

10 April 2015

Ms Gillian Schach
Senior Legal Officer
Legislative Services
Attorney General's Department

Dear Ms Schach,

RE: Invitation to provide comment on draft local regulations to support the Co-operatives National Law (South Australia) Act 2013

Thank you for the opportunity to provide comment on the draft local regulations. The Business Council of Co-operatives and Mutuals (BCCM) welcomes the news that the Co-operatives National Law (CNL) is soon to be commenced in South Australia. The CNL will help place co-operatives on a more competitive footing compared with companies, and this benefit is more certain to arise once there is uniformity of legislation across each jurisdiction.

Parity of treatment such that legislative inconsistency between jurisdictions and duplicative Federal and State regulatory requirements is removed, is an objective of the BCCM as stated in the national sector plan *"Blueprint for an Enterprising Nation"* published by the Council in 2014¹: *"States and Territories should develop and publish consistent policy statements and regulatory guides."*

It is noted that in the Australian Uniform Co-operatives Laws Agreement underpinning the CNL scheme of legislation, all jurisdictions agreed under Clause 25 to "use its best endeavours to ensure that as far as is reasonably possible the administration of the Co-operative Legislation is uniform."

Whilst uniformity is evident under principle legislation and the National Regulations, it is important that local regulations and administrative policies support the desired uniform regulatory system. The BCCM recognises that each jurisdiction is home to varying portions of the sector and this will, in turn, result in different capacities for each jurisdiction to provide supervisory and administrative services under the legislation. These practicalities notwithstanding, the BCCM is of the view that where uniformity of administration at jurisdictional levels is possible, it should be reflected in the local regulations, including any prescribed fees. It is this uniformity that will encourage the growth of the co-operative sector across Australia.

In examining the draft *Co-operatives (South Australia) Regulation 2015* there are two matters that in the opinion of the BCCM warrant comment.

1. There are no criteria specified for the exercise of the Registrar's power to allow a corporation other than a co-operative to use the word "co-operative" or "co-op" in its name.

Under the equivalent clause 5(2) of the Co-operatives (NSW) Local Regulation 2014 the Registrar is only able to grant the relevant exemption under s 220(7) of

¹ *Blueprint for an Enterprising Nation* Section 4; Modernising the rules and regulations governing co-operatives and mutuals, BCCM, page 24.

the CNL if "...satisfied that the entity concerned is trading or carrying on business for the purpose of promoting the economic interests of its members in accordance with co-operative principles or for any charitable purpose".

The BCCM is concerned that the Registrar under the draft South Australian Regulation will have a broader power to permit corporations to use the co-operative brand in circumstances where that corporation did not abide by the co-operative principles developed by the International Co-operative Alliance.

It is suggested that the draft Regulation be amended to include this restriction on the Registrar's exemption power, or alternatively that the Registrar publish a policy guidance document that clearly indicates that the exemption power will not be exercised in a manner that differed from the manner in which the New South Wales Registrar may exercise such exemption power.

2. The prescribed fees for certain administrative functions under the draft South Australian Regulation are significantly higher than the prescribed fees for the same functions under both the New South Wales and Victorian regulations.

Attached is a short comparative table of the fees across the three jurisdictions (**Attachment A**). This table indicates a significant difference in the prescribed fees for the registration of a non-distributing co-operative under the South Australian Regulation – a difference of 74% and a significant difference in the fee for approval of various disclosure statements or exemptions - \$353 compared with \$250.

A further anomaly exists in the fees for the lodgment of annual statements. Large co-operatives under the CNL are required to lodge full audited financial statements, whereas small co-operatives are only required to lodge an annual statement. The fees under the NSW and Victorian regulations reflect the differing administrative and supervisory functions of the Registrar in respect of large and small co-operatives. However, the fee under the draft South Australian Regulation is the same.

It is suggested that the fee structure be reviewed so that there is closer consistency with the amounts of fees prescribed under the New South Wales and Victorian regulations.

Please do not hesitate to contact the BCCM if any further information or comment is sought in relation to the draft Regulation. We look forward to the commencement of the legislation for the co-operative sector in your jurisdiction, noting this important development in removing legislative barriers and improving regulatory settings for co-operatives.

We note that such developments are consistent with current and historic reviews of the co-operatives sector including those set out in **Attachment B**.

Kind Regards

A handwritten signature in blue ink, appearing to read "Melina Morrison".

Melina Morrison
Chief Executive Officer
Business Council of Co-operatives and Mutuals



Attachment A: Comparative Table of Fees

Comparative table of fees as at 1 April 2015

Fee type	NSW	VIC	SA (proposed)
Application for registration – including disclosure statement CNL s26(1)(b)(ii)	350	331.10 + 29.10 (360.20)	353
Application for registration – no disclosure statement CNL s26(1)(b)(ii)	100	72.80 + 29.10 (101.90)	174
Application for prior approval of rules CNL s60	70	72.80	88
Application to register rule amendment (where pre approval not required) CNL s63	30	29.10	14
Approval of disclosure statement for special postal ballot Debentures or CCUs to members, mergers ,etc CNL s248, s338, s398	250	258.20	353
Lodgement of annual return by large co-operative CNL s289	250	258.20	88
Lodgement of annual return by small co-operative CNL s293	70	72.80	88
Approval for a corporation to use the word 'co-operative in name CNL s220(7)	250	331.10	353

Attachment B:

1. **Beddall, D. P. (1990). Small Business in Australia: Challenges, problems and opportunities, Canberra, Report by the House of Representatives Standing Committee on Industry, Science and Technology, Australian Government Publishing Service, made a specific recommendation for how CMEs can assist SMEs:**

F. Co-operatives

Co-operatives offer a realistic and valuable vehicle by which individual small businesses can overcome problems associated with their lack of management, marketing, bargaining power, and other resources. Each State and Territory has its own legislation covering co-operatives, and this differing legislation was identified in evidence to the Committee as the biggest problem facing this sector.

Recommendation 62

163. The Committee recommends that: the Standing Committee of Attorneys-General review State and Territory legislation applying to co-operatives with a view to providing uniform legislation for co-operatives throughout Australia. (para 8.127)

2. **The McClure Welfare Review (Feb 2015), A New System for Better Employment and Social Outcomes – Final Report, Department of Social Services, made a specific recommendation that the Government “work with the Business Council of Co-operatives and Mutuals, to ensure an enabling regulatory, economic and social environment to support mutuals and co-operatives” (page 183).**

3. **On 2 March 2015, the Australian Senate referred the role, importance, and overall performance of cooperative, mutual and member-owned firms in the Australian economy for inquiry and report by 30 November 2015.**

In the Terms of Reference, the Senate referred to the Economics Reference Committee, the operations of cooperatives and mutuals in the Australian economy, with particular reference to: economic contribution, **current barriers to innovation, growth, and free competition, the impact of current regulations**, and comparisons between mutual ownership and private sale of publicly held assets and services.