Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

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ASSOCIATIONS INCORPORATION AND OTHER LEGISLATION AMENDMENT BILL

CO-OPERATIVES NATIONAL LAW BILL

Second Reading (Cognate Debate)

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (11.31 am): I move—

That the bills be now read a second time.

On 26 November 2019, I introduced the Associations Incorporation and Other Legislation Amendment Bill 2019 into parliament. That bill was later scrutinised by the Education, Employment and Small Business Committee. On 4 February 2020, I introduced the Co-operatives National Law Bill 2020 and referred the bill to the Legal Affairs and Community Safety Committee. I thank those committees for their consideration of the bills and table the government's responses to each committee's report.

Tabled paper: Education, Employment and Small Business Committee: Report No. 30, 56th Parliament—Associations Incorporation and Other Legislation Amendment Bill 2019, government response 902.

Both reports make a single recommendation: that the respective bills be passed. The government welcomes these recommendations. I would also like to take this opportunity to thank stakeholders who took the time to make written submissions and appeared at public hearings to assist the committees in their consideration of the bills.

The Associations Incorporation and Other Legislation Amendment Bill proposes amendments to the benefit of Queensland's not-for-profit sector. These amendments reduce the regulatory burden for incorporated associations and charitable entities. For example, the associations bill provides the government with the ability to exempt particular classes of entities from the financial reporting requirements under the Associations Incorporation Act 1981 and the Collections Act 1966. It is the government's intention to use this ability to specifically exempt entities that have met a financial reporting obligation to the Australian Charities and Not-for-profits Commission from Queensland government reporting requirements. It is estimated that the proposed exemption will reduce red tape for approximately 5,000 organisations. To underpin this, the associations bill facilitates information-sharing arrangements between the Office of Fair Trading and the ACNC.

To ensure appropriate oversight of incorporated associations, the Office of Fair Trading will retain the ability to examine the financial affairs of exempt entities if circumstances warrant. The associations bill will also provide the chief executive with the discretion to consider special and unusual circumstances impacting on an association's financial affairs, such as a one-off grant or insurance payment and, if circumstances warrant, release the association from any additional reporting obligations that the association may be obligated for as a result of that payment. This will particularly assist associations that may be recovering from recent natural disasters such as drought or bushfire.

Amendments contained in the bill will further reduce red tape by making the use of a common seal optional. Associations will also be able to make use of modern communications technology to conduct meetings and voting without requiring the use of this technology to be specified in the association's rules. This change will allow associations to enable members to participate in the decision-making processes of their association even if those members are unable to participate in meetings face to face. The associations bill supports associations experiencing financial distress by allowing incorporated associations to enter voluntary administration and appoint an administrator to assist in their financial affairs. Associations will additionally have a new ability to voluntarily cancel their incorporation in certain circumstances as an alternative to appointing a liquidator under applied corporations law.

While the associations bill seeks to make life easier for the sector, the government is also cognisant that many incorporated associations rely on government and community financial support. The community expects those who hold influential positions within associations, particularly those that benefit from public funding, will be held accountable to minimum standards as part of a broad system of checks and balances. To facilitate this, the associations bill introduces new governance obligations requiring officers of incorporated associations to exercise their powers and discharge their duties with care and diligence, in good faith and in the best interests of the association. It also provides that they must not improperly use their position, or information obtained from their position, to gain a pecuniary benefit or material advantage, or trade the association while insolvent.

The associations bill also introduces an obligation for members of a management committee to disclose material personal interests in matters discussed at management committee meetings. The member may not vote on that matter unless expressly permitted by the remainder of the committee. A maximum of 60 penalty units will apply to a breach of these governance obligations. These obligations are entirely reflective of good governance practice and will enhance public confidence in the sector. They are not new in the field of not-for-profit regulation and exist in one form or another in the associations incorporation legislation of most other jurisdictions. Amendments contained in the bill will also facilitate greater transparency and accountability within associations by requiring management committee members to disclose information about the remuneration and other benefits paid to management committee members, senior staff members and their relatives in the way prescribed by regulation. My department will be consulting with the sector on these details should the associations bill be passed.

Incorporated associations will also be required to have a grievance procedure in their rules that provides for mediation and meets the principles of natural justice. To protect members from punishment for raising a grievance, associations will be unable to take disciplinary action against the complainant or their representative in relation to the matter that is the subject of the grievance until the grievance procedure has been completed. This will not prevent associations from taking disciplinary action against members where warranted. Associations may specify in their rules that a person cannot initiate a grievance procedure while the person is already subject to a disciplinary proceeding until that proceeding has been resolved. Incorporated associations required to observe the existing grievance procedures of parent associations will be able to refer to those procedures in their rules, provided the procedures comply with the principles in the associations bill. Associations that do not wish to amend their rules to provide for a grievance need not do so, provided they are willing to abide by the model rule grievance procedure that will be developed by the Department of Justice and Attorney-General, in consultation with the sector, should the associations bill be passed.

