



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS



2018-19 Pre-Budget Submission

15 December 2017

1 Introduction

The co-operative, mutual and member-owned business sector is a vibrant and important part of the Australian economy; the more than 2,000 co-operative or mutual enterprises (CMEs) contribute over 8% of Australia's GDP¹².

Co-operatives and mutuals provide competition and choice in a diverse economy. They allow small and medium businesses to aggregate their market power to compete in markets which, individually, they would be unable to. The mutual model provides competition in many sectors including banking, insurance and superannuation. CMEs are owned by Australians for Australians. They provide long term local employment and are taxed locally.

The common factor of all co-operatives and mutuals is that they are owned by their customers, their producers, their employees or the local community – these become the member-owners. The business is run for the benefit of those member-owners. For example, a mutually owned financial institution provides banking services to its customers, all of whom are eligible for a vote on board elections. A motorist mutual provides car mechanic services to its members, along with other, ancillary services. A co-operative of grape growers can utilise the market size of their accumulated crop to enter supplier contracts on more favourable terms than the growers could arrange individually.

This ownership structure is a different way of organising a business: rather than requiring capital from external shareholders (who typically do not transact with that business) which is then part re-paid through a dividend, as is the case for a listed company; or retaining ownership within a small number of individuals, as is the case for most private companies; a co-operative or mutual is run for the benefit of its members. The business does not have a requirement to maximise dividends for external shareholders or profit for owners through the business's transactions with its customers. Instead, it seeks to operate in a manner which provides its services to its customers at the lowest reasonable cost.

As noted, there are more than 2,000 businesses which operate as a co-operative or mutual in some form, and the members of these businesses are either individuals or smaller businesses.

In the case of individuals, the CME provides services for those individuals – for example, the financial institution or motorist mutual mentioned above, a health insurance provider or a superannuation fund. In Australia, more than 8 in 10 adults are a member of at least one co-operative or mutual, with a combined total of 29 million memberships across the sector (noting that a person can be a member of more than one CME).

For the small and medium business sector, co-operatives provide a powerful enabling function. The CME typically provides a service without which the operation of the business would be difficult. For example, the contracting and marketing power of a co-operative of grape growers. Each grower will run their own business, which in turn is a part owner of the over-arching co-operative. It is the co-operative which manages and signs supply contracts, or markets the

¹ <http://bccm.coop/publications/2017-national-mutual-economy-report-incorporating-top-100/#.WjM3ikqWbD4>

² http://bccm.coop/wp/wp-content/uploads/2017/11/5095-Newcastle-Brch_FA.pdf

produce into various markets.

Although the number of business co-operatives may be small (numbering in the hundreds), the number of small and medium businesses which are enabled through their membership is above 50,000. Often Mum and Dad operations, these businesses extend throughout the Australian economy: co-operatives exist extensively in the agricultural and fishing sectors (for example: co-operatives account for around 40% of Australia's grain exports, more than 10% of the total wine grape crush³ and 85% of Australian almond growers⁴); the car mechanic and crash repair industry; hair dressers; newsagents; bottle shops; butchers; and many more. Almost every industry has a co-operative operating for the benefit of its members.

Other areas where CMEs play an important role includes the provision of health insurance; indemnity and general insurance; banking products (there are more than 4 million customers of member-owned banks); and social services (including in the provision of indigenous care, aged care, disability services and social housing).

CMEs are generally incorporated and regulated under one of two legislative regimes:

- The Commonwealth Corporations Act

A co-operative or mutual which is formed as a company under the Corporations Act must have an appropriate company constitution in order to be considered a CME

- State or Territory-based Legislation

Typically, this is a version of the harmonised Co-operatives National Law (CNL), which has been introduced in most States and Territories since 2015. Western Australia has a piece of legislation which is consistent with CNL. Queensland has yet to implement the CNL or amend its current legislation.

