



Joint Standing Committee on the National Disability Insurance Scheme
PO Box 6100
Parliament House
Canberra ACT 2600
Via: online portal

22 February 2018

Dear Committee Members

Joint Standing Committee on the NDIS inquiry into Market Readiness

The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to provide a submission to the inquiry into NDIS Market Readiness. **Our submission, in seeking to demonstrate how co-operative and mutual enterprises can contribute to the development and operation of functional markets, responds primarily to terms of reference a., b. and c., but is also relevant to terms of reference f. and g.**

Introduction

Co-operative and Mutual Enterprises (CMEs) are important to the NDIS for these reasons:

1. CMEs can promote choice and control by NDIS Participants because they are owned by their members and established to meet a member need;
2. Where the members of a CME are workers, CMEs empower workers through devolved decision-making structures that produce better outcomes for workers and NDIS Participants, and
3. Because CMEs invest in meeting members' needs and invest in local communities, CMEs can provide vital services in thin markets where choice and control could be otherwise limited

In recent years, the BCCM has made a number of submissions about the role that Co-operative and Mutual Enterprises (CMEs) should play in the development of a truly Participant-focused disability services sector. We include brief synopses of these submissions as an appendix.

The BCCM has supported new and existing CMEs to operate in social care markets like the NDIS, including in housing (Supporting Independent Living Co-operative – SILC and Common Equity Housing Limited), community care and support (The Co-operative Life) and Disability Employment (Nundah Community Enterprises Co-operative).¹ Providing the foundations for more CMEs to operate in the NDIS, especially in thin markets, adds diversity and innovation and is a positive step to further market readiness.

The NDIS Costs Inquiry conducted by the Productivity Commission² found there are significant issues about market readiness and that service providers are finding adapting to the NDIS “*highly challenging*”. The Commission found these issues apply to governments, NDIS Participants and service providers. Echoing the findings of the Productivity

¹ For more information about three of these examples see <https://www.getmutual.coop/case-studies/>. See our previous submissions, listed in the appendix, for further information on SILC.

² Productivity Commission (2017) NDIS Costs inquiry, <http://www.pc.gov.au/inquiries/completed/ndis-costs#report>

Commission, the NDS also confirms in its 2017 *State of the Disability Sector Report*³, that service providers, whilst supportive of the NDIS, are under “immense pressure”.

Based on feedback from our members, our industry advocacy and people who have approached us to explore the CME business model, the BCCM considers there are significant issues that need to be addressed if the intended outcomes for the NDIS are to be achieved. This is a future where NDIS Participants are empowered and have real choice and control about how and where services are provided from a diverse and competitive market. To achieve market readiness, we consider more needs to be done by Government and the NDIA Board to foster the development of new and innovative business models.

Australia’s first employee mutual in the NDIS (developing the disability workforce to support the emerging market)

This inquiry is timely given that the South Australian Government has recently announced the formation of the first employee-led mutual in Australia. Highly-skilled staff who currently deliver Early Childhood Early Intervention services in the South Australian public sector will form a mutual to deliver these services in partnership with the NDIA.⁴ The project has support across political parties and from both levels of government. Federal Minister for Social Services Dan Tehan MP commented:

“The creation of the South Australian employee-led mutual is an example of the innovation and creativity required to deliver the NDIS, a world-first, ground-breaking scheme.”⁵

The BCCM provided expert advice to the NDIA and the South Australian Government on the proposal to form an employee mutual. We commend the South Australian government for its approach and we respectfully suggest the Committee considers how this employee-owned model can contribute to an improved NDIS workforce and better Participant outcomes.

Compared to other countries such as the UK, the proportion of employee-owned enterprises in Australia is very low. Where governments overseas have fostered the right economic and regulatory environment to support the growth of employee-owned enterprises, the evidence shows that productivity has increased.⁶⁷ There is also striking evidence of higher rates of employee and consumer engagement, lower rates of absenteeism, and increased resilience of firms during economic down-turns.

The CME business model is different to that of investor-owned firms. CMEs are examples of *hybrid organisations*.⁸ This means they have more than one purpose. Hybrid organisations derive a majority of their income from trade (usually >50%), but with two or more explicitly stated objectives such as producing a surplus, social and/or environmental impact. Unlike other organisational forms, CMEs are designed around the International Co-operative Principles and Values⁹, which focus the purpose and intent of the business on delivering benefit to members rather than profit to shareholders. This feature of member ownership also distinguishes CMEs from traditional not-for-profit organisations and charities where the achievement of a mission can take precedence over commercial discipline and good

³ NDS (2017) Disability Sector Report in association with the Centre for Applied Disability Research.

