Date Introduced: 25 March 1985  
House: Senate  
Presented by: Senator Jack Evans

Purpose

To provide the legal framework for the transformation of corporations into employee-owned co-operatives.

Background

The Bill was first introduced in the Senate on 6 June 1984 but lapsed with the dissolution of Parliament in October 1984.

An employee-owned co-operative may be defined as a business enterprise that is fully controlled by the workforce (one vote to each person) and in which labour hires capital. This type of co-operative is also referred to as a worker or industrial co-operative whose major objective is to provide members with employment. The structure an employee-owned co-operative takes depends on the circumstances surrounding its formation.

The history of the worker co-operative movement can be traced to early nineteenth century Europe, particularly England and France. Three types of worker co-operatives have evolved and are still evident today:

1. "Set-ups", where the workers begin production in a co-operative way, assembling their assets and skills to produce a good for an identified market. This type first evolved in response to the harsh and disruptive effects, including unemployment of the Industrial Revolution. There was considerable growth in Britain in the number of industrial co-operatives in the mid-nineteenth century, then declined towards the end of the century as a result of changing economic conditions, the advent of joint-stock companies and opposition from some leaders of the labour movement.
2. "Conversions", ("parental") where an existing firm is converted into a worker co-operative with the current owners or managers becoming a part of the co-operative or simply handing over the business. Some conversions occurred in the 1950s in Britain as a direct consequence of the Scott-Bader initiative whereby the entire shareholding of the company was given to the employees. This resulted in the Industrial Common Ownership Movement.

3. "Rescues", ("job-saving", "defensive") where a worker co-operative is formed from a failing company to protect employment and prevent redundancies. This type of co-operative emerged in the 1970s in Britain with the "Wedgwood Benn" co-operatives. The revival of interest in worker co-operatives was due partly to the deteriorating economic conditions in Britain and to the desire of people to develop new forms of industrial democracy. Legislation aimed to facilitate the establishment of worker co-operatives (Industrial Common Ownership Act) was passed in 1976.

Britain has had a history of both successful and failed worker co-operatives. Two main reasons for failure have been the lack of access to capital and managerial skills. Worker co-operatives have been more successful in other parts of Europe, particularly in France and Mondragon in Spain, and are well established in Italy, Germany and Poland.

Worker co-operatives have only become important in Australia in the late 1970s as a response to unemployment. In both NSW and Victoria, the State Governments have set up support systems for worker co-operatives, as a means of generating employment particularly for young people with few skills. Not all worker co-operatives in Australia are the result of community response to unemployment. Rescues (e.g. Modern Maid) and conversions (e.g. Dynavac) have also taken place.

Outline

This Bill provides the legislative framework to enable the transfer of ownership and control of a "potentially profitable" company to its employees. A Board
will be established to encourage the transformation and to maintain a register of employee-owned co-operative corporations. A corporation may apply to the Board for registration as an employee-owned co-operative or submit a proposal for its re-organisation to qualify as such. It will not be eligible if it employs less than 10 persons. As an incentive for corporations to be registered as employee-owned co-operatives, the income tax of registered co-operatives will be reduced by 8 per cent in each year of income.

Main Provisions

The Bill will come into operation on a date to be proclaimed (clause 2).

Clause 3 states that the objects of the Bill are to assist and encourage the transformation of corporations into corporations operating as employee-owned co-operatives.

Part II of the Bill deals with the Employee-owned Corporations Board which will be established by clause 5. The Board's functions are listed in clause 6. The Board will be required to:

(a) encourage and assist employees of corporations to acquire the ownership of corporations and to control and manage them as co-operative enterprises;

(b) provide financial and other assistance to these employees to attain that objective; and

(c) disseminate information on the Bill's objectives.

The Board will consist of three Ministerial nominees (unspecified in the Bill), three ACTU nominees and one member nominated by the President of the Australian Conciliation and Arbitration Commission. The members will be part-time and appointed by the Governor-General (clause 7).