Key features of a co-operative registered under State or Territory legislation:

- Form of corporation
- Limited liability for members
- Directors duties are based on those in the *Commonwealth Corporations Act*
- Financial reporting requirements similar to those in the *Commonwealth Corporations Act*
- Able to use the word 'co-operative' in its name
- Annual General Meeting required

In this Pre-Budget Submission, the Business Council of Co-operatives and Mutuals (BCCM) has provided a number of initiatives which the Government could consider to assist the CME sector. These suggestions are drawn from two sources: the Government's response to the Senate Economic References Committee's 2016 Inquiry into the co-operative and mutual sector; and other matters of which the BCCM is aware. The initiatives are typically low in fiscal cost to the Government, but will create more economic output and opportunity for a simple but effective business model – the co-operative and mutual.

³ <http://www.ccwcoop.com.au/about-us>

⁴ <https://www.almondco.com.au/>

2 About the Business Council of Co-operatives and Mutuals

The BCCM is the peak body for Australian co-operatives, mutuals and member-owned businesses. The BCCM represents a diverse range of businesses operating in sectors including agriculture, finance and banking, insurance, motoring services, health services, aged care, disability employment, education, indigenous services, social housing and retail.

The BCCM advocates for recognition of the sector and for measures that create a level playing field between co-operatives and other businesses, including implementation of the recommendations of the Senate Economics References Committee report into Cooperative, mutual and member-owned firms.

3 Summary of recommendations

1. The ABS should perform an audit of those businesses which are tagged as co-operatives on the ABR to ensure the veracity of that data. This audit should also confirm, as far as possible, that CMEs listed on the ABR are tagged as a co-operative.
2. The ABS should conduct a survey into the scope of Australia's co-operative and mutual enterprises.
3. The BCCM is recommending the Government audit its business advice websites to ensure that information on the co-operative and mutual business models are included and are informative.
4. ASIC and Treasury should appoint specific senior officials to oversee the workflow created through the implementation of the Independent Facilitator Review Report on Reforms for Cooperatives, Mutuals and Member-owned Firms.
5. Special project teams should be created within ASIC and Treasury which are tasked with the implementations of the Independent Facilitator Review Report on Reforms for Cooperatives, Mutuals and Member-owned Firms.
6. Indigenous co-operatives should not be required to either seek an exemption or change their corporate structure in order to receive funding over \$500,000 under the Indigenous Advancement Strategy.
7. The Commonwealth Government should undertake an audit of all federally regulated grants to ensure that co-operatives registered under State legislation are not prohibited from applying for grants which their Federally registered company competitors are able to.
8. The Government should consult with the CME sector, through the BCCM, when it is considering innovative, market based approaches to raising capital for SMEs.
9. The BCCM recommends the Government investigate innovative models of housing ownership, including the co-operative model.
10. The Government should work on a program of supports to develop the tools required for self-investment by the private sector in these innovative models of housing.
11. The Government should develop a register of the surplus land being considered for housing developments, and retain part of this land for low-cost and affordable housing providers, especially those in the co-operative sector.

4 Next steps for a level playing for CMEs - implementing the recommendations of the report on cooperative, mutual and member-owned firms

In March 2016, the Senate Economics References Committee handed down its findings following an inquiry into co-operatives and mutuals. The 17 recommendations received bi-partisan support. Taken together, these recommendations address the most important areas of reform for enabling CMEs to compete on the same basis as other enterprise structures.

The 17 recommendations cover important reforms in three areas:

- **Recognition** of the legal form and understanding its difference to other legal structures;
- **Regulatory change** needed to remove barriers that make it harder for CMEs to be regarded as a preferred organisation form and to raise capital to grow the businesses; and
- **Education** and awareness about CMEs and how they can be used to respond to current and emerging trends including in the context of public services.

The BCCM welcomes the progress that has been made in relation to a number of these recommendations. In particular, we commend the Government for accepting the recommendations of the Hammond Review, which relate to defining a mutual company and introducing a mutual capital instrument into the Corporations Act. We agree with the Government that these reforms will enhance competition, particularly in banking.

In recognition of these positive reforms, the BCCM is taking this opportunity to set out what we believe the next steps are for a level playing field for the CME sector by providing further comment on select SERC report recommendations and the Government's response thereof.