⁴ <https://probonoaustralia.com.au/news/2018/02/employee-led-mutual-deliver-ndis-services-sa/>

⁵ <https://ministers.dss.gov.au/media-releases/2821>

⁶ *Mutuals Task Force Our Mutual Friends and The Next Steps* London: Cabinet Office

⁷ *The Next Steps Report*

⁸ Julian Le Grand (2017) *The Hybrid Economy*. Keynote address to the National Conference of the Governance Institute of Australia, Melbourne. Julian chaired the UK Mutuals Task Force and is an internationally respected economist, having held, until recently, the Richard Titmuss Chair of Social Policy at the London School of Economics.

⁹ *International Co-operative Alliance*

governance. This can stifle innovation, such as workplace reform, required to adapt to a new consumer-directed funding arrangement such as the NDIS.

Where similar employee mutuals have formed in the UK, they have mostly happened in health and social care. Case studies and early research has demonstrated the critical success factors are where staff have early “buy-in” and influence over the development of the mutual and are active members and owners of the new enterprises during and after the various stages of formation. Staff have reported that they value the increased flexibility to respond to Participant’s needs when operating outside of a large bureaucracy. This active engagement by staff is supported in the UK in the form of a “*Right to Request*” where staff can nominate to form an employee mutual. Those staff can also apply to use a funded mutual development advisory service funded by Government to support staff in developing a robust and realistic business model and in understanding the cultural differences between being an employee as opposed to an owner *and* employee of an enterprise.¹⁰¹¹

The BCCM observes this approach to workforce (and market) development could be applied in a range of situations, including start-ups and existing organisations as well as in the public sector. We consider this is worthy of further consideration by the NDIA. It is a very different approach to innovation and market readiness to that which occurred in earlier stages of NDIS sector development where sector development funding was largely administered through provider associations.

Organisational form is highly relevant to “market readiness”

Organisational form, and the motivation of service providers, is highly relevant to the “market readiness” of the NDIS. Human services markets, such as the NDIS, are prone to market failures, particularly failures arising from information asymmetry and high labour costs (or in other words, low profitability). Thin markets are another cause of failure; this type of failure occurs where there are insufficient appropriate providers able to deliver the required services. The BCCM is regularly approached by individuals and organisations currently operating in social care areas like the NDIS and in thin markets – especially in rural and regional Australia – who are interested in forming a co-operative or mutual enterprise. Our observation is that the promise of empowered NDIS Participants and workers is yet to be realised. There is a massive challenge of developing and retaining a skilled, motivated and well-paid workforce to deliver the NDIS. The vision of an effective and diverse disability services market that empowers and liberates NDIS Participants is a worthy goal for the NDIS. However, it requires there to be capacity building in these markets that can overcome potential market failures and provide diversity and choice for NDIS Participants and rewarding and well-remunerated jobs for workers.

The CME organisational form can allow groups of NDIS Participants and workers to address these market failures. Because of their distinct mutual ownership structure, CMEs are focused on sustainably meeting the needs and aspirations of their members. For a consumer-member, this may primarily mean quality of care, while for a worker-member it may mean increased wages and a share in the profits, more voice in the workplace or more training and development opportunities. The presence of CMEs also adds diversity to the market, and where particularly successful, CMEs may have an impact on the quality and price of services across an entire market.¹² The UK experience has demonstrated that member-owned organisations have higher productivity and high staff and participant

¹⁰ CIPFA The Chartered Institute of Public Finance and Accountancy (February 2017) CIPFA Research. Research into Public Service Mutuals Sector.

¹¹ UK Office of Public Management (August 2010) New models of public service ownership: A guide to commissioning, policy and practice. Public Interest Report.

