Speech By

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ASSOCIATIONS INCORPORATION AND OTHER LEGISLATION AMENDMENT BILL

CO-OPERATIVES NATIONAL LAW BILL

Mr JANETZKI (Toowoomba South—LNP) (11.44 am): I understand that the business program motion issues have already been prosecuted, but I want to express my disappointment that bills of such importance to the community of Queensland are given two hours to be debated. I accept that the members for Kawana and Everton have put the case that we could debate the electoral integrity bill for three days—I think we could debate it for three weeks—as these bills should interest this House more than most.

If someone is attending an event of an unincorporated association or is a management committee member of an incorporated association, or if they are a part of a company limited by guarantee, a cooperative or a customer of a cooperative then the content of these bills will be of most significance to them. If we want to build a culture of volunteering and if we want to build a culture of not-for-profits continuing to step up, volunteering hundreds of hours, donating millions of dollars in free services to the community then these bills certainly need a greater deal of scrutiny and consideration than simply two hours. Already we are down to an hour and 45 minutes.

I am not sure about those on that side of the House—those grounded in a union upbringing and electorate offices—but many members on this side of the House have come up doing community work in unincorporated or incorporated associations and cooperatives. We on this side of the House understand the value of those organisations to our communities. That is why two hours of debate is simply not enough for those of us on this side of the House who care so deeply about our local community groups, cutting red tape and giving back to our communities. That is what we should be debating in this House. I think everybody should be given the opportunity to speak to the bills. Instead, very few members on this side of the House will be able to make a contribution to the debate.

The opposition will not be opposing these two bills because, as the Attorney-General has rightly said, there are important efficiency measures contained in them, whether it be financial reporting, the cutting of red tape or the removal of duplication. I acknowledge the efforts of the Attorney-General in that regard. However, there are significant missed opportunities that I want to briefly discuss in my contribution that could have made these bills stronger and could have made them more community focused. There could have been laid on the table other business community options that have simply been missed. There has been a missed opportunity. We know that there are 22,000 incorporated associations throughout Queensland. As I have said, there are a number of important efficiency measures that are contained in these bills that will make life easier for them.

The Queensland Law Society in its submission to the committee—I would encourage those opposite to read it; it is a 27-page submission—raised a number of concerns with the incorporated associations bill in particular and opportunities for improvement which I understand the government will

not be adopting. I want to particularly go to those obligations on management committee members. These are people who are volunteering their time and taking a risk in time and liability to undertake a service for their community free of charge. They are serving others. What we in this House should be encouraging is people to step in and volunteer for their communities where the government cannot fill the gap.

The incorporated associations bill inserts new duties under clause 31, which I foreshadow the opposition will be opposing, but otherwise we will be supporting the bills. The bill inserts new duties under proposed section 70E to J. In many respects, they reflect the duties under the Corporations Act that apply to directors of company such as the duty of care and diligence, the duty of good faith, use of position, use of information and the duty to prevent insolvent trading.

I want to turn to the last duty in particular—the duty to prevent insolvent trading. This was the duty that raised the eyebrow of the Queensland Law Society in particular. Under this new duty it is an offence for a member or former member of a management committee of an incorporated association to take part in incurring a debt if at the time of incurring the debt the association was insolvent and immediately before the debt was incurred there were reasonable grounds to expect that the association was insolvent or would become insolvent.

That reflects, as I said in large part, the Corporations Act directors' duties. However, under the defences contained in the Corporations Act as they relate to company directors, the defence fails to provide a 'safe harbour' for volunteers on a management committee. As the Queensland Law Society said—and I will turn to their submission—in respect of this particular amendment, it shifts the current 'light touch' regulatory approach in the existing act to a much more 'complex corporate' style regulatory regime. For example, there is a new duty to prevent insolvent trading similar to the corresponding obligation in the Corporations Act. This is not coupled with the corresponding 'safe harbour' defences available to directors of corporations.

If these corporate responsibilities are going to be imposed on volunteers then they should have the benefit of 'safe harbour' provisions similar to those afforded to company directors. Here we are holding volunteers on management committees and incorporated associations to a higher standard than company directors with all the resources, all the capability, all the educative opportunities. Here we are holding our management committee volunteers to a higher standard than corporate directors.

