Modernising Australian co-operatives regulation

Final findings and recommendations report

January 2025

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Business Council of Co-operatives and Mutuals

Traditional acknowledgement
The Business Council of Co-operatives and Mutuals (BCCM) recognises the Traditional Owners of the land on which we work and meet. We wish to pay our respects to First Nations peoples and their elders, past and present. We recognise that the values of Indigenous cultures and co-operative values are deeply connected through the business model of community owned, people centered enterprise that cares for community and environment.

Statement of Co-operative Identity
A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.

Co-operative values
Co-operatives are based on the values of **self-help**, **self-responsibility**, **democracy**, **equality**, **equity** and **solidarity**. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

Co-operative Principles
The co-operative principles are guidelines by which co-operatives put their values into practice.

1. Voluntary and open membership

2. Democratic member control

3. Member economic participation

4. Autonomy and independence

5. Education, training and information

6. Cooperation among co-operatives

7. Concern for community[1]

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[1] Cooperative identity, values & principles | ICA

Contents

1. Foreword

This report is the culmination of an 18-month consultation to establish the industry priorities for modernisation of Australian co-operatives regulation. It is informed by the experience of co-operatives across Australia, in a variety of sectors, of different sizes and length of operation.

Co-operatives play a critical role in Australia's economy providing essential services to rural communities, primary producers and businesses, buying power and scale for smaller enterprises to compete and fostering innovative solutions in manufacturing, housing, energy, and social care. Thousands of Australians and small businesses are more resilient and safeguarded by the co-operatives of which they are members.

However, as with all business structures, regulatory frameworks must evolve to meet contemporary needs.

This report aligns with the aspirations of the United Nations' second International Year of Cooperatives in 2025, which calls for governments to review and improve their legislation and regulation of co-operatives. It offers actionable recommendations to improve the efficacy of the Co-operatives National Law and its supporting regulatory machinery, ensuring co-operatives can thrive and compete fairly with other businesses.

A fulsome review of the regulation governing Australian co-operatives is overdue. The stress test of the COVID pandemic, which showed awareness of co-operatives and the responsiveness of regulation wanting, adds to the urgency for government and industry to act on key recommendations in this report.

Thank you to all the BCCM members, co-operatives and representative bodies who participated in the consultation. Your insights were invaluable in shaping this report and its recommendations. I also thank Anthony Taylor in the BCCM team, and Robyn Donnelly, for their efforts in bringing this process to fruition.

We look forward to working with co-operators, policymakers and regulators to make the International Year of Cooperatives 2025 a landmark year for co-operative reform in Australia.

Melina Morrison
CEO
Business Council of Co-operatives and Mutuals

2. Executive summary

This report evaluates the Co-operatives National Law (CNL) and the consistent Co-operatives Act 2009 (WA), which together form a national scheme for the registration of co-operatives. It offers recommendations for the modernisation of the legislation and the regulatory machinery that supports the administration of the national scheme. It has been informed by a consultation process (summarised in **Appendix 1**) that was undertaken to deepen and test our understanding of industry views on CNL.

There has been no formal review of the CNL since its enactment more than a decade ago. While the industry view is that the core tenets of the CNL remain sound, amendments are urgently needed for it to catch up with developments in business practice and regulation.

The regulatory machinery that supports the CNL as a national scheme also needs urgent attention. COVID exposed the lack of co-ordination among regulators; many co-operatives are disappointed with the level of support they received. A co-ordinated response would have served co-operatives, and the communities they serve, better.

Beyond the impact in crises, the lack of formalised regulatory co-ordination between states and territories, and with the Commonwealth, is one of the underlying reasons why co-operatives regulation is 'falling behind'. Some easy wins to improve the regulatory environment for co-operatives, at a low cost or even cost positive for all parties, are being foregone.

The findings and recommendations at a glance:

1. **Modernising the legislation:**

Key observations

- Long time limits for regulatory approval of co-op rules disincentivises formation.
- The Model Rules need updating to be more useful for groups forming a co-operative.
- Changes in business regulation such as insolvency reforms, online general meeting provisions and the Director Identification Number system have not been applied to co-operatives.
- Globally there is a trend towards permanent protection of legacy assets being included in co-operatives legislation.

Key recommendations

- Reduce legislated approval times to 14 days.
- Review and update the Model Rules.
- Appropriately apply recent changes to business regulation to co-operatives
- Introduce opt-in provisions for permanent protection of co-operative legacy assets.