¹² For this proposition, applied in more detail to agricultural markets, see Limnios, Mazzarol and Soutar, “Pacemaker co-operatives across primary industries: what drives organisational resilience?” in Mazzarol, Reboud, Limnios and Clark (eds) (2014), Research Handbook on Sustainable Co-operative Enterprise: Case Studies of Organisational Resilience in the Co-operative Business Model, 160.

engagement levels.¹³¹⁴¹⁵ CMEs, whether owned by workers or participants, benefit all stakeholders through their local embeddedness and long-term approach to value creation.¹⁶

Enabling the formation of co-operatives and mutuals in the NDIS

The 2016 Senate Economics References Committee inquiry into cooperative, mutual and member-owned firms made 17 recommendations about the removal of barriers for the development of the co-operative sector generally in Australia¹⁷:

- **Recognition** of the legal form and understanding the differences to other legal structures;
- **Regulatory change** needed to remove barriers that make it harder for co-operatives and mutuals to be regarded as a preferred organisational form and to raise capital to grow their businesses; and
- **Education and awareness** about co-operatives and mutuals and how they can be used to respond to current and emerging trends including in the context of how public services are delivered

The BCCM is pleased that there has been bipartisan support to address a number of these recommendations, particularly those that relate to recognition and access to capital for mutuals.¹⁸ However, all 17 recommendations must be implemented to ensure a conducive environment for the growth of Australia's CME sector. In particular, Recommendation 3 recommended that the Commonwealth Government work with States and Territories to develop a program of supports to encourage the establishment of new co-operative and mutual enterprises.¹⁹

In human services markets like the NDIS, which are predicated on informed user choice and control, the BCCM suggests governments should actively encourage a diversity of providers. This is in the Scheme's best interests and contributes to its longer-term sustainability. The Harper review²⁰ acknowledged the role of government in fostering this diversity among providers:

"In many human services, users benefit from direct choice and control. In these instances, a range of diverse providers and provider types can be an important factor in ensuring that users have access to meaningful choice. Where direct user choice is not possible, governments can play an important role in encouraging diversity through commissioning processes and decisions. Where they directly commission services, governments can: specify contracts with duration periods that do not exclude potential competitors for extended periods of time; and institute processes that avoid allowing monopoly providers to develop over time".

¹³ UK Office for Public Management (December 2010) Op cit. Shared Ownership in practice Findings from case studies of employee and community ownership of public services. Public interest report.

¹⁴ Le Grand, Professor Sir Julian (July 2016) Advisor to BCCM in submission to Human Services Inquiry

¹⁵ Le Grand, Julian and Roberts, Jonathan (August 2016) The public service mutual: theories of motivational advantage. Marshall Institute, London School of Economics

¹⁶ ILO (2017) Social and Solidarity Economy and the Future of Work, 16-17.

http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---coop/documents/publication/wcms_573160.pdf

¹⁷ Commonwealth of Australia (2016) Economic References Committee Inquiry into Co-operative and Mutual firms.

¹⁸ Greg Hammond OAM (July 2017) Review on Report on Reforms for Co-operatives, Mutuals and Member-owned Firms undertaken by an independent facilitator appointed by the Commonwealth Treasurer, the Hon. Scott Morrison.

¹⁹ Commonwealth of Australia (2016) Economic References Committee Inquiry into Co-operative and Mutual firms. Op cit. Page 111.

²⁰ Professor Ian Harper et al (March 2015) Competition Policy Review Final Report www.competitionpolicyreview.gov.au

In South Australia, the Commonwealth and South Australian governments have played the supporting role as envisaged in the Harper Competition Policy Review. The role of these two levels of government has been to provide the resources, time and support necessary for staff, including through their trade union, to make a democratic, informed decision about forming an employee-owned mutual. We believe this is an approach that should be emulated by all levels of government in relation to their involvement as a stakeholder in the formation of any employee-led mutual. This approach ensures that employee-owned public service CMEs will be formed in line with the co-operative value of self-help and the co-operative principle of open voluntary membership, both intrinsic to the long-term success and development of CMEs as a globally recognised form of enterprise.²¹

This supportive role by government to foster the development of new and innovative business models also occurred in the formation of a new enterprise co-operative – Supporting Independent Living Co-operative (SILC). The members of SILC are other smaller family-governed disability housing co-operatives.²² In this case, the Commonwealth Department of Social Services (DSS) provided funding through the Sector Development Fund to enable SILC to form and attract new models. SILC has been very successful in the NDIS with 9 houses under development.

While there is evidently increasing recognition and awareness of the CME model at a governmental level, there is still more that can be done to increase awareness amongst service provider organisations, Participants and workers in the NDIS. The NDIA should put the CME model front and centre in its informational materials (including online) that will be accessed by Participants and workers. Participants or workers who believe a CME model may suit their needs and aspirations should be able to obtain appropriate advice about planning, forming and operating a CME in the NDIS. The impact of administrative and regulatory compliance on new (i.e. small) entrants to the NDIS should be kept in mind and reduced where possible to foster innovation and business model diversity.