Recommendation 1: The committee recommends that the Commonwealth Government ensures that a national collection of statistics and data is undertaken to provide an accurate picture of the scale and extent of the co-operative and mutual sector.

As was noted in the introduction, co-operatives and mutuals can be registered either under State or Territory Legislation, or under the Federal Corporations Act. The fact that CMEs sit across two regulatory frameworks means the capture of statistics on this business model is difficult.

A CME which is registered under the Corporations Act is formed as a company, but is bound by its company constitution to act for the benefit of its members. The company registers maintained by ASIC do not capture which companies operate as a CME.

Despite the implementation of Co-operatives National Law, each State and Territory retain their own registry of co-operatives for their State. The format of this registry, the information contained within it, and the accessibility of the registry by external organisations varies from State to State.

As part of its objective to map the full scope of CMEs across the Australian economy, over the last 12 months the BCCM has received the following information from various government

departments:

- The ABS has advised there are “...roughly 3000 COP- cooperative simply structured businesses...” listed on the Australian Business Register.

The ABS also notes that “...to get a true count of businesses registered on the ABR we would need to exclude cancelled ABNs etc...”

In response, the BCCM notes that its own examination of the ABR has revealed that some businesses which are CMEs are not noted on the ABR with the “COP” marker, while some which are listed with the marker are not CMEs.

- In response to Senate Estimates questions, the ATO has noted “there are less (sic) than 9,800 co-operatives who have active registrations with the ATO, including not for profit entities...less than 4,050 have an Australian Business Number.”

It is the case that all CMEs registered under the Corporations Act will have an Australian Company Number and an Australian Business Number. Those registered under State or Territory legislation may have an Australian Business Number, but not an Australian Company Number – this at least partially explains the ATO’s comment regarding the number which are registered with the ATO and the lower number which have an ABN.

The BCCM produces an annual National Mutual Economy report covering the top 100 CMEs in Australia. One of the key challenges in producing this report is identifying all the CMEs registered as companies in Australia, and hence, which CMEs make up the top 100. Currently, we rely on self-identification by CME companies and manual verification of company constitutions, which are resource-intensive and haphazard methods.

It is beyond the scope of the BCCM to conduct a full survey of CMEs in Australia – the organisation has neither the resources nor the authority to require State Registrars, the ATO, the ABS and ASIC to report accurate figures for CMEs registered within their respective registers and systems.

However, it remains the case that the co-operative and mutual business model accounts for more than 8% of Australia’s GDP. As was noted in the Introduction, the business model is vital for many thousands of small and medium businesses to continue to operate.

Recommendations 1 & 2:

The ABS should perform an audit of those businesses which are tagged as co-operatives on the ABR to ensure the veracity of that data. This audit should also confirm, as far as possible, that CMEs listed on the ABR are tagged as a Co-operative.

The ABS should conduct a survey into the scope of Australia’s co-operative and mutual enterprises. This study should be required to collect and collate data disaggregated data on the sector in parity with its collection of data for all other business forms.

The BCCM understands the ABS receives funding for special research projects of this type and believes there is value in a project focusing on the CME sector.

Recommendation 3: The committee recommends the Commonwealth Government work with states and territories to develop a program of supports to encourage the establishment of new co-operatives and mutual enterprises.

Recommendation 6: The committee recommends the Commonwealth Government work with states and territories to ensure the continual improvement to advice, guidance and information provided at all stages in the establishment, governance and regulation of co-operatives.

The Government did not agree with Recommendation 3, noting that it is up to the individual or entity in question to decide on the appropriate business structure. We note that Recommendation 6 is also relevant to our comments below.

The BCCM agrees with the Government that choice of business structure is a decision for the owners of the entity in question.

The Senate Economic References Committee highlighted the lack of awareness of and education about co-operatives and mutuals. This is evident among legal and business practitioners and some Government Departmental officials where their knowledge of the business model is low. Because of this, other organisation forms are given preference.