2. **Enhancing regulatory co-ordination:**

Key observations

- Lack of regulatory guidance on disclosure statements is a barrier to co-operative growth.
- Public data about co-operatives is hard to access.
- The impact on co-operatives is not usually considered when business regulatory reforms at state or Commonwealth level are being developed or implemented.

Key recommendations

- Develop national guidance for disclosure statements.
- Combine public registers for improved access to co-operative data.
- Formalise and renew regulatory co-ordination between states and territories and with the Commonwealth.

What next?

Co-operative stakeholders to this consultation emphasised the importance of consistent, transparent and agile regulation for co-operative formation and growth. This report shows there are a range of legislative and regulatory issues that need to be examined and addressed by policymakers and regulators to achieve these goals.

After more than a decade of operation, and in line with the United Nations' calls for governments to review and enhance their co-operatives legislation and regulation during the International Year of Cooperatives 2025, the time is right for a formal review of the Co-operatives National Law.

The BCCM suggests that, as the lead State in the implementation of Co-operatives National Law, New South Wales is the logical host for such a formal review.

Photo: Geraldton Fishermen's Co-operative (WA), Australia's largest rock lobster exporter.

3. Summary table of recommendations

Recommendation	Action required	Theme	Reference
1. The Model Rules should be reviewed by an expert panel and updated to reflect contemporary governance practices.	Legislative amendment	Approval processes for rules and disclosure	5.1.1
2. The time allowed for approval of the formation rules by the Registrar should be limited to 14 days and s24(6)(b) CNL and s17(6)(b) *Co-operatives Act 2009 (WA)* should be repealed.	Legislative amendment	Approval processes for rules and disclosure	5.1.1
3. The requirement for the preparation of a formation disclosure statement by distributing co-operatives should be reviewed and more closely linked to risks associated with joining the co-operative.	Regulatory co-ordination	Approval processes for rules and disclosure	5.1.4
4. Registrars should develop consistent regulatory guidelines for the preparation of formation disclosure statements for both distributing and non-distributing co-operatives.	Regulatory co-ordination	Approval processes for rules and disclosure	5.1.4 - 5.1.5
5. Registrars should provide a digital process for lodgement of current disclosure statements by distributing co-operatives. Information about this should be easily accessible for co-operatives.	Regulatory co-ordination	Approval processes for rules and disclosure	5.1.6
6. That consideration be given to whether provisions equivalent to the *Corporations Amendment (Meetings and Documents) Act 2022* should be applied to co-operatives.	Legislative amendment	Regulatory agility	5.2.1
7. That consideration be given to whether small business insolvency provisions introduced for companies should be applied to co-operatives.	Legislative amendment	Regulatory agility	5.2.1
8. Registrars should establish a regular communication with the Australian Securities and Investments Commission and Federal Treasury to ensure that	Regulatory co-ordination	Regulatory agility	5.2.1

changes to the C*orporations Act* that would benefit co-operatives are recognised and appropriately and promptly incorporated into the CNL.			
9. Registrars should establish regular meetings to consider administrative and regulatory matters under the CNL with a view to ensuring consistent administration.	Regulatory co-ordination	Regulatory agility	5.2.1
10. That the current separate public registers for co-operatives be combined under a single entity that is able to provide efficient, timely and consistent digital access to data for all co-operatives.	Regulatory co-ordination	Public registers	5.3.1
11. That Registrars consider publishing annual data about co-operative registrations, insolvencies, solvent wind ups, conversions to alternative corporate structure and deregistration applications.	Regulatory co-ordination	Public registers	5.3.1
12. The provisions in the CNL and the Co-operatives Act 2009 (WA) relating to the offer of debentures and CCUs should be reviewed and errors removed.	Legislative amendment	Publication of regulatory guides	5.4.1
13. Registrars should publish clear and consistent guidelines for the offer of securities.	Regulatory co-ordination	Publication of regulatory guides	5.4.1
14. That consideration be given to requiring co-operative directors to have a Director Identification Number as part of their eligibility to be a director.	Legislative amendment	Other matters	5.5.1
15. That consideration be given to whether legacy asset protection provisions similar to the *Co-operatives, Mutuals and Friendly Societies Act 2023 (UK)* should be introduced into the CNL and *Co-operatives Act 2009 (WA).*	Legislative amendment	Other matters	5.5.2

4. Co-operatives in Australia

Co-operatives are one of the four common types of limited liability corporation utilised in Australian economic and community life alongside companies, incorporated associations and Aboriginal Corporations.

Each of these corporate structures supports a diverse and vibrant Australia by facilitating different business and organisational purposes and outcomes for its members and the community. The co-operative facilitates groups of individuals and businesses to make their own solutions to economic, social and cultural challenges under a framework of mutuality and democratic governance.