The 'safe harbour' provisions, which could be applied to management committee volunteers and are not under this bill, would give them that protection as it does corporate directors—and these are amendments only recently made to the Corporations Act. When recognising that a company may be heading towards insolvency, if directors take certain steps with the reasonable belief that it would result in a better outcome for their company then that will be a defence to any claim or proceedings brought by ASIC or any other regulator in relation to insolvent trading. That is the protection not afforded to management committee members.

In a post-COVID-19 environment, in a time when we know volunteerism is under pressure and when giving is down, surely that is the wrong message to be sending to our communities. If they put their time and effort on the line to volunteer on a management committee, surely they should be given the same protection, if not more, than those operating under a company structure.

I will turn to volunteering just for a moment. As I have said, these are people who donate hundreds of hours of their time—millions of dollars by way of volunteer service. All of us have volunteers in our community. We know that volunteerism is on the decline. In the 2016 Census there were 714,000 volunteers in Queensland—down from 980,000 in 2014 and down from 1.2 million in 2010. Right now we need greater community engagement, not less. We need more reasons for people to volunteer their time, not less.

If people are concerned about liabilities they may face in their capacity when volunteering on a management committee, they will not be volunteering. Then we will see fewer people put in their time and effort and the community will suffer for it. I am particularly concerned about that provision. That is why I flag the opposition's intent to oppose that clause.

In respect of consultation on this bill, I do not believe that there has been broad enough consultation. That was something raised by the Queensland Law Society.

Mr Lister: They always do. It's always the same.

Mr JANETZKI: I take the interjection from the member for Southern Downs: it is always the same. Bear in mind that the Attorney-General introduced this bill on 26 November, public submissions were due to close on 19 January, and it has been sitting there waiting to be debated since that time. Bearing in mind that a lot of people who should have been submitting could well have been on holidays or were not aware of this, there were four submissions. That is fine, but we need to engage with our community

sector. We need to engage with those small incorporated associations—those people on that spectrum between an unincorporated association and a company limited by guarantee by which most community services are provided in our community.

We know that there has not been proper consultation. We know that there has been little interest shown by this government. The fact that we now have only two hours for debate—the fact that we have two hours for debate on two important community-building bills; they are being debated cognately, not even being debated separately—says everything about the priorities of this government. I repeat: it says everything about the priorities of this government. Both of these bills are community-building bills and we have two hours to debate them.

I think that shows the lack of interest the government has in these issues. We are at the end of a term. It is like a box needed to be ticked—'Quick. Get this out the door. We have to get it done'—when we should be engaging more deeply in the community sector than ever before to try to come up with innovative solutions to drive volunteerism, to drive people who want to make a contribution to their community. Instead, we are imposing corporate director-like obligations on management committee members. It is appalling. It sends the wrong message to our community at a time when they should be receiving a different one.

I want to turn briefly to the ACNC. There have been some reports about the relationship between the ACNC and the various jurisdictions. I accept that under this bill there will be some efficiencies in that regard between the ACNC and other jurisdictions in stopping the duplication of reporting and other measures that the Attorney has already spoken about in her contribution. However, you have to love a coalition federal government, Mr Deputy Speaker. On the ACNC website they have a red-tape-reduction page which talks about the delivery of red-tape initiatives amongst ACNC. It is a common problem—the relationship between the ACNC and the other state and territory jurisdictions.

This morning I printed this red-tape-reduction page by the federal government and the ACNC. Notably—and I will table this—there is one jurisdiction where there are all red crosses. There are green ticks, there are jurisdictions 'In progress' and there are red crosses. Would you believe it, Mr Deputy Speaker, but the red crosses are all beside Queensland! Every other state and territory have ticks. For 'Report once' and 'Common audit thresholds', South Australia, ACT, Tasmania have tick, tick, tick and Western Australia, Victoria and New South Wales are 'In progress'. For Queensland, there are three strikes. Again, that goes to show the priority of this government. They do not care about red-tape reduction. They do not care about working with the federal government. They do not care about efficiencies. They should. They should because more than ever we need to be focusing on red tape. In a post-COVID world we are going to need every bit of red-tape reduction and efficiency we can manage to get our community back on its feet and our economy back on its feet. I table that report.

Tabled paper: Extract, undated, from the acnc.gov.au website titled 'Red Tape Reduction' 903.

