



8 March 2024

Aged Care Bill 2023 Exposure Draft

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 in response to the Exposure Draft of the Aged Care Bill 2023 (the Bill).

The BCCM is the national peak body representing the co-operative and mutual movement across all industries. The BCCM is currently delivering Australia's first co-operative and mutual enterprise support program in social care, the \$7 million [Care Together Program](#), on behalf of the Australian Government.

The Bill is the cornerstone of the Australian Government's response to the Royal Commission into Aged Care Quality and Safety (the Royal Commission). It is a direct response to the first recommendation of the Royal Commission and seeks to provide the basis for a new person-centred aged care system that delivers safe and quality care.

The BCCM believes that the Bill's objectives and principles and the new regulatory and governance processes for aged care providers generally represent a strong response to the Royal Commission recommendations and provide a basis for the change needed for a rights-based aged care system.

However, the Bill, like the current Aged Care Act, in its blanket approach to governance requirements, does not recognise the co-operative model and its member-based governance as a legitimate, person-centred, innovative and empowering option for care delivery.

Co-operatives have an important role in regional, rural and remote Australia, in empowering the care workforce and in developing innovative models of stakeholder voice and participation beyond the minimum requirements for consumer and worker consultation envisaged in the Bill.

The co-operative model aligns strongly with the Statement of Principles and overarching policy objectives that the Bill is seeking to achieve and it will be a missed opportunity if co-operatives are not appropriately recognised in the Bill.

Drawing on best practice in international regulation of social care sector co-operatives, the BCCM calls for an amendment of the Bill, supported by appropriate Rules, to appropriately recognise co-operative governance models. **We recommend that:**

- **The Bill is amended to exempt registered co-operatives from s100(2)(a), provided they meet any requirements set out in the Rules**
- **Rules are drafted that mean only registered co-operatives with an appropriate social care objective, asset lock and commitment to director training enjoy the exemption.**

In the appendix we provide an illustration of how these recommendations could be implemented.

The BCCM would be pleased to provide further information on any matters raised in this submission.

Policy context: co-operatives and reform for a person-centred aged system

The Royal Commission noted that ‘the system designed to care for older Australians is woefully inadequate. Many people receiving aged care services have their basic human rights denied. Their dignity is not respected and their identity is ignored. It most certainly is not a full life. It is a shocking tale of neglect’.

It recommended a new Aged Care Act as the cornerstone of a new, person-centred aged care system. The Australian Government accepted this recommendation.

At the same time, the Australian Government has recognised the potential of co-operatives and mutuals, as person-centred enterprises, to contribute to the social care reform and innovation effort. \$7 million over 2.5 years has been made available to fund the [Care Together Program](#) through the Department of Health and Aged Care. It is being delivered by the BCCM and runs until June 2025.

Australian Government support for the Care Together Program is consistent with the bipartisan recommendation of the 2016 Senate Economics References Committee into co-operatives, mutuals and member-owned firms that ‘the 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.’¹

What are co-operatives and mutuals?

Co-operatives and mutuals are organisations that are owned and democratically controlled by their members. The members may be consumers, workers, small or medium enterprises, a community of interest or a combination of these.

The purpose of co-operatives and mutuals is to deliver economic, social and cultural benefits to their members and communities, rather than to maximise profits for shareholders.

Co-operatives operate under seven internationally agreed principles that are enshrined in Australia’s harmonised state and territory co-operatives legislation, Co-operatives National Law. These principles include Member Democratic Control, Member Economic Participation and Concern for Community.

Due to their distinct models of ownership, governance and principles, co-operatives and mutuals are recognised by international organisations such as the UN (see [UN resolution calls for a second International Year of Cooperatives in 2025](#)) and the ILO (see [Recommendation 193](#)) as ‘people-centred’ organisations with an important role to play in community controlled, sustainable development.

There are more than 1,840 co-operatives and mutuals operating across all sectors of the economy in Australia, including health, social care, housing, agriculture, banking, insurance, retail and wholesale. The top 100 co-ops and mutuals have a combined turnover of \$37.7bn ([2023 National Mutual Economy Report](#)).