Co-operatives register under harmonised state and territory legislation, the Co-operatives Act 2009 (WA) and the Co-operatives National Law (collectively, the CNL). The unique aspects of CNL, such as the express references to the international co-operative principles, the active membership provisions or Co-operative Capital Units, reflect 150 years of experience in the global and Australian co-operative movement of what structural elements tend to underpin sustainable mutual businesses.

When national adoption of CNL was achieved in 2020, this represented a significant improvement in the regulatory environment for co-operatives. All co-operatives can now operate nationally with no additional registrations, all have access to Co-operative Capital Units and all jurisdictions now apply reduced reporting requirements to small co-operatives.

According to the research the BCCM conducts for the National Mutual Economy Report, more than 1,400 Australian enterprises and organisations are currently registered as co-operatives. They have at least 315,000 individual and small business members, $10bn turnover, $7.2bn assets and 18,200 employees.

Co-operatives operate across areas of traditional strength like agriculture (CBH Group), retail (The Barossa Co-op), small business purchasing (Independent Liquor Group), housing (the ACHA network) and Aboriginal community-controlled services (many members of NACCHO) as well as emerging sectors like social care (SILC), community energy (CoPower) or worker-owned social enterprise (Nundah Community Enterprises Co-op).

Photo: Norco Co-operative (NSW), a 100% farmer-owned food and beverage manufacturer since 1895.

5. Key issues, findings and recommendations

The key issues, findings and recommendations have been collated across several themes, drawing on the feedback received from co-operators in response to the Discussion Paper and Interim Paper:

- Approval processes for rules and disclosure
- Regulatory agility
- Public registers
- Publication of regulatory guides
- Other matters

5.1 Approval processes for rules and disclosure

5.1.1 Rule approvals – formation rules

Formation of a co-operative under the CNL first requires the presentation of a set of rules for approval by the Registrar. Promoters may use Model Rules or devise their own rules that comply with CNL.

The Registrar has 28 days to make a decision to either approve or reject a set of rules under the CNL. If the Registrar rejects any or all of the rules, the proposed co-operators must submit amended rules giving the Registrar a further 28 days for approval. There is no provision in the CNL for a co-operative to request that the Registrar approve the rules within a shorter time.

The position in Western Australia is different. Section 17 *Co-operatives Act 2009 (WA)* requires the draft rules to be submitted 35 days – *or a shorter time allowed by the Registrar*.

The following questions were asked about approving rules for formation:

> *Q6. Should the Model Rules be updated? Or should they be discarded and the rules simply be required to comply with a list of topics?*
>
> *Q7. Should the time permitted for the Registrar to approve rules be reduced?*

The majority of responses strongly indicated that the Model Rules should be retained but that they should be updated to reflect modern governance practices and they should be better explained or clarified. It was suggested that the Model Rules were not flexible enough to apply to co-operatives in different sectors. Two respondents indicated that the Model Rules should be discarded.

The majority of responses indicated that the 28 days for rules approval allowed under the CNL was too long and created problems particularly when the proposed co-operative was working with financiers during start up. One response suggested that 28 days was too long for approval where the Model Rules were used. Regrettably, two respondents reported that Registrars extended time for approval due to lack of staff. The Co-op Federation noted that unless a proposed co-operative had assistance from the Federation, it was likely that they would experience long times for rule approvals.

Co-ops WA advised that there were no delays for rule approvals in Western Australia because co-operatives could ask for the approval process to be expedited. They reported this was done by the co-operators paying an additional fee. There does not appear to be a legislative basis for the Registrar to charge an additional fee under the *Co-operatives Act 2009 (WA)*.

Co-ops WA also expressed support for Registrars providing more data about rules approval turn-around time and the reasons for the time involved (such as refusals).

5.1.2 Approving rule changes

A further question was asked about time frames to amend rules. Under the CNL, prior approval is required to amend certain rules.[2] The process for approval allows the Registrar 28 days to consider the proposed amendment and a further 28 days if it has to be resubmitted.

> *Q15. Should the time permitted for the Registrar to approve a change to a rule be reduced?*

Respondents indicated that 28 days was unnecessary and held potential business risks. One respondent expressed dissatisfaction that the Registrar responded to a proposed rule change within 28 days only to say that the Registrar required more time thereby giving the Registrar a further 28 days to respond.

5.1.3 Consistency for rule approvals

A hallmark of the CNL scheme is that both the legislation and its administration are to be consistent. Consistent administration requires regular collaboration between Registrars to ensure that the law is applied consistently in each jurisdiction and that as regulators, there is consistent information published about how the legislation will be applied.