I wanted to raise with the House the concerns raised by the Queensland Law Society and other stakeholders about a discrepancy still with the ACNC in relation to some thresholds. Associations have obligations to keep financial records, prepare financial statements and prepare audit reports. Under this bill, small associations are those with revenue under $20,000; medium associations are those with revenue between $20,000 and $100,000; and large associations are those with revenue over $100,000. One cannot help but think that this bill was in fact drafted for a couple of incorporated associations that did not fit in the square neatly. Instead of addressing those couple of instances of larger incorporated associations, they have just taken a one-size-fits-all approach and will force everybody to comply with this greater regulation than they otherwise would have to.

The Queensland Law Society has argued for greater consistency across the industry, saying that the proposed tiers of financial reporting should be amended to match the classifications used by the ACNC. Their thresholds are: small charities have revenue under $250,000; medium charities have revenue between $250,000 and $1 million; and large charities have revenue of $1 million or more.

Finally, in relation to the grievance procedure—and the Attorney-General raised this—there is a clause in the bill which states that associations must abide by the grievance procedure. I note that in their submission Clubs Queensland said—

... we are concerned that Clubs will no longer have the ability to take disciplinary action against their members who have conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association, without first engaging in a mediation with the member.

...

... therefore submits that the term 'dispute' should be clearly defined to ensure that persons who have conducted themselves in a way considered to be injurious or prejudicial to the character or interests of the association cannot use the proposed dispute resolution procedures.

The Queensland Law Society submitted that it is unlikely small organisations will have the privilege of easy and accessible dispute resolution due to matters being required to be heard in the Supreme Court. I will leave that grievance procedure concern there.

The other issue I want to raise in relation to this bill relates to the Collections Act. Whether it be the bushfires over the summer or a range of other issues in our community that come up, the Collections Act deals with fundraising in Queensland. That bill was drafted in 1966. It does contain some archaic and difficult-to-read language for those people who want to set up fundraising efforts. What has been missed here is an opportunity. The Queensland Law Society called this out again. This government has missed an opportunity to review the Collections Act to bring it up to the 21st century.

There was no crowdfunding, there was no internet, there was no email and there was no technology of that nature when it was drafted in 1966, and the government has missed a chance. We are a big-hearted people in Queensland and we love to fundraise, but we have an act that is simply not fit for purpose. It is not fit for purpose for fundraising, and this government again has failed to address the concerns that could have made a difference to fundraising and that culture in our community, whether it be volunteering or fundraising. My thoughts on the Associations Incorporation Act are that there are missed opportunities that could have made a real difference to the community sector in Queensland, and the Labor government has missed it.

I will now turn to the Co-operatives National Law Bill. The policy objective of this bill is to modernise and improve the regulatory framework for the formation, registration and management of cooperatives by repealing the Cooperatives Act 1997 and adopting nationally harmonised cooperatives legislation known as the cooperatives national law. The bill strives to adopt certain benefits such as: reducing regulatory burdens, increasing operational flexibility and creating consistency in cooperatives legislation across Australian jurisdictions. The cooperatives national law is template legislation contained in the appendix to the Co-operatives (Adoption of National Law) Act 2012 in New South Wales. This is a national law that has been rolled out across the jurisdictions.

I was listening to the Attorney-General's contribution, and I again heard a dispassionate discussion of things that are really important to the community. The history of cooperatives goes back a very long way. I believe the first retail cooperative store in Australia was formed in Brisbane in 1859. An act was passed in 1893 that drove the development of cooperatives in regional and rural areas in particular right throughout this state. From 1890 to 1910 Queensland went from approximately 3,500 kilometres of railway to nearly 6,500 kilometres, and that drove rural development at a pace not ever seen.

Mr Minnikin: I bet the trains ran on time back then.

Mr JANETZKI: I take that interjection from the member for Chatsworth. It has gone backwards since then. That saw a hastening of the development of agricultural production and communities right throughout Queensland. That decentralised our population—that is one of the things that is greatest about it—but it also helped local communities bind together against the adversity they faced in early pioneering times here in Queensland. Cooperatives allowed people to come together for a common cause. Whatever their particular product or interest may have been, it gave them an opportunity to work together cooperatively. Today there are 70 distributing cooperatives left which relate to agriculture, fisheries, retail transport and water, and there are 100 non-distributing cooperatives in accommodation, hospitality, arts and recreation.

Mr Powell interjected.

Mr JANETZKI: I take the interjection from the member for Glass House. There are plenty of them in the electorate of Glass House, and I can tell you, Mr Deputy Speaker, there are plenty of them in the Darling Downs too. In fact, the 160 or so cooperatives left in Queensland are like a rollcall of regional and country towns. If you look through that list you will see towns like Townsville, Proserpine, Bundaberg, Maleny and Wamuran. My own personal experience is that I grew up on a dairy farm. My father sold our milk to a local cooperative, the Mount Tyson dairy factory, and when that went broke we sold our milk to a cooperative in Toowoomba known as Unity. I have fond memories of tours along the factory floor.