¹ See

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

Compared to other countries, Australia lags in the adoption of co-operatives in social care and the Care Together Program is leveraging the experience of significant social care co-operative sectors that have developed in many countries. The program has a focus on:

- Supporting the development of innovative co-operative models of social care delivery, particularly in regional, rural and remote settings
- Reducing the barriers to formation and growth of co-operative social care

Supporting the development of innovative co-operative models of social care delivery, particularly in thin markets (regional, rural and remote Australia)

One of the key challenges for aged care is workforce shortages. There is strong international evidence² about the benefits of co-operatives to address this, especially when they are employee/worker owned. These benefits include:

- High rates of attraction and retention.
- Provide decent jobs including a focus on education and training.
- Strong consumer engagement.
- Productivity improvements largely attributable to stronger worker engagement as employee-members.
- Help to build stronger local communities.
- Attractive to younger and diverse workforces who value working for truly responsible and sustainable organisations.

Another challenge is service delivery in thin markets. The cost structures of many large providers do not work in this context. Enabling different legal and business models that can operate with different cost structures and motivations is important if sustainable innovation is to occur through the aged care reforms. Data from the Department of Health and Aged Care about addressing supply gaps in regional, rural and remote (RRR) Australia showed aged care supply gaps currently exist across 41% of RRR communities. The data shows these supply gaps are projected to increase significantly into the future.³ Co-operatives have been integral to regional development in Australia (e.g. agricultural processing and marketing; retail; community hospitals) and around the world due to their ability to operate in places with lower population density or in markets that favour larger entrants.

The overarching problem identified in the Royal Commission was lack of choice and control for older people to receive safe and quality care. Consumer and multi-stakeholder-owned models of co-operatives place consumers at the centre of ownership and governance and should be one of the pillars of a new person-centred care sector.

There are many existing Australian and international examples of co-operative social care that demonstrate the potential for the co-operative and mutual model to contribute significantly to a person-centred Australian aged care system:

- [Nundah Cooperative Community Enterprises](#) is an award-winning worker and community-owned co-operative that has been providing sustainable long term quality jobs for people with a disability who, prior to joining the Nundah Co-op, had been long term unemployed. The Nundah Co-op business model uses a blended workforce model where education and training, learning from others is intrinsic to its success, which extends beyond 25 years.

² See [The Benefits of Worker Cooperatives | Democracy at Work Institute](#), [EO-Knowledge-Programme-Report-2023.pdf \(employeeownership.co.uk\)](#), [What do we really know about worker co-operatives? | Co-operatives UK](#)

³ Research and policy development to identify Aged Care Supply Gaps in RRR Australia, Final Report.

- [The Co-operative Life](#) is a worker-owned co-operative currently operating in Sydney and the New England region of NSW. The Co-operative Life primarily provides support services to people with a disability with a small client base of older people.
- [Supporting Independent Living Co-operative](#) is an Australian secondary co-operative operating in the NDIS. SILC is the registered provider under the NDIS and its members are small family governed co-operatives. Support workers are also eligible to become members of these local family governed co-ops. SILC supports its member co-ops with regulatory compliance, back office, training and networking services. The secondary co-op model facilitates scale benefits without loss of local family control.
- [Equal Care Co-operative](#) is a UK example of a multi-stakeholder social care co-operative where the members are the workers and consumers of care.
- [Elevate Co-operative](#) is a U.S. example of a secondary co-operative where the members are small and large home care co-operatives. The purpose of the Elevate Co-operative is to support the co-op members to be sustainable through the provision of back office and value-added services. Many of the members of Elevate are smaller worker owned co-operatives located in remote areas of the U.S.

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 Care Together Program maps the barriers being encountered by the pilot projects it is working with. Some of these barriers are generic across the care sector (such as local workforce or community capacity challenges) while others are specific to co-operatives and mutuals (such as lack of consideration of co-operatives in relevant legislation).