Lastly, the associations bill will apply the Fair Trading Inspectors Act 2014 to the Associations Incorporation Act to provide inspectors with the powers necessary to efficiently investigate incorporated associations. The committee noted in its report that the explanatory notes to the associations bill could further justify this proposal.

It is necessary for the Office of Fair Trading to have a range of powers, including search and entry powers, at its disposal to carry out proactive compliance, investigate misconduct within associations and enforce offence provisions. The Associations Incorporations Act does not presently contain those powers. Ensuring appropriate powers are made available to inspectors will, along with proposed governance obligations for management committee members and officers, strengthen trust and confidence in the not-for-profit sector.

The Fair Trading Inspectors Act is an existing piece of legislation that provides common inspectorate provisions for the enforcement of a number of fair trading acts. These common provisions reflect standard inspectorate and enforcement principles and are balanced by appropriate safeguards. The associations bill simply applies these accepted principles and safeguards to the investigation of incorporated associations.

The Fair Trading Inspectors Act will however be applied in a modified way so powers deemed unnecessary for the regulation of incorporated associations are not available. Inspectors will not be able to stop or move vehicles or obtain criminal history reports. In keeping with general provisions of the Fair Trading Inspectors Act, entry powers will not apply to a place where a person resides.

The Co-operatives National Law Bill 2020, the CNL Bill, received strong stakeholder support. I would like to thank the individuals, cooperatives, organisations and peak bodies that made submissions to the committee. The CNL Bill will repeal the Cooperatives Act 1997 and in its place apply the cooperatives national law, or CNL, as a law of Queensland. The CNL is nationally harmonised cooperatives legislation, contained as template legislation in the appendix to the New South Wales Co-operatives (Adoption of National Law) Act 2012. The CNL has been progressively introduced by states and territories since 2012. The CNL Bill will modernise the legislation governing cooperatives in Queensland and complete the national legislative scheme developed by the states and territories.

Cooperatives operate across the state of Queensland, in regional areas, and in a diverse range of industries, including agriculture and fishing, dairy, water supply, health services, grocery and hardware supplies, recycling, and Aboriginal and Torres Strait Islander arts. Cooperatives contribute to productivity, growth and job creation within the Queensland economy, most importantly, boosting local communities. They support local businesses and local communities by putting profits back into the economy.

The CNL Bill will deliver several key reforms. The first key reform that will benefit Queensland cooperatives is a harmonised system of law that improves the regulatory environment, supporting the ongoing viability of cooperatives as a business model. The ongoing viability of cooperatives supports communities that cooperatives operate in. The CNL Bill will also reduce red tape and associated business costs.

The CNL includes a tiered system of financial reporting, whereby small cooperatives will no longer have to obtain costly financial audits provided they meet the definition of 'small cooperative'. A cooperative, and any entity it controls, is defined as a small cooperative upon meeting two of the following criteria in a financial year: consolidated revenue of less than $8 million; consolidated gross assets of less than $4 million; or fewer than 30 employees.

Based on current estimates, over 90 per cent of Queensland cooperatives may be considered small under the new tiered system of reporting. A small cooperative will have reduced reporting requirements and will not have to obtain a costly audit, unless their members or the registrar considers it is necessary. As the majority of Queensland's cooperatives are small businesses operating in regional areas of Queensland, the removal of audits for small businesses, especially in our farming communities, will provide much needed financial relief. For large cooperatives, their reporting requirements will remain the same as the current requirements under the Cooperatives Act 1997.

Implementation of the CNL Bill will also allow automatic mutual recognition of registered cooperatives by other states and territories. One registration will allow a cooperative to trade nationally. This will reduce fees and red tape for cooperatives operating across borders. At present, if a Queensland cooperative wishes to carry on business interstate, it must register and pay fees in that state or territory and follow different legislative frameworks.

Implementation of the CNL Bill will also allow cooperatives to raise funds through the issue of cooperative capital units. Cooperative capital units are a financial instrument by which cooperatives can inject funds from external sources. The ability to raise funds using cooperative capital units is not available under the current Cooperatives Act 1997.

By applying the CNL, the CNL Bill will also update directors' and officers' duties to be consistent with the Corporations Act 2001, providing a modern standard of corporate governance. By removing the high cost of an audit for small businesses, reducing costs and red tape for cooperatives wanting to trade interstate and providing opportunities for additional fundraising, the CNL Bill will provide a range of direct benefits to Queensland cooperatives. Most importantly, cooperatives support local businesses and communities by putting profits back into regional economies.

The CNL Bill will support the ongoing viability of cooperatives in playing a crucial part in Queensland's economy which is of even greater importance as a consequence of the increased hardships regional Queensland is going through as a result of the COVID-19 pandemic. Furthermore and in conclusion, during these uncertain and unprecedented COVID-19 times, it is important that we do all we can to help charities that rely upon volunteers to help the most vulnerable in our community. Red-tape reduction is an important element in supporting our charities. I commend both bills to the House.