

LOANS (CO-OPERATIVE COMPANIES) BILL 2004

EXPLANATORY MEMORANDUM

This Bill is for an Act to enable loans to be made by the State to certain co-operative companies and for related purposes.

The purpose of this Bill is to establish a scheme enabling loans to be made by the Government to eligible Western Australian Co-operative Companies. Eligible companies meet requirements set out in section 120(1)(c) of the Commonwealth Income Tax Assessment Act 1936.

The effect for eligible co-operative companies is that if they borrow money from a government of the Commonwealth or a State, then the company may claim the capital repayments of the loan an Income Tax deduction. The loans must be used for the acquisition of assets required for the carrying on of the business of the company.

This Bill :

- Defines an "eligible co-operative";
- Allows the Minister to make loans to eligible co-operatives on behalf of the State;
- Establishes the "Co-operative Companies Loans Fund" under section 9 of the Financial Administration and Audit Act 1985;
- Determines what moneys may be credited and charged to the account;
- Determines the security required for loans to be made;
- Enables the Minister with approval from the Treasurer to borrow sums of money from the Western Australian Treasury Corporation for the purposes of the Act;
- Provides for borrowed funds to be credited to the Consolidated Fund and transferred under appropriation to the Co-operative Companies Loans Fund.

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

Clause 1: The short Title of the Act is the Loans (Co-operative Companies) Act 2004.

Clause 2: The Act comes into operation on the date it receives Royal Assent.

Clause 3: This clause contains definitions for terms used in the Act.

"eligible co-operative" means a co-operative company as defined in section 117 of the Income Tax Act and has as its primary objective the acquisition of commodities from its shareholders for disposal or distribution.

"Income Tax Act" means the Income Tax Assessment Act 1936 of the Commonwealth.

Clause 4: Establishes and names a fund for the administration of the Act.

Subclause 1 specifies that there is to be an account called the "Co-operative Companies Loans Fund" and held as part of the Trust Fund constituted under section 9 of the Financial Administration and Audit Act 1985.

Subclause 2 specifies the moneys that are to be credited to the Co-operative Companies Loans Fund. These are

- (a) all moneys borrowed by the Minister from the Western Australian Treasury Corporation and credited to the Consolidated Fund are to be transferred to the Co-operative Companies Loans Fund;
- (b) all moneys paid by eligible co-operatives to which the Minister has made loans and being repayment of capital, payment of interest on the loans and payment of administration charges; and
- (c) any other moneys lawfully received for the purposes of the this Act.

Subclause 3 specifies the moneys that may be charged against the Co-operative Companies Loans Fund. These are

- (a) the capital of the loans made by the Minister to eligible co-operatives that may be transferred from the Co-operative Companies Loans Fund to the co-operative and costs of administering the loans. Administration costs will be paid to the Department of Agriculture;
- (b) repayment of principal moneys borrowed by the Minister from the Western Australian Treasury Corporation the interest on those loans and any other expenses associated with the borrowing of those loans.

Clause 5: This Clause provides authority for the State to make loans to eligible co-operatives.

Subclause 1 enables the Minister, acting on behalf of, and in the name of, the State to make a loan to an eligible co-operative for the purpose mentioned in section 120(1)(c) of the Income Tax Act.

Section 120 provides

- that if a co-operative company has as its primary objective, the acquisition of commodities from its shareholders for disposal or distribution; and
- a loan is from a government of the Commonwealth or a State; and

- the loan was used to acquire assets which are required for the purpose of carrying on the business of the company; then
- the repayment of the capital of the loan shall be an allowable deduction for tax purposes.

There is a proviso that deduction will be allowed only if shares representing 90% of the value of the company are held by persons who supply the company with commodities or animals which the company requires for its business.

Subclause 2 provides for the Minister to determine the terms and conditions of a loan in relation to repayment of the loan, interest and administration charges, the security to be provided to protect the State from risk of default and any other matters in relation to the loan.

Subclause 3 specifies that the loan and repayment of capital, payment of interest and administration charges must be secured by a guarantee of a kind approved by the Treasurer. It is intended that a guarantee be an unconditional bank guarantee from a financial organisation with a license to operate a bank in Australia that has a credit rating from a recognised rating agency approved by the Treasurer.

Clause 6: This clause authorises the Minister to borrow money for the purposes of this Act and determines the pathway for the borrowed money. It provides for the money to be credited to the Consolidated Fund and for the money to be appropriated to the Co-operative Companies Loans Fund.

Subclause 1 enables the Minister with the approval of the Treasurer to borrow sums of money from the Western Australian Treasury Corporation for the purposes of this Act.

Subclause 2 specifies that all moneys borrowed by the Minister are to be credited to the Consolidated Fund and transferred to the Co-operative Companies Loans Fund.

Subclause 3 provides for the Consolidated Fund to be appropriated to the extent necessary for transfer to the Co-operative Companies Loans Fund.