The BCCM notes that the Commonwealth Government already funds a program that is focused on encouraging co-operation in agriculture. The Farming Together program, funded through the Department of Agriculture and Water Resources, allows individuals and pre-existing entities involved in primary production to consider how they can co-operate or collaborate to benefit their individual operations. While the Farming Together program does promote the co-operative structure, it also allows participants to consider all collaborative structures (all forms of incorporation, partnership, trust etc).

The Department website for the Farming Together program notes:

“Co-operatives and other collaborative business arrangements help farmers to own and control more of the food supply chain themselves, delivering greater returns at the farm gate”⁵

The BCCM commends programs such as Farming Together, where the co-operative structure is promoted, as a means of increasing the competitiveness of SMEs and export-focussed businesses. The BCCM views such programs as ensuring Australians do get full optionality in terms of structures when starting and operating their businesses.

The co-operative or mutual structure is often absent from Commonwealth Government websites, especially those designed for small businesses. For example, the business.gov.au website makes no mention of the model:

- The page located at <https://www.business.gov.au/Info/Plan-and-Start/Start-your-business/Business-structure> provides information on companies, trusts, partnerships and sole traders, yet has no information on co-operatives

⁵ <http://www.agriculture.gov.au/ag-farm-food/farm-collaboration>

- The *Help Me Decide* pages located at <https://register.business.gov.au/helpmedecide/businessstructure> also provides information on companies, trusts, partnerships, sole traders and superannuation funds, but is again silent on the co-operative or mutual structure

As such, the Government business information websites currently do not provide Australians with the full set of business structure choices that may be appropriate for their business.

We note that State and Territory based business websites also often do not include information about CMEs. The BCCM has been working with the South Australian government to implement updates to that State's gateway website - sa.gov.au – and we understand that these changes will be introduced shortly.

Recommendation 3:

The BCCM is recommending the Government audit its business advice websites to ensure that information on the co-operative and mutual business models are included and are informative. The BCCM is able to provide the Government with suggested information, and can provide an audit of websites which could be updated. Given that Government websites are updated on an ongoing and regular basis, this information could be added to appropriate pages without additional budget expenditure.

This topic is discussed further in Section 6 – Agriculture and Regional Development, below.

Recommendation 4: The committee recommends that a mutual enterprise is explicitly defined in the Corporations Act 2001, and its associated regulations.

Recommendation 5: The committee recommends that the role of directors in mutual enterprises is defined in the Corporations Regulations to align with the proposed definition of a mutual enterprise in the Corporations Act.

Recommendation 16: The committee recommends that APRA set a target date for the outcome of discussions with the co-operative and mutuals sector on issues of capital raising and bring those discussions to a timely conclusion.

Recommendation 17: The committee recommends that the Commonwealth Government examine proposals to amend the Corporations Act 2001 to provide co-operative and mutual enterprises with a mechanism to enable them access to a broader range of capital raising and investment opportunities.

The BCCM welcomes the Government's recent announcement regarding the acceptance of the recommendations of the Independent Facilitator Review Report on Reforms for Cooperatives, Mutuals and Member-owned Firms, written by Greg Hammond OAM.

The Recommendations in the Review broadly mirror Recommendations 4, 5, 16 and 17 of the Senate Economics References Committee inquiry, and the BCCM is appreciative that the Government has accepted Recommendations 4 and 17 of the Senate Committee inquiry.

The regulation of co-operatives and mutuals can be a highly specialised area of secondary legislation. Those CMEs which currently operate under the Corporations Act do so under legislation and regulations which also cover every other company in Australia.

By accepting the recommendations of the Hammond Review, the Government has accepted that the CME model differs from other company models in some form. This is explicit in the acceptance of Recommendation 4 of the Senate Committee inquiry.

Amendment of the Corporations Act is a significant activity. This will require expertise and oversight at the highest levels of the bureaucracy.

Recommendations 4 & 5:

The BCCM recommends that senior officials in ASIC and Treasury be appointed to oversee the project.

The BCCM also recommends that a special project team be created within ASIC and Treasury which are tasked with the implementations of Recommendations 4 and 17.