What is so special about a cooperative is that the members own the cooperative. I went on to have the privilege of working at Heritage Bank, which is probably—apart from the RACQ—Queensland's greatest mutual. Regional towns in particular need a fully functioning cooperative model. This act will help deliver that because it includes a tiered system of financial reporting whereby most small cooperatives will not be required to submit an audit or financial report to the registrar. The intent of this is to reduce costs for small cooperatives. Under the national regulations, a cooperative is defined as 'small' when it meets two of three criteria.

The cooperatives national law updates directors' and officers' duties and responsibilities with more consistent and modern requirements under the Corporations Act. The current legislation only provides that officers act honestly and with care and diligence. However, under the cooperatives national law directors will have a duty to: act in good faith in the interests of the cooperative; act with reasonable care; act for a proper purpose; and retain discretion and avoid conflicts of interest. Stakeholders are in favour of the change, stressing that adopting the same language used in the Commonwealth Corporations Act enables legal advisers to provide better advice to directors of cooperatives in respect of their duties.

One of the challenges cooperatives have faced over time has been structural problems. The same reason they have been so successful is also part of their challenge; that is, the members own the cooperative, and that is fantastic. I remember advising at Heritage Bank in relation to the annual general meeting. The beautiful thing about a mutual or cooperative annual general meeting is that one person has one vote. You can have $100 in your account for three months, but when you come along to vote your vote means as much as somebody who has $5 million in a term deposit. That is democracy in action, and that is what is special about cooperatives and mutual societies.

The problem mutual societies have always faced has been in relation to the raising of capital. In a banking context any profits could be held as retained earnings, but generally most cooperatives have fallen away simply because the members of that cooperative simply could not invest the capital to fund that growth. That is why cooperatives have fallen away over time. That is why, in my opinion, policymakers—particularly at a federal level, but also at the state level—have failed to regulate appropriately to encourage these different forms of organisations to survive and prosper into the 21st century.

However, I do believe there are opportunities for the future, and that again is where I think this bill could have gone a little bit further. We could have had a bigger discussion about community based companies. There are examples in Victoria where, when it looks like a community might lose its fuel station, by cobbling together enough capital and community goodwill they can tip it in and keep the fuel station in their local country town and deliver any proceeds back to their community. We know there is a will in our regional and rural towns for this to happen. This is where governments must step up and step into this space to help educate, to better represent these different community based models in policymaking decisions, and to think more deeply about how we want to encourage rural and regional communities to survive in the 21st century.

Those of us who live in regional and rural areas want local services delivered by local people. We know that that is the best way to deliver good decision-making and good governance in our communities. Those are the opportunities we must seize into the future. That is why it is pleasing to see in the cooperatives national law the introduction of a mechanism to raise funds through the issuance of cooperative capital units. CCUs are a unique and flexible financial instrument that can provide cooperatives with a means to raise funds to finance their operations without diluting member control and ownership. These CCUs can be issued to members or nonmembers.

I recall at Heritage Bank the challenges we faced as a mutual in raising capital, and I know bigger mutuals do too. We issued a dead issuance on the ASX. We were the first ever mutual ADI to do that. We had to tiptoe around our constitution because one thing we prided ourselves on more than anything else was our democratic structure that would be held in our local community. The Commonwealth government has introduced additional mechanisms by which mutual ADIs can raise capital. This is the kind of forward-thinking policymaking we need, not just from the Commonwealth government but also from this government. We need to be thinking differently about how we do business. The models by which these businesses are delivered to their communities must be seriously considered.

My opinion on this bill, which the opposition will be supporting, is that, again, it is a missed opportunity for a deeper discussion and a deeper consideration. An opportunity has been missed to plan for the strategic future in larger urban areas, but particularly in regional and rural areas where cooperatives, unincorporated associations, incorporated associations and companies limited by guarantee—all of these different structures—deliver community services. These bills have missed the opportunity to encourage volunteerism at a time when we so desperately need it. We are going to need all hands on deck to turn around our community and our economy, and the government has missed these opportunities. Sadly, for Queensland it has proven once again that this Labor government simply has the wrong priorities for our state.