The Discussion Paper asked the following question:

> *Q16. Should a co-operative be able to expect that if a specific rule is approved in one jurisdiction it will be approved in any other jurisdiction?*

Twelve respondents strongly supported this proposition. The Co-op Federation and Community Power Agency Co-operative both remarked that as advisers to new co-operatives and co-operatives needing to change their rules, consistency is important. BAL Lawyers responded:

> "*Yes – consistency and equality for all entities is key*"

Two respondents indicated that there may be differences in local or state requirements that should be factored in.

5.1.4 Formation Disclosure statements

Distributing co-operatives are required to present a formation disclosure statement for approval by the Registrar.

Section 25(2) CNL and s17(2) *Co-operatives Act 2009 (WA)*, specify the content of the formation disclosure statement as:

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[2] Section 60 CNL (*s103 Co-operatives Act 2009 (WA))* requires pre-approval by the Registrar in two circumstances: a. if the co-operative is proposing to change all of its rules to achieve a change of co-operative type, and b. *for specified provisions*. The specified provisions for rules requiring pre-approval are published in the local Government Gazette and not always published on the Registrar's website.

- *the estimated costs of formation; and*
- *the active membership provisions of the proposed co-operative; and*
- *the rights and liabilities attaching to shares in the proposed co-operative; and*
- *the capital required for the co-operative at the time of formation; and*
- *the projected income and expenditure of the co-operative for its first year of operation; and*
- *information about any contracts required to be entered into by the co-operative; and*
- *any other information that the Registrar directs to be included.*

There is no general regulatory guide for drafting a formation disclosure statement. Registrars publish an example or template for a disclosure statement for a distributing co-operative. In New South Wales and Queensland there is a comprehensive template, and it makes clear that once approved it is valid only for six months. Victoria, South Australia, Western Australia and Tasmania each publish a short list of inclusions, many of which are already required as part of proposed co-operative's rules.

The following questions were asked about formation disclosure statements:

> *Q10. Should all distributing co-operatives be required to prepare a disclosure statement as part of the formation process?*
>
> *Q11. Should the requirement for a disclosure statement be dependent on risk associated with the purchase of shares? If so, what dollar amount do you consider to represent a risk that would require disclosure by a co-operative?*

The responses to these questions were mixed.

Ten responses included a simple yes, while five respondents proposed that a disclosure statement should be required only when there is an element of risk. Two responses referred to the need to match requirements for companies, so that a disclosure statement may not be needed at formation unless there was to be a significant fundraising event to occur at that time. These respondents proposed that instead of a formation disclosure statement, appropriate disclosure could be required when the co-operative does embark on a significant round of fundraising. One respondent suggested that a formation disclosure statement should be required when the amount of share capital required for membership is $5,000 or more.

5.1.5 Formation disclosure statements for non-distributing co-operatives

Non-distributing co-operatives are not required to lodge a disclosure statement unless the Registrar directs. There is no template for a disclosure statement for a non-distributing co-operative and no guidance about when it will be required other than a statement on the New South Wales Registrar's website:

> A disclosure statement will be required where the operations of the proposed co-operative may result in a significant financial risk to members or where other circumstances exist that warrant the preparation of a disclosure statement.[3]

[3] See Fair Trading NSW

The Co-op Federation and Co-operative Bonds both remarked on the need for clearer information about when the Registrar would require a non-distributing co-operative to prepare a formation disclosure statement.

It was also noted that the NSW Registrar required all non-distributing co-operatives to provide projected financial statements as part of their application for approval of rules and this information is used to determine whether to require a disclosure statement.

5.1.6 Ongoing disclosure requirements for distributing co-operatives

Distributing co-operatives must maintain a current registered disclosure statement (s68 CNL and s137A *Co-operatives Act 2009 (WA)*). 'Current' is defined as when there is a change in the rights or liabilities attaching to shares or a significant change occurs in the co-operative's financial position or prospects.

The following questions were asked in relation to s68 CNL:

> *Q8. Is it necessary to require all distributing co-operatives to update their disclosure statement at least annually?*
>
> *Q9. Should the requirement be altered to reflect the risk of loss to new persons who seek membership so that the disclosure necessary to those persons includes current financial information and any other significant matters the contribute to risk for the new member?*

Some comments focused on the lack of guidance regarding the meaning of when a disclosure statement should be updated and lodged with the Registrar, including whether a disclosure document with a hyperlink to the latest financial reports of a co-op will remain current in most circumstances.

