

CO-OPERATIVES AMENDMENT BILL 2015

First Reading

Bill read a first time, on motion by **Mr P.T. Miles (Parliamentary Secretary)**.

Explanatory memorandum presented by the Parliamentary Secretary.

Second Reading

MR P.T. MILES (Wanneroo — Parliamentary Secretary) [1.39 pm]: I move —

That the bill be now read a second time.

The Co-operatives Amendment Bill 2015 amends the Co-operatives Act 2009, to achieve consistency with the Co-operatives National Law and to allow Western Australian cooperatives to participate in a national regulatory scheme for the registration and regulation of cooperatives. Participation in the scheme will remove barriers to the development and expansion of cooperative enterprises and offer investment opportunities by allowing those WA-registered cooperatives wishing to expand their operations to carry on business nationally, without any requirement to register in other jurisdictions.

Cooperatives are organisations that are owned and democratically controlled by members who have united to meet common economic, social or cultural needs. Capital is used to service the common needs of active members of the enterprise, rather than generating a dividend to shareholders.

There are currently 52 cooperatives registered in Western Australia. They operate a variety of enterprises including agriculture, aquaculture, grain distribution and marketing, value-added production, export development, retail trading, transport, arts and crafts, and construction and engineering. The majority of registered cooperatives are small to medium-sized businesses, but the sector also includes some significant enterprises. The reported revenue of the sector was over \$3 billion last financial year. The largest cooperative in Australia, Co-operative Bulk Handling or CBH, is registered in Western Australia.

Each state and territory has legislation regulating the registration and operation of cooperatives. Since 2007, Australian jurisdictions have been working to develop uniform legislation, recognising that fragmented, overly prescriptive and, in some instances, outdated legislation has placed cooperatives at a competitive disadvantage against entities registered under the commonwealth Corporations Act 2001.

The Australian Uniform Co-operative Laws Agreement came into effect in February 2012. The agreement is aimed at providing a modern scheme that minimises regulatory burden, allows cooperatives to compete with other forms of enterprise on equal terms and facilitates interstate expansion and trade. Western Australia and the other signatories to the agreement agreed to either apply the Co-operatives National Law, which was developed by a national working party and enacted in New South Wales, or enact alternative but consistent legislation.

In 2010, Western Australia replaced the dated Companies (Co-operative) Act 1943 with the current Co-operatives Act. As the national law was still under consideration at that time, the Western Australian Co-operatives Act was developed in consultation with the Co-operatives National Law Working Group. Consequently, the Western Australian Co-operatives Act already incorporates most elements of the national law. For that reason, and to ensure that the powers of future Western Australian Parliaments are not fettered, the WA government decided to meet its commitment under the agreement to achieve substantial consistency with the national law by amending the WA Co-operatives Act. The agreement requires jurisdictions choosing to enact alternative consistent legislation to seek approval from the Legislative and Governance Forum on Consumer Affairs of their proposed consistent legislation. On 12 June 2015, consumer affairs ministers endorsed Western Australia's proposed amendments to its legislation, meaning that an amended WA Co-operatives Act will be regarded as being consistent for the purposes of the agreement.

I will now summarise some of the key elements of the bill. The majority of changes align the processes and terminology in the legislation with those in the national law and will not have an impact on the day-to-day operations of cooperatives. The most significant changes that will be made are of a regulatory nature as follows. First, a registered cooperative will be permitted to conduct business in any participating jurisdiction, subject to complying with the applicable provisions of the legislation in that jurisdiction. The registrar of cooperatives in that jurisdiction will retain the right to revoke that entitlement. Second, duties applying to the directors of cooperatives and the defences available to an allegation of a breach of those duties will be aligned with those that apply to the directors of proprietary companies. In accordance with changes proposed by the Directors' Liability Reform Bill 2015 with regard to liability of officers, directors will be liable for offences only when culpability is established on the part of the officer concerned. Third, obligations in relation to accounting, auditing and financial reporting will be more closely aligned with those applying to proprietary companies, and reporting thresholds will be adjusted to allow non-distributing cooperatives to have access to the simplified auditing and reporting regimes that apply to small cooperatives. Finally, a mechanism will be introduced to allow

a cooperative to adopt by reference any or all of the provisions of model rules prescribed by the regulations. Rules will be able to be altered more easily and only those changes that have potential to have a significant impact on the rights or obligations of members will require pre-approval from the registrar.

On becoming a party to the agreement, the government undertook to consult stakeholders before amending the WA Co-operatives Act. National consultation was undertaken in relation to the draft national law and was promoted in Western Australia by the Consumer Protection Division of the Department of Commerce. Following the finalisation of the national law and its adoption as the cooperatives law in NSW, Consumer Protection released a consultation paper titled “Proposals to Align the Co-operatives Act 2009 with the Co-operatives National Law 2012”. The paper was distributed widely within the sector and an industry reference group was formed to discuss the proposed amendments. As a result of that consultation, some differences between the WA Co-operatives Act and the national law will be preserved, including the following: the rules of a Western Australian cooperative may allow a member under the age of 18 to vote; a member of a cooperative may also be the representative of a corporate member; a person who is not a member of the cooperative may act as a proxy if the rules of the cooperative permit it; provisions in relation to the valuation of shares of former members will take into account falls in the value of assets; and the timing currently prescribed in the Western Australian act for lodgement of annual reports and some applications will be retained.

All participating jurisdictions have accepted that these are minor differences of local application and will not prevent the WA cooperatives act from being accepted as substantially consistent for the purposes of the agreement. The changes proposed by the bill have the full support of Western Australia’s cooperatives sector. The government is committed to providing a legislative framework for the cooperatives sector in Western Australia that is modern, efficient and fit for purpose.

Western Australia’s participation in the national scheme through alternative but consistent legislation will offer immediate opportunities for growth and expansion for cooperatives in this state, and the proposed changes will aid the development of the sector in the longer term. The changes to be implemented by the bill reflect the government’s commitment to streamline regulation, reduce red tape and increase investment opportunities for small business in this state.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.