Countries with strong co-operative care sectors recognise and encourage co-operatives in relevant legislation and regulation. They also have supportive ecosystems for co-operative growth and formation, which may involve both elements of government policy and sector self-help through secondary co-operatives, networks, industry bodies and investment funds.

A leading international example of a positive policy environment for the development of social care co-operatives is Italy:

- Co-operatives are recognised in the Constitution
- Co-operatives are incentivised to contribute to ecosystem development including allocating funds to co-operative sector investment funds and being part of industry bodies and secondary co-ops that support both established and new co-ops.
- Social co-operatives are a specific type of co-op recognised in legislation with automatic recognition as social enterprises. They are a preferred model for receipt of public funds for delivery of social care services. Eighty-five per cent of social care in some regions of Italy is delivered by co-ops.

Response to the Exposure Draft

There is strong alignment between the proposed Principles for the aged care system and the principles of co-operatives and mutuals

The BCCM is supportive of the Objectives, Statement of Rights and Statement of Principles in the Bill as reflective of the spirit of the Royal Commission and with good potential to underpin real reform and cultural change in the aged care system. The BCCM also believes that there is strong alignment between co-operative models of social care delivery and many of the principles for the aged care system.

The following table shows the broad alignment between co-ops and mutuals, the Care Together Program and some of the proposed Aged Care Act principles:

Principles of the government-funded aged care system	How co-ops and mutuals support the principle	BCCM/Care Together Program practical examples of co-op innovation under this Principle
(3)(b) supports individuals to ...exercise individual responsibility and make decisions	Co-ops and mutuals are based on democratic stakeholder governance. Consumer-governed co-ops and mutuals can be exemplars of self-responsibility and democratic decision-making by consumers in relation to their care.	COTA Australia is undertaking a project to understand and demonstrate the feasibility of consumer self-management in home care.
5(b) access to integrated services, including strong linkages with the health, mental health, veterans, disability and community services sectors.	Co-operatives exist to deliver service rather to maximise profits. They have significant potential to operate in regional areas and adopt integrated service models that may be low-profit. Aboriginal Community Controlled Organisations are proven examples of co-operatives and mutuals that already deliver integrated services successfully.	The Central Coast Hunter New England PHN is seeking to establish a co-operative as part of a wider initiative to establish a multi-disciplinary place-based health and social care team in Glen Innes and surrounding communities.
(6) (a) a diverse, trained and appropriately skilled workforce who are valued and respected	Co-operatives operate under the principle of Concern for Community, including offering a safe and inclusive workplace. Worker-owned co-ops have special potential to deliver a diverse, skilled and valued workforce.	KCLC is a community based voluntary organisation seeking to create co-operative social care employment opportunities for people with diverse backgrounds including supporting the local Congolese and refugee communities.
(6)(b) supports aged care workers of registered providers being empowered, including:	Worker-owned and multi-stakeholder models of co-operative have special potential to empower workers, facilitate information sharing and meaningful	The Co-operative Life is a not-for-profit, charitable worker co-operative currently operating in Sydney and the New England

<p>(i) provide feedback, suggest measures and take actions that support innovation, continuous improvement and the delivery of high quality care</p> <p>(ii) participate in governance and accountability mechanisms</p>	<p>participation in governance and continuous service improvement.</p>	<p>region of NSW. It is the first worker-owned co-op to operate in aged care in Australia.</p>
<p>(13) (a) promotes innovation, continuous improvement and contemporary evidence-based best practice</p>	<p>Co-operatives and mutuals represent business model innovation in Australian care delivery, diversifying the options for how we access and deliver care.</p> <p>In line with the principle of Co-operation among Co-operatives, co-operatives have unique potential to form secondary structures that allow for scale benefits with loss of local control.</p> <p>Australian policymakers can draw on international experience of care sector co-operatives policy and regulation and adapt it to the Australian context.</p>	<p>Care Together is an innovation program focused on developing co-op and mutual models of social care delivery in the Australian context.</p> <p>Care Together has potential secondary co-operative projects underway including in the Murrumbidgee region.</p>

The governance requirement in s100(2)(a) is not appropriate for co-operatives and the determination process in s102 is not a sustainable means for co-operatives to operate as aged care providers

Despite the positive potential of the Bill, represented in its objectives and principles and many of the new regulatory and mandated stakeholder voice/representation mechanisms, the BCCM cannot conclude that the Bill will provide a viable framework for co-operatives to form and grow as aged care providers.