Recommendations

In order to provide an enabling environment for the formation of CMEs in the NDIS the BCCM recommends:

1. Full implementation of the recommendations of the Senate Economics References Committee inquiry into cooperatives, mutuals and member-owned firms, with particular reference to Recommendation 3.
2. That the NDIA puts in place the policies and procedures required for all NDIS Participants and workers to have access to information about the formation and operation of all forms of member-owned CMEs, including Participant (consumer), worker and multi-stakeholder CMEs and can access appropriate advice on the planning, formation and operation of a CME if they so wish.
3. That State and Territory Governments give public sector disability services staff transitioning to the NDIS the opportunity, including through their trade union, to consider becoming an employee-owned mutual as an alternative to privatisation and, when doing so, provide the time, support and resources necessary for employees to make a democratic and informed decision.

Appendices

We have provided a number of appendices with further information:

²¹ See the International Co-operative Alliance statement on identity, values and principles: <https://ica.coop/en/whats-co-op/co-operative-identity-values-principles> Co-operatives were recognised by the United Nations in 2012 for their unique contribution to socio-economic development: <https://ica.coop/en/un-international-year>

²² [Supporting Independent Living Co-operative](#)

1. About the BCCM
2. About co-operative and mutual enterprises
3. Previous submissions relating to the NDIS
4. Recommendations of the Senate Economics References Committee inquiry into cooperative, mutual and member-owned firms report

The BCCM would look forward to providing more information about the role co-operatives and mutuals can play in delivering quality services and quality jobs in the NDIS.

Yours sincerely

Melina Morrison
CEO
Business Council of Co-operatives and Mutuals

Appendices

1. About the BCCM

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, 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 organisation forms, including implementation of the recommendations of the Senate Economics References Committee report into cooperative, mutual and member-owned firms.²³

2. About co-operative and mutual enterprises

Co-operative and mutual enterprises are a significant contributor to the Australian economy: 8 in 10 Australian adults are members of at least one CME. Annual turnover of the top 100 CMEs (excluding member-owned superannuation funds) was over \$30 billion in FY2015/2016.²⁴ Together with mutual superfunds, it is estimated that the CME sector contributes up to 8 per cent of Australia's GDP.

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

- State or Territory-based Co-operatives National Law (the CNL)²⁵
- The Commonwealth Corporations Act
A co-operative or mutual which is formed under the Corporations Act must have an appropriate company constitution in order to be considered a CME.

The distinguishing feature of all CMEs, regardless of what legal form they use, is that they are owned by their members and operate for member benefit. Member benefit can mean a wider range of social or non-financial benefits compared with the financial returns enjoyed by a shareholder. Membership is tied to contributing to or making use of the CME; this ensures the CME is made up of people who share its common purpose.

3. Previous submissions relating to the NDIS

The BCCM has made a number of submissions that relate to the NDIS as follows:

- **Submissions to the Productivity Commission inquiry into NDIS Costs** (March 2017 and July 2017).²⁶ Our March submission provided two cases studies of co-operatives registered with NDIS that operate efficiently without compromising quality. Our July submission is similar to this submission, focusing on the importance of organisational form for Participant outcomes and workforce development.
- **Submission to the Joint Standing Committee on the NDIS inquiry into transitional arrangements for the NDIS** (2017).²⁷ Our two submissions, developed in partnership with our members operating in the NDIS, provide detailed feedback from our sector on consistency and delivery of NDIS plans, pricing sustainability,

²³http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report

²⁴ Business Council of Co-operatives and Mutuals, National Mutual Economy Report 2017, 20.

<http://bccm.coop/wp/wp-content/uploads/2017/11/BCCM-2017-NME-Report.pdf>

²⁵ The Co-operatives National Law has been adopted in all States and Territories except Queensland. Western Australia has adopted consistent legislation.

²⁶ https://www.pc.gov.au/_data/assets/pdf_file/0008/215639/sub0091-ndis-costs.pdf ;

https://www.pc.gov.au/_data/assets/pdf_file/0004/219784/subpp0329-ndis-costs.pdf

²⁷ <https://www.apf.gov.au/DocumentStore.ashx?id=7fdece6a-73c6-4ef5-80c4-ad44d5a555ce&subId=515225> ;

<https://www.apf.gov.au/DocumentStore.ashx?id=4acee929-b52a-4ee1-b077-57791e0ce991&subId=515225>

housing packages and the need for innovation and market readiness for the success of the NDIS. The information in these submissions is of relevance to the Terms of Reference of the current inquiry.