There will be minimal budgetary impact, as these roles can be taken from existing Treasury and ASIC staffing levels.

Recommendation 10: The committee recommends that the Commonwealth Government amend the Indigenous Advancement Strategy to allow registered co-operatives the same access to allow levels of grant funding as other entities.

The regulatory framework for co-operatives enacted through the Co-operatives National Law is robust, modern and flexible. The BCCM is confident in the provisions of the Co-operatives National Law. Co-operatives provide a limited liability structure. The duties of the Directors of the co-operative are the same as those of a company regulated under the Corporations Act.

The co-operative structure, however, provides a sense of ownership which is understood and embraced by many indigenous communities. This is borne out by research conducted by Charles Sturt University and University of Technology Sydney which shows Aboriginal Co-operatives and community owned businesses out-perform private businesses on a range of measures including:

- Services offered to their wider community
- Being self-starting
- Total indigenous staffing levels within the organisation
- Stronger economic development

The BCCM notes that the Government has commented that organisations seeking more than \$500,000 in funding can seek an exemption from the requirement that they incorporate under Commonwealth legislation. Changing business structure can be an onerous task for many entities, requiring specialised legal advice and assistance, making it a costly undertaking. As such, it would be appropriate for these businesses to request an exemption. However, it is our

understanding that such an exemption can only be provided once funding has been approved, rather than earlier in the process.

Recommendation 6:

Indigenous co-operatives should not be required to either seek an exemption or change their corporate structure in order to receive funding over \$500,000 under the Indigenous Advancement Strategy. This recommendation could have a positive impact on the Budget as funding for co-operatives to change corporate structure would no longer be required.

Recommendation 11: The committee recommends that the Commonwealth Government review, and where necessary amend the eligibility criteria for grants and funds across all of government grants and program guidelines to ensure that co-operatives and mutual enterprises are not excluded on the basis of their business structure.

The BCCM recognises, as discussed in the Government's response, that grants are designed with intended outcomes in mind with eligibility decided on a case-by-case basis. However, the BCCM has brought to the attention of the Government a number of programs where CMEs are unable to progress past certain stages of the application process – the most usual reason for which is that State registered co-operatives do not have an ACN.

Companies registered under the Corporations Act are provided with an ACN. The requirement for an ACN is typically seen by Government Departments and agencies as ensuring that the applying organisation has a minimum level of corporate governance and the BCCM recognises that this is a reasonable expectation. However, by requiring an applicant to be in possession of an ACN, Departments and agencies are ignoring the regulatory framework by which State registered CMEs are bound.

Unless there is some specific reason why Federally registered businesses only are eligible for grants, they should be open to all businesses, no matter the jurisdiction of incorporation.

Recommendation 7:

The BCCM recommends that the Commonwealth Government undertake an audit of all grants to ensure that co-operatives registered under State legislation are not prohibited from applying for grants which their Federally registered company competitors are able to.

In particular, the BCCM would like to see reviews of the eligibility criteria for the following grants or incentives:

- R&D tax incentive – recognise co-operatives as a type of incorporated entity and, as such, eligible for the tax incentive on an equal footing with companies
- New Enterprise Incentive Scheme – modify the requirement that participants maintain a controlling interest in the business entity while participating in the Scheme to allow for co-operative (and other forms of group) entrepreneurship among unemployed people
- Indigenous Advancement Strategy – place co-operatives on an equal footing with companies and Aboriginal corporations in the funding criteria, as noted in Recommendation 10
- The Tourism Partnership – should be available to registered co-operatives, rather than specifically companies. This is especially true given that one of the aims of the Tourism

Partnership is to help develop collaborations between business – i.e. to help tourist businesses form co-operatives

- This point is also true of the other grants available under AusIndustry’s Entrepreneurs’ Program; the Business Evaluation, Growth Services and Supply Chain Facilitation grants.