This is because the requirement in s100(2)(a) for aged care providers to have a majority independent non-executive directors on their governing body conflicts with the democratic, participatory and member-based governance model of registered co-operatives.

In particular, this requirement conflicts with s174(2) of Co-operatives National Law⁴, which requires a co-operative to have a majority of member-directors on its board. In addition to their participation in governance, members of a co-operative generally must have an ongoing economic relationship with their co-operative (the concept of active membership in Co-operatives National Law) and may also be involved in the management of

⁴ And the equivalent s199(3) Co-operatives Act 2009 (WA) for co-operatives registered in Western Australia.

their co-operative. This means that members may not be considered independent and/or non-executive as directors.

This governance requirement in co-operatives legislation is based in the international co-operative principles and is not a 'nice to have' for co-operatives (see Myriam Michaud, [One Governance Theory to Rule them all?](#)). Democratic and participatory governance is fundamental to our model, and it is not possible for a co-operative to continue to be a co-operative if its members do not democratically control it through the member representatives elected as the majority of the board of directors.⁵

The issue is particularly stark for worker-owned co-operative models, because their members will almost always be considered non-independent and/or executive due to their role within and relationship with their co-operative.

Such co-operatives will have to rely on the determination process in s102 to be exempted from the governance conditions in s100 (as is the case in the current Aged Care Act), exit from the aged care system, or convert to a non-co-operative structure and governance model (demutualise).

As outlined in the explanatory notes to the Bill, the Bill inserts s102(4)(g) to provide for consideration of conflicts between a state law such as Co-operatives National Law and the Bill as part of a determination process. While we acknowledge and appreciate efforts to consider our earlier feedback on this issue by inserting this clause, we must be clear that requiring co-operatives to rely on a case-by-case, determination process, that needs to be repeated periodically, to operate in aged care is an unworkable arrangement for the following reasons:

1. In remaining silent about co-operatives as a model of provision, this approach perpetuates the lack of awareness and recognition in the community and among policymakers of co-operatives as a distinct and legitimate model of service delivery and governance.

Case study: recognition of mutuals in Australian legislation spurs further positive policy changes

In the early 2000s, Australian financial institutions were transferred to the Corporations Act. The policy driver was to centralise regulation of capital markets and financial services at the Commonwealth level.

Financial co-operatives and mutuals (credit unions, building societies, friendly societies etc.) were transferred in most cases from bespoke state legislation to the Corporations Act. The Corporations Act contained no definition of a mutual and limited, to no, mention of any of the distinct features or principles of co-ops and mutuals compared to other financial services providers.

As there was no legal recognition of mutuals as a distinct model in primary legislation, financial services policy and regulations in the 2000s were made on a 'agnostic' or 'one size fits all' basis.

In 2019, the Corporations Act was amended to introduce a definition of a mutual entity. Following this, a number of regulations and Codes have made special mention of mutuals, such as APRA prudential standards and the Franchising Code of Conduct.

2. It is not in accordance with best practice regulation of social care co-operatives internationally.

Case study: learning from Italian social co-operative legislation

⁵ As such, instruments such as the ILO's Recommendation 193 on the Promotion of Cooperatives recommend that public policy and regulations that impact co-operatives are informed by co-operative principles.

Since the 1980s, a new model of co-operative known as the social co-operative has emerged in Italy as an important model of publicly-funded social care delivery. Today, co-operatives are responsible for delivery of 85% of care services in some regions of Italy (see European Union, [Social enterprises and their ecosystems in Europe: Italy](#))

The social co-operative model was given legal recognition through Law 381/1991. The key difference between a social co-operative and other co-operatives that this law sets out is that a social co-operative must have as its main objective community benefit rather than member benefit.