- **Submission to the Joint Standing Committee on the NDIS inquiry into Accommodation for people with disability in the NDIS** (March 2016).²⁸ Focused on the role of co-operatives in disability housing. In particular, how consumer co-operatives can build, own and manage property for their members, staff co-operatives can deliver accommodation support services to Participants, and enterprise co-operatives can help smaller housing organisations to achieve efficiencies through pooling back office functions. Gives detailed information on different models of ownership, including land trusts.
- **Submissions to the Productivity Commission inquiry into Human Services** (2016-).²⁹ Our initial submission to this inquiry provides dozens of case studies of CMEs providing a range of human services (including housing, care, health, transport) in Australia and overseas.
- **Submission to the Future of Work and Workers inquiry** (2018).³⁰ Includes sections on Australia's ageing population, the growth of the health and care sector and the race to increase productivity and develop the workforce in this environment. Makes recommendations about how government can enable the development of CMEs including through formation of an Ownership Commission to understand the diversity of ownership forms in the Australian economy.
- **Public Service Mutuals White Paper** (2014)³¹. Provides further detail on why organisational form matters in the delivery of human services and the advantages of the CME form.
- **Submission to the Senate Community Affairs Committee inquiry into the delivery of outcomes under the NDS 2010-2020** (2017).³²
- **Submission to the Joint Standing Committee on the NDIS** (September 2015).³³

4. Recommendations of the Senate Economics References Committee inquiry into cooperative, mutual and member-owned firms report³⁴

Recommendation 1

2.32 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.

Recommendation 2

3.28 The committee recommends that co-operative and mutuals sector be better represented in government policy discussions, and is actively promoted as a possible option for service delivery particularly where community based initiatives are being considered.

Recommendation 3

²⁸ http://bccm.coop/wp/wp-content/uploads/2016/03/BCCMsub_JSC_NDIS_DisabilityAccommodation_Mar16.pdf

²⁹ http://www.pc.gov.au/_data/assets/pdf_file/0008/204938/sub216-human-services-identifying-reform.pdf

³⁰ <https://www.aph.gov.au/DocumentStore.ashx?id=c24dedeb-4e1f-4117-807f-0dcc7aa95763&subId=563783>

³¹ Business Council of Co-operatives and Mutuals (August 2014) Public Service Mutuals: a third way for delivering public services in Australia. White Paper.

³² http://bccm.coop/wp/wp-content/uploads/2014/05/sub37_BCCM.pdf

³³ http://bccm.coop/wp/wp-content/uploads/2014/05/BCCMsubmission_NDIS.pdf

³⁴ See the full report:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/~/_media/Committees/economics_ctte/Cooperatives/report.pdf

3.29 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 4

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

Recommendation 5

3.51 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 6

3.75 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.

Recommendation 7

3.80 The committee recommends that the Commonwealth Government to work with all relevant stakeholders to undertake a program of education and training to inform them about the role of co-operatives and mutuals.

Recommendation 8

3.81 The committee recommends that the Commonwealth Government examine ways in which it can improve the recognition and understanding of the co-operative and mutual sector in the national secondary school curriculum and that tertiary institutions consider the inclusion of co-operative and mutuals in accounting, business, commerce, economics and law degrees.

Recommendation 9

3.82 The Committee recommends that professional accreditation bodies, such as the Law Society and Institute of Chartered Accountants, require a demonstrated knowledge of the co-operatives and mutual structure before it will licence its members to practice accounting or law.

Recommendation 10

3.92 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.

Recommendation 11

3.93 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.

Recommendation 12

4.17 The committee recommends that the co-operative and mutual sector be considered when the government is preparing a Regulatory Impact Statement that accompanies new regulatory policies.

Recommendation 13

4.18 The committee recommends that the Commonwealth Government liaise with its state and territory counterparts to ensure that the regulatory burden for small and medium sized co-operative and mutual enterprise aligns with the needs of these organisations and ensures they are not disadvantaged relative to companies of a similar size.

Recommendation 14

4.26 The committee recommends that the Commonwealth Government closely monitor the progress of the International Accounting Standards Board in developing solutions to bring co-operative shares under the definition of capital under AASB 132, and, where possible, facilitate equivalent amendments as expeditiously as possible.

Recommendation 15

4.42 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.

Recommendation 16

4.45 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

4.49 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.