Co-operative Bonds stated that lodging an updated disclosure statement:

> "...should be based on certain thresholds regarding member obligations and terms, changes to capital raising and other matters that pertain to change in risk profile. In addition, there should be two standard national templates for disclosure - one for formation and one for updating as different information is required..."

Co-ops WA stated that the obligation to lodge a current disclosure statement did not mean there was a need to lodge a new disclosure statement annually to reflect changes in the co-operative's financial position and that the provisions as drafted 'speak for themselves'.

Nevertheless, some other respondents revealed that some Registrars had no process for receiving an updated disclosure statement and have in fact rejected them when they are lodged. That is, apart from any substantive issue about judging when an update to a disclosure statement is required, there is a process issue in some jurisdictions.

The NSW Registrar made a class order in respect of s68 CNL to exempt co-operatives from lodgement of an updated disclosure statement where the initial share capital requirement is $200 or less. Information about this exemption is difficult to find and no other jurisdiction has a similar exemption in place.

5.1.7 Summary and recommendations

The primary objective of the CNL at the time of its introduction was to

> *"...ensure that there are no competitive advantages or disadvantages for co-operatives as compared to corporations..."*[4]

However, current processes for formation of a co-operative may frustrate the growth of the sector because it can take too long and there is no purposeful national guidance for preparing the formation documents.

While pre-approval of rules is a good regulatory measure to ensure that only true co-operatives are formed, delays can operate as an unacceptable barrier for co-operatives. Model Rules may provide a quick pathway to approval, however, the feedback from respondents suggests Model Rules do not reflect modern governance practices or allow for tailoring of rules to suit various sub-sectors.

Legislated time limits under the CNL and the *Co-operatives Act 2009 (WA)* do not necessarily present a clear time limit for approvals when provision for extending the time appears to be used frequently and without good cause.

Disclosure statements are generally required to ensure adequate information about risk to a potential member. It is reasonable to question whether a formation disclosure statement is necessary unless there is significant risk for members at the point of formation.

Ongoing disclosure under s68CNL reflects the fact that co-operatives seek to encourage new members to join continuously. Disclosure to new members should reflect the current risks rather than the risks disclosed at formation. It is important that Registrars produce regulatory guidance about these requirements so that co-operatives are able to comply with them.

Recommendations:

1. The Model Rules should be reviewed by an expert panel and updated to reflect contemporary governance practices.
2. The time allowed for approval of the formation rules by the Registrar should be limited to 14 days and s24(6)(b) CNL and s17(6)(b) *Co-operatives Act 2009 (WA)* should be repealed.
3. The requirement for the preparation of a formation disclosure statement by distributing co-operatives should be reviewed and more closely linked to risks associated with joining the co-operative.
4. Registrars should develop consistent regulatory guidelines for the preparation of formation disclosure statements for both distributing and non-distributing co-operatives.
5. Registrars should provide a digital process for lodgement of current disclosure statements by distributing co-operatives. Information about this should be easily accessible for co-operatives.

5.2 Regulatory agility

5.2.1 Regulatory agility

The CNL is a national scheme supported by an agreement between all Australian states and territories[5]. Amendments to the CNL template law and the Co-operatives National Regulation (CNR) can only be made

[4] Co-operatives National Law Regulatory Impact Statement, 2012 page 6
[5] Australian Uniform Co-operative Laws Agreement (AUCLA)

with the agreement of two thirds of the states and territories. Amendments to the *Co-operatives Act 2009 (WA)* can be made by the Western Australian Parliament provided such amendments are consistent with the CNL template.

Some aspects of the CNL legislative scheme dealing with financial reporting, insolvency and fundraising disclosure mirror provisions in the *Corporations Act 2001* through application and modification. In some cases, changes to the *Corporations Act* flow through to the CNL, but not all of them. Developments to laws governing equity crowdfunding, changes to insolvency laws, and most recently, new climate-related reporting requirements, do not flow through to the CNL.

As a crisis, COVID demonstrated the challenges of the national scheme to deliver on its goals of uniform legislation and administration for co-operatives. At a national level, co-operatives simply did not receive the regulatory relief and guidance they needed at this time.

During COVID, the BCCM advocated to each Registrar to make temporary orders modifying the insolvency provisions as applied from the *Corporations Act* to CNL and *Co-operatives Act 2009 (WA)* (as had been put into effect for companies). The responses were not uniform and took months to effect across the eight jurisdictions. In some cases, there was never a response.

