



23 June 2023

A new model for regulating aged care

Submission to the Department of Health and Aged Care

Introduction

The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to make this submission to the Department of Health and Aged Care's consultation on a new model for regulating aged care.

The BCCM is the national peak body representing the co-operative and mutual movement across all industries.

In recognition of the potential policy benefits of more co-operative and mutual ownership in social care, \$7 million over 2.5 years has been made available to fund the [Care Together Program](#), Australia's first co-operative and mutual enterprises support program in social care. The Program runs until June 2025. The Program is funded by the Australian Government through the Department of Health and Aged Care and is being delivered by the BCCM. It has a focus on:

- Supporting the development of innovative co-operative models of social care delivery, particularly in thin markets, through access to education, expert advice and consultancy services
- Reducing the barriers to formation and growth of co-operative social care

A significant barrier for co-operative and mutual enterprises forming in social care in Australia that the Care Together Program seeks to address is that they are poorly understood by business advisers and policymakers. Without an enabling legislative and policy environment supporting co-operatives, older Australians and their families looking for transformative change in aged care will be denied the opportunity to benefit from the successful examples of social care co-operatives in other countries that empower communities, workers, and consumers.

The BCCM's submission focuses primarily on amendments to the governance requirements for aged care provider registration set out in s63.1D of the *Aged Care Act 1997 (Cth)*. These amendments are required if the new regulatory model for aged care is to enable co-operatives and mutuals to form and operate in the sector, including those that may receive support through the Care Together Program.

The BCCM would be pleased to provide further information or examples to illustrate the matters raised in this submission.

Response to the consultation paper

The BCCM is generally supportive of the approach outlined in the consultation paper. In particular, the BCCM supports a regulatory approach that:

- Is proportional
- Encourages new business types to become registered aged care providers (as outlined in relation to sole traders in the consultation paper)

- Empowers older people, workers and providers to lift the quality of care, working with the Regulator and other stakeholders.

Raising the quality of aged care

2. To raise the quality of care, what role should government and non-government stakeholders play?

Co-operatives and mutuals are models where stakeholders take responsibility and are empowered through membership and democratic governance rights to lift the quality of services they are involved in delivering or receiving. Due to these features, they are considered to have significant potential as a model that can lift quality and accessibility in thin markets and in the development of multi-disciplinary approaches.

The aged care regulatory environment should therefore broadly enable older people, workers, providers and other stakeholders to use co-operative and mutual enterprise models of service delivery.

Supporting quality care

4. What types of education or engagement do you think would support providers to continuously improve?

The BCCM, as the national peak body representing co-ops and mutuals and the deliverer of the Care Together Program, facilitates information sharing and networking amongst co-operatives and mutuals, and with other stakeholders, to improve service quality across social care sectors. This includes a Community of Practice.

The BCCM would welcome these types of activities being considered and encouraged in the new regulatory model for aged care.

Becoming a provider

4. What are your views on how the proposed model will allow other business types, such as sole traders and partnerships, to enter the sector?

The BCCM supports a proportional approach to regulation that considers different business types (including co-operatives and mutuals), sizes and areas of service focus.

The BCCM notes the recent change to the Australian Government's [Statement of Expectations](#) for APRA to require APRA to take a proportional approach to regulation and consider the impact of regulation on 'different businesses models'. Mutuals are the main 'different' model operating across the financial services sectors regulated by APRA and APRA is expected to consider them when making standards.

The BCCM supports a similar approach being taken in aged care regulation, with an express requirement for regulators and regulatory policymakers to consider the impact of aged care regulation on co-operative and mutual providers.

The lack of explicit recognition of co-operatives and mutuals as a business type is what has led to the issue of incompatible governance obligations outlined below in our response to the question 'what are your views on the proposed approach to provider obligations?'

Responsibilities of a provider

1. What are your views on the proposed approach to provider obligations?

The BCCM notes the intention to continue with provider governance obligations for certain categories of service provision and to detail the obligations for 'particular groups' of providers in subordinate legislation in the new regulatory model.

The current governance obligations set out in s63.1D of the *Aged Care Act 1997* require majority independent non-executive directors on the board of most providers. There are exemptions for certain small providers and Aboriginal Community Controlled Organisations. These are well-founded exemptions based in recognition that:

- encouraging a range of business types to deliver aged care generally has a positive impact on service quality and accessibility
- community and member-controlled organisations operate under different (and proven) governance principles to the governance principles recommended and promoted in the 'mainstream' listed and not-for-profit sectors

In line with their principles of Democratic Member Control and Autonomy and Independence¹, co-operatives and mutuals operate with majority member-directors on their boards. This ensures they are genuinely accountable to and empower their members. In line with these principles, majority member-directors on boards is mandated by law for co-operatives.² Members in a co-operative or mutual are by definition persons with an economic interest in the organisation that may make them non-independent and/or executive (as a result of their customer, worker, supplier and/or shareholder relationship with the entity³).

For all types of co-operative, there is regulatory risk and ambiguity about when a majority-member board will meet the requirement of s63.1D(2)(a) given the economic involvement the member-directors may have with their co-op. This will have a chilling effect on governance in existing co-operatives, encourage exits and discourage new formations, particularly given business advisors often have low understanding of co-operatives and are inclined to highlight any difficulties or risks involved in forming one.

For worker-owned co-operatives specifically, it is clear they will not be able to function in aged care. Existing worker co-operatives plan to exit the sector by December 2023. No new worker co-operatives will be formed in aged care and Care Together Program will not be able to promote the model in this sector, despite that being an objective of the program (with the underlying recognition that worker-owned models have potential to be one solution to a sustainable care workforce.)

¹ This is an [internationally-agreed](#) principle of the co-operative movement, enshrined in Australian legislation in s10 of the Co-operatives National Law.

² See 174(2) Co-operatives National Law.

³ In many co-operatives and mutuals, members may be required to not only be an active customer, worker or supplier to be a member, but also make an investment in shares.

The BCCM therefore calls for co-operatives and mutuals to be exempted expressly in primary legislation from the requirement to have majority independent non-executive directors on their boards in the new aged care regulatory model. The BCCM would be willing to explore a solution through subordinated legislation if this can be shown to meet the governance needs of co-operatives and mutuals.

Finally, the BCCM notes that similar governance requirements are not in place for co-operatives and mutuals operating in the NDIS. Consistent and appropriate regulation is required across all social care sectors for co-operatives and mutuals to play a role in the development of multi-disciplinary models.

Recommendations

- 1. Primary legislative exemption of co-operatives and mutuals from the requirement to have a majority independent non-executive board of directors (as currently required by s63-1D *Aged Care Act 1997*).**
- 2. Introduce a requirement (e.g. by a Statement of Expectation) for aged care regulators and regulatory policymakers to consider the impact of aged care regulation on co-operatives and mutuals.**

About the BCCM

The BCCM is the national industry peak body for co-operatives and mutuals, working with governments, regulators and policymakers to ensure the Australian economic landscape is fully able to benefit from a competitive co-op and mutual movement.

Through its member co-ops and mutuals, the BCCM represents 11 million individuals and 160,000 businesses.

The BCCM has supported new co-operatives and mutuals to form in a range of sectors and is a member of the International Co-operative Alliance (ICA) with access to world-wide networks.

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