Such co-operatives are automatically recognised as social enterprises, giving them an advantage in public procurement for delivery of social care services, compared with traditional co-operatives and other providers that do not have the same legal recognition.

Law 381/1991 also makes some other changes for social co-operatives, including requiring inspections every year (instead of two years for other Italian co-ops), allowing such co-operatives to have volunteers as members and confirming that secondary co-operatives of social co-operatives are also recognised as social co-operatives.

Importantly, Law 381/1991 does not place restrictions on the participatory and democratic governance model common to all types of co-operative. A social co-operative is often a multi-stakeholder model, however, single stakeholder models are not precluded and many social co-operatives are worker-owned.

In the Australian context, it is already possible under co-operatives legislation for a co-operative to have a public or community interest objective and achieve charitable registration, approximating the main aspect of the Italian social co-operative model.

The Italian approach shows that models of co-operative that align with the objectives of public funders can be promoted without hindering the democratic governance model that is fundamental to all co-operatives globally.

The development of the new Aged Care Act and supporting rules presents an opportunity to promote a similar model of socially-driven co-operative as a recognised and preferred model in aged care.

3. It adds unnecessary red tape, costs and uncertainty for co-operatives to operate in aged care, discouraging use of the model and placing it at an unjustifiable disadvantage compared to other models.

Case study: The Co-operative Life and BCCM's experience of the determination process under the current Act

The Co-operative Life (TCL) is Australia's first worker-owned co-operative operating in aged care. It is a registered non-distributing co-operative without shares under Co-operatives National Law and a registered charity. It has the objective of providing best-practice care to older people and people with a disability. The co-operative operates on low overheads and thin margins to deliver highest quality care through optimising the care experience (person-centred, culturally appropriate models of care).

Under TCL's worker co-op model, the majority of the board of directors must be worker-members. This board structure is incompatible with the requirement in the current (and proposed) Aged Care Act that a majority of directors of an aged care provider must be independent non-executive directors.

In early December 2023, TCL, with pro bono support from BCCM, made an application to the Aged Care Quality and Safety Commission (the Commission) for determination of an exemption from the requirement to have a majority independent non-executive directors on its board.

An estimated 5 working days have been spent by TCL and the BCCM in preparation of the application and subsequent correspondence with the Commission and related follow-up actions. The BCCM spent an additional 3 days in preparing and

delivering a general briefing on co-operative law and governance for the Commission. In total, we would estimate the dollar value of TCL and BCCM time spent on the application and related information-sharing by BCCM, if delivered by an external commercial advisor, to be approximately \$12,000-\$15,000 (possibly more owing to the lack of expertise in the area, meaning additional time would be taken).

At the time of making this submission (8 March 2024) the Commission is still considering the application and has made a number of follow-up inquiries to TCL for further information.

The BCCM is of the firm view from this experience to date that if a determination process remains the only way for many co-op models to operate in aged care then the model will be both disadvantaged and marginalised due to the ongoing additional uncertainty, time and cost involved.

In addition, there is a risk that existing co-op aged care providers like TCL exit the aged care sector, particularly in regional areas. TCL was already weighing this up before deciding to seek a determination. Despite having ambition and real opportunities to grow their aged care services, particularly in the New England region, they have been discouraged from growing and potentially even continuing their current aged care provision due to there being no easy way to utilise a co-op governance model under the aged care regulatory settings.

4. In disincentivising worker—owned and other co-operative models, it is inconsistent with the principles of the Aged Care Act in relation to innovation, aged care sector worker empowerment, integrated service models and regional service delivery.

Case study: Independent care workers consider a worker co-op model

Through the Care Together Program, groups of independent social care workers in regional Australia have commenced exploring worker-owned co-operative models.