COVID also impacted the ability of co-operatives to hold general meetings. Unfortunately, the Model Rules that were adopted by many co-operatives at formation do not provide for virtual general meetings. Some co-operatives sought to change their rules, but this was not successful as they could not hold the meeting to pass the special resolution required.

The advice and any relief provided by each Registrar was inconsistent and in most cases merely provided a fee free extension of time to hold the AGM.

The Discussion Paper asked the following questions:

> *Q1. Do you think the system for legislative change is responsive to the evolving needs of the co-operative movement?*
>
> *Q2. Should co-operatives legislation be technology neutral?*
>
> *Q3. Should recent changes to insolvency law be applied to co-operatives?*
>
> *Q18. Where the regulator has power to make adjustments to regulatory impact and the power to produce guidance for co-operatives do you think the regulators should act quickly and uniformly in response to these problems?*

The majority of respondents to question one agreed that it was slow and inconsistent. While agreeing that the CNL scheme brought positive change to the co-operative sector, it was noted by CBH Group that co-operative regulators need to continue to evolve the governance/regulatory landscape to deal with changes in the operating environment (both past and anticipated) and to co-ordinate between them for consistent responses.

Two respondents stated that the inconsistency and tardiness of regulatory adaptation tended to relegate the status of co-operative enterprise. For example, Eyre Peninsula Co-operative Bulk Handling commented that:

"Co-operatives are still viewed as a country bumpkin tool and not taken as seriously as they should be. The urgency is not there."

Technology neutrality means that a piece of legislation allows regulated persons to achieve the objectives or requirements set out in the legislation using any technology, such as digital technologies. In relation to co-operatives, there are three main areas where technology neutrality is important: the ability of co-ops to conduct their day-to-day operations and commercial transactions digitally, the ability of co-ops to hold meetings and ballots digitally, and the ability to meet any regulatory requirements such as sending in an annual return or the lodgement of an updated disclosure to the Registrar digitally. While Electronic Transactions legislation in each jurisdiction facilitates commercial transactions between parties, it does not impact on regulatory requirements for co-operatives or companies to lodge, execute or deliver all documents required under the Corporations Act or the CNL. COVID prompted changes to the *Corporations Act* to expressly allow companies to hold fully online meetings and to use digital signatures for a variety of documentary requirements.[6]

The majority of respondents to Question 2 supported the ability of co-ops to operate in a technology neutral environment, with some referring specifically to the problems encountered with online meetings during COVID. Notably, one Registrar (WA) has taken the view that online meetings cannot be accommodated under the Co-operatives Act and has developed an amendment to the legislation to enable this.

Question 18 addressed the topic of regulatory change responsiveness by referring to instances under the CNL that allowed Registrars flexibility to exempt entities from or modify the impact of some regulatory requirements. Respondents agreed that it was necessary for Registrars to act promptly and consistently and that this function could be done by a centralised office.

On the specific question about the application of recent changes to insolvency laws for small companies to allow them to restructure with the guidance of a small business professional, most respondents were in favour of this. Some respondents pointed out that the co-operative directors were more likely to focus on the co-operative's survival (Union Co-op Society) while others stated that, in principle, co-operatives should have access to the same insolvency relief processes as companies. Co-ops WA expressed scepticism about the value of these provisions for co-operatives due to their different characteristics to small companies but was open to the matter being investigated further.

5.2.2 Summary and recommendations

By applying some parts of the *Corporations Act*, the CNL is automatically updated to reflect some regulatory developments for companies. However, not all developments that apply to companies automatically apply to co-operatives. There appears to be no regular communication between ASIC or the Federal Treasury and co-operative Registrars on administrative matters or trends and priorities in business regulatory policy. This leaves Registrars responsible for checking whether it is appropriate to apply changes in the *Corporations Act* to co-operatives, with or without modifications. Currently, this is not happening.

[6] *Corporations Amendment (Meetings and Documents) Act 2022.* The amendments enable wholly virtual meetings where permitted by the constitution of the company and other changes to facilitate wholly digital conduct of business by companies (including digital affixing of a company seal).

Recommendations:

6. That consideration be given to whether provisions equivalent to the *Corporations Amendment (Meetings and Documents) Act 2022* should be applied to co-operatives.
7. That consideration be given to whether small business insolvency provisions introduced for companies should be applied to co-operatives.
8. Registrars should establish a regular communication with the Australian Securities and Investments Commission and Federal Treasury to ensure that changes to the C*orporations Act* that would benefit co-operatives are recognised and appropriately and promptly incorporated into the CNL.
9. Registrars should establish regular meetings to consider administrative and regulatory matters under the CNL with a view to ensuring consistent administration.