Part III deals with employee-owned co-operatives. Clause 8 will require the Board to maintain a Register of Employee-owned Co-operative Corporations. A corporation, wishing to qualify for registration, must provide in its memorandum and articles of association that:
(a) employees must form the majority of the corporation's members;

(b) all employees are eligible to become members;

(c) no property or income will be transferred to the members, except for remuneration and dividends;

(d) on dissolution or winding-up, the remaining assets will not be distributed among members but will be transferred to another registered corporation or to the Consolidated Revenue Fund;

(e) a majority of the corporation's employees have the right to exercise, or to control the exercise of a majority of the votes at a general meeting of the corporation.

Furthermore, a corporation will not qualify for registration if it employs less than ten persons. Under clause 10, a corporation may apply to the Board for registration or provisional registration as an employee-owned co-operative. The corporation will be registered, or provisionally registered, as a qualified employee-owned co-operative with the Board under clause 11. Where the corporation is provisionally registered, the Board will set out particulars of the period allowed in which the corporation may be qualified for registration.

The Board will have the power to obtain information and documents from the corporation where it considers it necessary to do so (clause 12). Clause 13 empowers the Board to revoke, under certain circumstances, the registration or provisional registration of the corporation as an employee-owned co-operative provided that it has given reasonable notice of its intention.

Under clause 14, a corporation, not qualified for registration may submit a proposal for its re-organisation in order to qualify as an employee-owned co-operative. The proposal will need to be approved by a majority of the corporation's employees and will contain particulars of the existing structure and business carried on by the corporation, as well as the arrangements that will enable the corporation to carry on business during the transition period.
By clause 15, the Board will have the power to approve or refuse the proposal taking into account:

(a) the prospects of the corporation carrying on its business profitably, and operating successfully as an employee-owned co-operative;

(b) the proportion of employees in favour of the proposal;

(c) the provision to be made for protecting the rights and employment prospects of employees opposed to the proposal; and

(d) the need for, and availability of, financial assistance and the desirability of the corporation operating under official management for a period.

Under clause 16, a corporation that has been provisionally registered as an employee-owned co-operative may apply to the Board for registration as an employee-owned co-operative after it has fulfilled the proposal's requirements.

The Board may approve the guarantee of financial assistance to a provisionally registered corporation to enable the corporation to develop as a co-operative on a sound financial basis. Financial assistance may only be by way of a guarantee, by the Commonwealth, of a loan of up to $250,000 (clause 17).

The Board may instruct that a provisionally registered employee-owned co-operative be placed under official management for a period (clause 18).

Clause 19 provides that the income tax of registered co-operatives, or those provisionally registered for the year, will be reduced by 8 per cent in each year of income. For less than one year, the reduction will be proportionate.

Part IV deals with various administrative procedures. Under clause 20, a Board member holds office for three years and is eligible for re-appointment.

The Board is required, by clause 33, as soon as practicable after each 30 June, to prepare and furnish, to
the Minister, a report of its operations during that year. The report must be tabled in Parliament by the Minister within 15 sitting days of receipt of that report.

Remarks

1. "The role of the State in the operation of worker co-operatives is crucial. In no country have worker co-operatives been successful without, at least, legislative framework which facilitated their formation and operation."[1] Workers co-operatives have certain advantages with regard to taxation, and other forms of government assistance are common.

2. One of the most successful worker co-operatives operates at Mondragon in the Basque region of Spain. The Mondragon evidence suggests that if various conditions are met, and the right structures are chosen, then co-operative production is bound to work well. The necessary requirements are:

   - adequate access to capital;
   - management expertise;
   - full and genuine democratic control;
   - a fair measure of loyalty and commitment from its worker members;
   - an element of capital ownership and a meaningful capital entry contribution;
   - worker-members must not be permitted to withdraw their capital except on retirement or when they otherwise leave the co-operatives.

It does not necessarily follow that these conditions together will always guarantee success. Personal leadership and market factors are also important.

The "formation of new co-operatives - or the transformation of conventional enterprises into co-operatives - should not be encouraged unless these necessary conditions are satisfied; and, secondly, if they
are satisfied, then the chances of success will be at least as great as they are for a conventional business."[2]

For further information, if required, contact:

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References