The workers understand there will be new registration requirements for care providers and believe it makes sense to band together as a co-operative to manage these requirements and access other benefits of pooling their resources such as organising training together. The workers are also active in the NDIS and understand similar reforms will likely follow in that sector.

By banding together and pooling resources for good governance, continuous improvement and meeting of regulatory requirements, the workers may be above the small operator threshold and would need to apply for determinations from time-to-time to operate as a co-operative with a worker-controlled board of directors.

This may incentivise them to remain as individual contractors and not pool resources, exit the sector or to seek individual contracting or employment arrangements with a large for-profit care provider which can meet the governance requirements but may not deliver the same level of worker empowerment, information sharing, governance participation or focus on training.

Therefore, the current drafting of the Bill may incentivise outcomes that are inconsistent with many of the principles proposed in the Bill.

Consistent with the proposed principles, the Bill already recognises and has different regulatory requirements for a number of provider types and other stakeholders in the aged care system, including:

- Small individual and incorporated operators being exempted from governance requirements.

- Aboriginal Community Owned Organisations being exempted from governance requirements. Noting that ACCOs are co-operatives and mutuals and share the essential features of a member-based governance model of non-Aboriginal and Torres Strait Islander co-operatives and mutuals.
- Digital platform intermediaries that are not actually service providers having a different set of regulatory requirements to registered providers.

Given the Australian Government, at a policy level, has signalled support for the co-operative model of social care delivery through the Care Together Program, and through the current Bill has expressed a willingness to accommodate different business models including member-governed ACCOs, we believe there is no principled reason for co-operatives not to be expressly recognised and treated as a unique form of provider in the Bill that is exempt from the requirement to have majority independent non-executive directors on its board.

Other comments

The BCCM expects that the proposed responsible person duty in s121 would heavily impact regional and smaller providers, including those that are using or are considering using a co-operative or mutual model. The BCCM supports general incorporation/registration laws being the means by which duties are imposed on directors of entities, rather than through industry-specific legislation such as this.

We note also that there is currently a discrepancy in directors' duties between charitable companies and all other charitable entities, including registered co-operatives that are charities.⁶ The BCCM has received feedback that this has some influence in choice of entity for social care provision because charitable company directors are perceived as being subject to lower duties.

Recommendation

There is an opportunity to legislate an exemption for co-operatives from the requirement to have a majority independent non-executive board, drawing on the approach taken in relation to the social co-operative model in Italy.

In the Italian approach, a sub-type of co-operative with a clear social mission and asset locks is recognised as a preferred model for delivering publicly-funded services. The democratic governance common to all types of co-operative is not hindered, while the aspects of co-operatives that align strongly with the goals of public funders are encouraged.

The BCCM recommends that:

- **The Bill is amended to exempt registered co-operatives from s100(2)(a), provided they meet any requirements set out in the Rules**
- **Rules are drafted that mean only registered co-operatives with an appropriate social care objective, asset lock and commitment to director training enjoy the exemption.**

The BCCM has included as an appendix an illustration of how our recommendation could be put into practice in legislation and rules.

⁶ See <https://www.kwm.com/au/en/insights/latest-thinking/acnc-governance-standards.html>

Appendix: sample amendments to the Bill and Rules and explanation

Amend s100

100 Membership of governing bodies

(1) This section applies to a registered provider that is an entity other than:

- (a) a government entity; or
- (b) a local government authority; or
- (c) a registered provider of a kind prescribed by the rules.

(2) Subject to subsections (3), (4) and (5), it is a condition of registration that a registered provider must ensure that:

- (a) a majority of the members of the governing body of the provider are independent non-executive members; and
- (b) if the provider is a registered provider of a kind prescribed by the rules—at least one member of the governing body of the provider has experience in the provision of clinical care.

(3) Subsection (2) does not apply in relation to a registered provider at a particular time if both of the following apply at that time:

- (a) the governing body of the provider has fewer than 5 members;
- (b) the provider delivers funded aged care services to fewer than 40 individuals accessing funded aged care services.