5.3 Public registers

5.3.1 Public registers

Public register information for co-operatives is maintained in eight separate registers with varying methods and fees for access determined by local regulations and practice. **Appendix 3** contains information about the relevant agency, public register access and fees for each jurisdiction.

The Discussion Paper posed the following questions:

> *Q4. Should the public register information for co-operatives be located on a single register? If you think it should be in a single register, should it be the same register as all other business models, or should it be a separate national co-operatives register?*
>
> *Q14. Do you think there should be such differences in the fees charged for the same functions between each state and territory? Do you think that functions such as a common public register or centralising the approval functions for registering co-operatives would help achieve more uniform administration of the legislation?*

Respondents expressed support for a single national register that clearly identified co-operatives. Most respondents also took the view that the register should reinforce the distinct identity of co-operatives and therefore be kept separate from public register data for other types of corporation. A small number of respondents indicated support for the register to be combined with other entities, although it was still suggested that the Australian Business Register was not adequate.

CBH Group noted that:

> *"A common public register or greater co-operation between regulators may assist in ensuring that an increased level of efficiency can be obtained."*

Speaking to the arrangements for searching public documents of co-operatives, Independent Liquor Group Co-operative commented that:

> *"The current system is slow. Stakeholders such as banks that need this corporate information are used to dealing with ASIC's automated processes and can find it confusing to navigate."*

Most respondents also agreed that the fees for the performance of functions should be uniform and that a single public register would facilitate this. Co-ops WA suggested combining functions in this way was *ultra vires*.

5.3.2 Summary and recommendations

Public register information not only provides data about the co-operative sector for policymaking and business purposes, it is also an indicator of the legitimacy of the sector that it records. Financial transactions, capital movement and regulatory compliance can all be identified in a well maintained and accessible public register. The existence of a reliable public register can inform government agencies considering regulatory change and how to improve efficiency of regulatory operations.

Sections 597 and 598 CNL provide an administrative solution for the establishment of a single public register by allowing a Registrar to confer a function on another Registrar from a corresponding jurisdiction and for those functions to be delegated to another person.

Recommendations:

10. That the current separate public registers for co-operatives be combined under a single entity that is able to provide efficient, timely and consistent digital access to data for all co-operatives.
11. That Registrars consider publishing annual data about co-operative registrations, insolvencies, solvent wind ups, conversions to alternative corporate structure and deregistration applications.

5.4 Publication of Regulatory Guides

5.4.1 Regulatory guides

The Discussion Paper noted that a key change under the CNL scheme was to provide greater access to capital for co-operatives through the offer of new capital instruments, Co-operative Capital Units (CCUs).

Offers of CCUs are governed by a mix of disclosure requirements depending on whether the offer is made to members only or to the public. The BCCM has independently reviewed the legislative requirements for CCU offers and noted a number of drafting errors in both the CNL and the *Co-operatives Act 2009 (WA)*. These matters have been communicated by the BCCM to Registrars but no action has been taken to remedy the errors. **Appendix 4** identifies the drafting errors.

Since implementation there has been limited use of CCUs. A search of state and territory Registrar websites reveals no information about the nature of a CCU nor the process for making an offer of CCUs.

The Discussion Paper asked the following:

> *Q17. Should regulators publish material about fundraising by offering securities and provide guidance material for co-operatives to prepare offer and disclosure documents? Should there be a centralised process for the lodgement and publication of offer documents for co-operative securities to ensure uniformity?*

Respondents said that Registrars should publish guidance material on fundraising and disclosure, and that Registrars should provide a portal for the lodgement of offer documents. Community Power Agency Co-operative supported improved guidance about offer processes noting that:

> *"The experience of getting CCUs approved for the Haystacks Co-op was very slow and painful. NSW Fair Trading had limited understanding of how to approve or use CCUs, with the approval process taking over 9 months and needing several external advisors."*

BAL Lawyers were strongly in favour of the publication of regulatory guides and information by Registrars:

> *"There are volumes of information published on companies through the ASIC website, yet the information on co-operatives on each Registrar's website is inconsistent and varies greatly in depth of information. It makes it difficult for people to make informed decisions to incorporate a co-operative or become a member of the co-operative."*

The Co-op Federation noted in discussion with the BCCM that:

> *"Registrars are strongly focussed on enforcement of regulation in respect of formations. Once the co-op is formed regulatory oversight is minimal."*

And that:

> *"There is a fundamental lack of regulatory guidance for matters other than rule approval."*

Two respondents disagreed with the Registrar publishing guidance material for fundraising. Co-ops WA suggested that the publication of guidance material on fundraising could make the Registrar a market participant.

