BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

Co-operatives and co-operative companies: one sector

The Australian co-operative sector is comprised of registered co-operatives and co-operative companiesa. They are considered to be, and count themselves as co-operatives because of their structure, as well as their legal form. What makes them co-operatives is their commitment and strong adherence to the international co-operative principles, particularly member ownership, mutuality and democratic governance.

That the sector is comprised of both legal models is first a product of the legislative history from colonial Australia through federation and to modern corporate legislation, and second, because there is no national co-operatives law.

Co-operatives were formed in Australia from the 1850s based on principles established by the Rochdale pioneers in Britain. They were formed as companies or joint ventures because there was no separate legislation for co-operatives.

The power to legislate for corporations was always a matter for States[1i]

Each State had a Companies Act and South Australia and Queensland imported or adapted the British *Industrial and Provident Societies Act.*

Legislative policy changes through the war years and as part of regional and agricultural development, particularly in the dairy industry, saw regulation and incentives to form marketing pools and co-operative exporting arrangements. Co-operative business models were explored to varying degrees in each State.

In New South Wales the only corporate legal model for trading was a company until 1923 when the *Co-operation Act* was passed. This legislation was highly restrictive and a co-operative had to fit in to one of eight specific categories[2].

The first co-operatives legislation in Victoria was passed in 1953[3].

In South Australia you could form a co-operative type society under the *Industrial and Provident Societies Act*

In Western Australia the co-operatives were formed under a special chapter of the Companies Act for that State until 2009 when the first Co-operatives Act was passed as part of the national scheme for uniform legislation (CNL).

In Queensland a co-operative could be formed under Industrial and Provident Society legislation, or a 'compulsory co-operative' was dictated under special legislation governing the sugar milling industry.

Combined with the absence of specific legislation for co-operatives in some jurisdiction, the universal availability of companies' legislation and the policy in some States (especially New South Wales) to prohibit co-operative banking and insurance, the sector grew with a mix of corporate legal forms.

As co-operative legislation developed in each State, and later in each Territory, they followed a similar pattern:

- Shares have a fixed par value and cannot be traded on a stock exchange
- Shares can only be issued to members, and later, to prevent control by members who were considered 'dry' members, the shares could only be held by active members.

[1] The Constitution provides some power to legislate for corporations, although no specific power to make laws about co-operatives. The States referred their power to legislate for companies to the Commonwealth under a deal in 2001 – the federal law is the *Corporations Act 2001*.
[2] The eight categories were rural societies, trading societies, rural credit societies, urban credit societies, building societies, investment societies and community advancement societies.
[3] Murray Goulburn was formed in 1951.

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- Active membership requirements meant that the co-operative has to be in a position to repay share capital as members ceased to transact with the co-operative.
- Distribution of profit is encouraged as rebates based on patronage while dividends on shareholdings are restricted.
- Democratic control was cemented in the legislation through the 1 member: 1 vote principle
- International co-operative principles became part of the legislation and key interpretive values.

Co-operative companies

Those co-operatives who began life as companies were co-operative in nature because their constitutions embedded principles of member ownership and democratic control, distributions of surplus based on patronage rather than shareholding and restrictions on external investment. They continue to operate according to these principles.

Why don't they transfer incorporation to become co-operatives?

- As yet there is no national law for co-operatives and many of the larger co-operative companies operate nationally and some, internationally.
- They operate in the same way as a co-operative and so there is no incentive to change corporate type
- As companies, these co-operatives have better access to finance because:
    - Financiers understand companies more than they understand co-operatives
    - Fundraising nationally through the issue of securities is governed by the Corporations Act, whereas fundraising nationally by a co-operative is governed by two regulatory systems
    - The impact of international accounting standards is that co-operative shares must be classed as a liability rather than capital and this has a negative effect on their balance sheets

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Disclaimer

This article has been written as a short overview of the legal structures taken by co-operatives and some of the reasons for these different structures. It is not a comprehensive analysis and therefore the BCCM and the author, Robyn Donnelly, wish it to be known that there are other details to contribute to the history and analysis. The BCCM, and author, stress this piece contains general information about legal matters. The information is not advice, and should not be treated as such. All information is correct as of 27 May 2015.