(4) Subsection (2) does not apply in relation to a registered provider at a particular time if, at that time, the provider is a kind of body that is known as an Aboriginal Community Controlled Organisation.

(5) Paragraph (2)(a) or (b) does not apply in relation to a registered provider at a particular time if a determination under section 102 that the requirement set out in that paragraph does not apply in relation to the provider is in force at that time.

(6) Subsection (2)(a) does not apply in relation to a registered provider at a particular time if, at that time, the provider is a **registered co-operative** that meets any conditions prescribed by the rules in order for subsection (2)(a) not to apply to a registered co-operative.

Insert in definitions

Definitions

...

Registered co-operative means a co-operative that is registered under **Co-operatives National Law** or the **Co-operatives Act 2009 (WA)**.

Co-operatives National Law means the Law set out in the appendix to the **Co-operatives (Adoption of National Law) Act 2012 (NSW)** and applying in a State or Territory under the following:

- (a) the **Co-operatives (Adoption of National Law) Act 2012 (NSW)**;
- (b) the **Co-operatives National Law Application Act 2013 (Vic.)**;
- (c) the **Co-operatives National Law Act 2020 (Qld)**;

- (d) the Co-operatives National Law (South Australia) Act 2013 (SA);*
- (e) the Co-operatives National Law (Tasmania) Act 2015 (Tas.);*
- (f) the Co-operatives National Law (ACT) Act 2017 (ACT);*
- (g) the Co-operatives (National Uniform Legislation) Act 2015 (NT).*

Insert in the Rules

Rules

...

100(2)(a) does not apply to registered co-operatives that meet certain conditions

For the purposes of subsection 100(6) of the Act, subsection 100(2)(a) does not apply to a registered co-operative if at a particular time the registered co-operative has clauses in its rules to the effect that:

- (a) distributions to members on a wind up are limited to the nominal value of their contribution to the registered co-operative; and*
- (b) an objective of the registered co-operative is the delivery of best-practice care services to aged people; and*
- (c) all directors of the registered co-operative must complete a co-operative governance training course within 6 months of their appointment as a director.*

The exemption would be limited to entities that are registered co-operatives. That means the co-operative must be incorporated under Co-operatives National Law in its home state or territory or the consistent Co-operatives Act 2009 (WA). This ensures only co-operatives that adhere to all the requirements in co-operatives legislation that reflect international co-operative principles can enjoy the exemption.

Condition (a) applies an asset lock, meaning any asset value increases will be used in line with the purpose of the co-operative and not for individual member gain while the entity enjoys the exemption. This already is the case for non-distributing co-operatives, but is not a requirement by law for distributing co-operatives.⁷ This requirement is consistent with co-operative principles and is an appropriate condition for an entity that is receiving public funds. It is an element of the co-operative structure for all co-operatives in Italy, including social co-operatives.

Condition (b) would mean that only co-operatives that had a relevant public/community purpose would receive the exemption. The final wording should be such that it does not conflict with any requirements of registration as a charity. This requirement draws most clearly on the experience and innovation seen in the Italian co-operative movement in the social care sector and reflected in Law 381/1991.

Condition (c) would mean that only co-operatives that require all their directors to undertake co-operative governance training would receive the exemption. This requirement is consistent with the co-operative principle of Education, Training and Information and means co-operatives are required to operationalise this principle as part of effective member-based governance.

⁷ Note the co-operatives legislation already limits profit distribution to members. Non-distributing co-operatives cannot distribute profits to members during operations or on a wind up. For, distributing co-operatives there is a regulatory cap on any dividends paid on shareholdings that is designed to make these a non-speculative form of capital.

Other co-operatives and mutuals that are not registered under co-operatives legislation or do not meet these three conditions would still be able to operate as registered providers, either by being satisfied that their board of directors meets the requirements of s100(2)(a), meeting the requirements of a different exemption or by seeking a determination for exemption from that governance requirement.

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.

Contact details:

Melina Morrison, CEO

E: melina.morrison@bccm.coop

M: +61 410 902 656