. Presumably it was a policy decision that reflected a particular view and there is not much I can say—

CHAIR: It is not appropriate to ask policy questions of current or former governments. The bill obviously—and correct me if I am wrong—offers key improvements that will make the regulatory framework in Queensland easier. I know in your opening statement you outlined a few things, but is there anything that you could add in terms of the key improvements in the bill?

Mr McKarzel: It is a suite of measures and reforms that collectively make the difference. The first issue is that finally we get consistent legislation across the jurisdictions—the states and territories—which means that you remove any transactional barriers and costs for individual entities that want to work across borders. Married to that is automatic mutual recognition. Under the current Cooperatives Act, an entity wanting to trade into Queensland is deemed foreign and has to apply or register and then pay a fee, so that goes as well.

Probably the key issue for individual cooperatives is the fact that the vast bulk of them—those that are called small cooperatives—will have reduced reporting. The central issue there is that they save money on not having to provide an audited statement, so there is a significant saving there. Having said that, they are still required to have the normal financial records and do their normal financial accounting and the Queensland registrar will have the power to request or compel a report if there is an indication that that ought to happen. It is a bit more of a risk based approach, but it is also taking into account that the records will still be there. They are still required to keep their records as an entity, but we are not asking them to give us a full audited statement.

The other issue which will affect and be good for larger entities is the new financial instrument that they will have access to—the larger cooperatives will have access to—which is the cooperative capital units. I am not a financial guru, but my understanding of how the current act works is that you can raise money through debentures. Under what they call CCUs—cooperative capital units—they are a more flexible instrument that allows the cooperative to raise some capital or some money but keep the member control over the enterprise, and that is obviously consistent with the principles that were agreed to nationally on how a cooperative ought to operate and what the principles should be to underpin it. That will be accessible by larger cooperatives if the bill were to pass.

Very quickly, there are the directors' duties, as I said previously, and the other issue is hopefully getting the Corporations Act references uniform. There is the one reference in the CNL to wind-up and liquidation and all the other matters, so then everyone in every state and territory and all of the advisers to all of the cooperatives are all looking at the same references. If the Commonwealth changes the Corporations Act again, then it is only one change to the CNL—that is, to the references to the Corporations Act in the CNL. You just need the one change to happen and then you realign them if the Commonwealth again changes the Corporations Act.

CHAIR: The bill proposes to automatically adopt amendments made to the cooperatives national law—CNL—by the New South Wales parliament. Are there any other pieces of Queensland legislation that also automatically adopt amendments made by another parliament?

Mr McKarzel: I will ask David Reardon to answer that. I think the Australian Consumer Law might be the relevant example.

Mr Reardon: Yes, that is right. Probably the Australian Consumer Law is a good example of this type of model. Essentially, Queensland's Fair Trading Act applies the Australian Consumer Law as it is in force from time to time as a law of Queensland. If amendments to the Australian Consumer Law are made by the Commonwealth parliament, then they automatically take effect in Queensland. This is a very similar model, albeit that the template legislation for the cooperatives national law is held by New South Wales as the host jurisdiction rather than the Commonwealth, which is not a party to this scheme. Historically, there have been other instances where template legislation has applied. Prior to the Commonwealth taking responsibility for consumer credit the Consumer Credit Code was a template law that was held by Queensland at the time, so there has been some history of this type of application law in Queensland.

CHAIR: What safeguards are in place in the bill regarding the proposed automatic amendment regime?

Mr Reardon: I might ask my colleague Anthea Walsh to clarify or add anything further that she feels is helpful for that question, but essentially I think a key thing to remember is that the bill in no way detracts from the sovereignty of the Queensland parliament to adopt new legislation or make variations. The idea of the CNL is to adopt a national law scheme. Having the automatic application of amendments helps maintain the consistency of that scheme across the jurisdictions, but at any point in the future the Queensland parliament could decide to do something different and legislate in a different way. I will just ask Anthea if there is anything further.

Mr McKarzel: Just while I think of the other issue before we ask Anthea to fill you in on more detail, there cannot be an amendment unless it has gone before the ministers—the ministers responsible. CAF, the Consumer Affairs Forum, would have to consider amendments and there would need to be an agreement that amendments are appropriate and then New South Wales would amend its act and our application law would then pick that up. You have the ultimate protection which is in theory that if Queensland was not happy it could repeal and reinstate its previous act, but also for amendments there is a national approach under that intergovernmental agreement that Anthea referred to earlier that dictates how an amendment is to be presented and discussed and approved.

One other thing I did not mention, Chair, was that the shape of the CNL, the Co-operatives National Law, actually derives from the Cooperatives Act in Queensland—the 1997 act. It is very similar to our act because our act was one of the more modern ones when the national process started. Although, as I mentioned earlier in response to your question, there are a whole bunch of reforms that will apply to Queensland if the national law is adopted, the actual CNL itself draws heavily on the structure of the Cooperatives Act 1997 in Queensland that would be repealed if the bill went through. I will ask Anthea if she has anything further to add.

Ms Walsh: Just adding on to David's comments, it is the Australian Uniform Co-operative Laws Agreement which underpins the voting arrangements for CAF ministers and it is a unanimous vote, so it needs the unanimous vote of every state and territory for an amendment to proceed, and of course Queensland's vote is part of that.

Mr McDONALD: I am interested why New South Wales is the host state given that it was a Queensland law from 1997.

Mr McKarzel: I do not know the history of why it ended up being New South Wales. It predates us given that this story or journey, as it were, goes back to the late 2000s. It probably does not make too much difference which jurisdiction holds the template legislation as long as the agreement is tight, and it is in terms of requiring a unanimous decision on amendments, and as long as the parliament has the ability to reverse out of it by repeal if there was an outcome that the parliament was not happy with. As to exactly why New South Wales and not Victoria, it may very well be paper, scissors, rock, but I am sure there is a story behind it. The reality is it is an appendix to the New South Wales act.

Mr McDONALD: Thank you.

CHAIR: As there are no further questions, that brings this briefing to a close. With regard to the question taken on notice in relation to, I think it was, minor amendments, your response is required to get to the secretariat by the close of business on Tuesday, 25 February so that we can include that in our deliberations. That concludes this briefing. I thank Mr McKarzel, Mr Reardon and Ms Walsh for appearing today. Thank you to the secretariat staff and to Hansard. A transcript of these proceedings and an archived broadcast will be available on the committee's parliamentary web page in due course. I declare this public briefing for the committee's inquiry into the Co-operatives National Law Bill 2020 closed.

The committee adjourned at 11.13 am.