As a comparison, AusTrade’s *Landing Pad* program specifically states that this grant is available for

“Any Australian individual, partnership, company, association, co-operative, statutory corporation or trust that has carried on export promotion activities during the year for which they seek an export grant can apply.”⁶

We note that there will be no budget impact, as grants are typically limited in their funding.

Recommendation 15: The committee recommends that Commonwealth and State Governments support the formalisation of some of innovative market-based approaches to raising capital for small and medium sized co-operative and mutual enterprises, in the form of advice and information, as they become available.

The BCCM has highlighted in submissions about social impact investing and crowdfunding that CMEs represent a tried and tested form of crowdfunding and social impact investing. CMEs often start with a group of people ‘passing the hat around’ to meet a common need or cover a common risk. We have made submissions on particular policy areas, describing how co-operatives facilitate private investment or crowdfunding in that policy area:

- Regional development: Submission to the inquiry into the role of government in the development of cities⁷
- Energy and infrastructure: Submission to the inquiry into modernising Australia’s electricity grid⁸
- Agriculture and regional development: Submission to the inquiry into decentralisation and regional development⁹
- Housing: Submission to the NSW inquiry into retirement villages¹⁰
- Regional development: Submission to the NSW inquiry into regional start-ups¹¹

Recommendation 8:

The Government should consult with the CME sector, through the BCCM, when it is considering innovative, market based approaches to raising capital for SMEs.

⁶ <https://www.austrade.gov.au/Australian/Export/Export-Grants/About/who-can-apply>

⁷ http://www.aph.gov.au/Parliamentary_Business/Committees/House/ITC/DevelopmentofCities/Submissions

⁸ <http://bccm.coop/wp/wp-content/uploads/2014/05/22-Business-Council-of-Co-operatives-and-Mutuals-2.pdf>

⁹ http://bccm.coop/wp/wp-content/uploads/2014/05/Sub-130-BCCM_Redacted.pdf

¹⁰ Submissions have not been publicly released but the terms of reference are available here:

http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Retirement_villages/Inquiry_into_NSW_Retirement_Villages.page?

¹¹ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-submission-details.aspx?pk=%2058582>

5 Housing

The BCCM commends the Government on the steps taken in affordable housing policy in the past year, particularly the National Housing Finance Investment Corporation, the announcement that surplus Government land will be allocated to housing, and the introduction of tax incentives for provision of affordable housing.

The co-operative housing model is extremely diverse, but is first and foremost an ownership structure (which can complement varying degrees of resident self-management, co-housing, co-design etc). The key models of housing co-operative are as follows:

- Common equity – members of the co-operative receive secure tenancy, while no individual has equity in the properties managed by the co-operative
- Shared equity – the co-operative and its member may directly have some equity in the properties managed by the co-operative
- Full equity – the co-operative directly owns properties outright and members of the co-operative have full individual ownership stakes and ability to access capital gains on their stake

The flexibility of the co-operative structure makes it a suitable model for the provision of tailored, secure and affordable housing to many groups in the Australian community. Currently, the common equity model is most prevalent, with around 177 housing co-operatives using this model as part of the community housing sector. BCCM members Common Equity Housing Ltd and Common Equity NSW are the umbrella organisations for these housing co-operatives in Victoria and New South Wales. While the shared equity and full equity models are less developed in Australia, there is burgeoning interest. The Narrara Eco Village, on the Central Coast, is one example. Another is the AGENCY Project, in inner Sydney, which is exploring the use of the co-operative structure for an aged independent living housing development.

The BCCM believes it is important that the flexibility of the housing co-operative model to operate across the ownership spectrum (from full ownership to secure tenancy) and for groups with various needs (e.g. low-income, first home owners, last home owners, key service workers) is recognised in the development of Australia's affordable housing policy.

Recommendations 9, 10 & 11:

The BCCM recommends the Government investigate innovative models of housing ownership, including the co-operative model.

The Government should work on a program of supports to develop the tools required for self-investment by the private sector in these innovative models of housing.

The BCCM recommends the Government develop a register of the surplus land being considered for housing developments, and retain part of this land for low-cost and affordable housing providers, especially those in the co-operative sector.