5.4.2 Summary and recommendations

Regulatory information and guidance is important for potential co-operators, existing co-operatives and advisors to co-operatives. It is a core function of corporate regulation and a failure to provide basic information about fundraising, and CCUs in particular, is likely to reduce the uptake of these instruments.

It is also important that drafting errors noted in the legislation are remedied promptly so that there can be clarity around the processes for fundraising by co-operatives.

Recommendations:

12. The provisions in the CNL and the Co-operatives Act 2009 (WA) relating to the offer of debentures and CCUs should be reviewed and errors removed.
13. Registrars should publish clear and consistent guidelines for the offer of securities.

5.5 Other matters

5.5.1 Director Identification Numbers (DINs)

Director Identification Numbers (DINs) only apply to directors of companies, Aboriginal Corporations and registered Australian bodies. The main policy driver for the introduction of the DIN scheme is to deter fraudulent behaviour such as "phoenixing"[7]. It will also serve to protect director personal information.

> *Q5. Should co-operative directors be required to obtain a DIN? Alternatively, should member directors be excused from the DIN requirements, but independent directors required to have a DIN?*

Responses to this question were generally in favour of DINs applying to co-operative directors. Some respondents such as Folk Art Co-operative Society drew a distinction between small community co-operatives and large business co-operatives. One respondent suggested that not taking advantage of the DIN system made co-operatives look unprofessional. Co-ops WA did not support the application of DINs to co-operatives because phoenixing does not usually occur in the co-operative sector.

The Co-op Federation had not considered that DINs were necessary for co-operative directors because of the low incidence of phoenixing in the sector. However, it was acknowledged that DINs may help deal with instances of persons disqualified from managing companies who then seek to incorporate a co-operative.

There was interest in more information about instances of disqualified persons attempting to form co-operatives. Co-ops WA suggested that further information be provided by Registrars on any regulatory assessment (need, costs, benefits, legal steps) that has been undertaken on the application of DINs to co-operative directors. **Appendix 2** provides examples of co-operative formations involving persons who were disqualified from managing companies and similar issues that the BCCM is aware of.

5.5.2 Summary and recommendation

Applying Director Identification Numbers to directors of co-operatives can protect the integrity of the co-operative model with limited red-tape impact on directors or co-operatives.

Recommendation:

14. That consideration be given to requiring co-operative directors to have a Director Identification Number as part of their eligibility to be a director.

5.5.3 Protecting legacy assets

The Discussion Paper noted recent changes to co-operatives law in the United Kingdom to allow for permanent protection of legacy assets for co-ops that opt-in through a member vote. In a co-op that has opted in, members will not be entitled to more than their nominal investment in the co-op on a wind up or similar structural event.

[7] See Concerns about illegal phoenix activity | ASIC

Legacy asset protection supported by legislation, sometimes also referred to as a permanent 'asset lock' or as 'indivisible reserves', is seen as an integral part of the co-operative structure in many parts of the world[8] and an important anti-demutualisation mechanism.[9] Further information about these types of provisions and their rationale can be viewed at Legacy assets.

The Discussion Paper asked the following question:

> *Q12. Should the law be amended to allow for permanent protection of legacy assets by co-operatives?*

Most respondents supported the proposition of co-ops having the ability to opt in to a statutory legacy asset protection framework. Co-ops WA did not support it indicating that the members of distributing co-operatives were likely to want a distribution of assets in the event of a demutualisation or winding up of the co-operative.

5.5.4 Summary and recommendation

Statutory protection for legacy assets can assist established co-operatives, whether distributing or non-distributing, to reduce the threat of demutualisation and focus on their purpose of service delivery to current and future members. An opt-in framework would ensure there is no impact on co-operatives that do not wish to adopt such provisions.

Recommendation:

15. That consideration be given to whether legacy asset protection provisions similar to the *Co-operatives, Mutuals and Friendly Societies Act 2023 (UK)* should be introduced into the CNL and *Co-operatives Act 2009 (WA)*.

[8] See Cliff Mills, *Ius Cooperativum*, A study of indivisible reserves in cooperatives in EU member states

[9] Mutuo, Demutualisation and how to stop it

Photo: Haystacks Solar Garden Co-operative (NSW), an innovative solution allowing renters to access the cost-of-living benefits of solar. The co-op raised nearly $1 million in a CCU offer to members.

Photo: The Barossa Co-op (SA), a leading community-owned retailer and major local employer. Every dollar spent at the co-op's supermarket generates an additional 76c of value in the local economy.

6. Other industry-specific and emerging issues impacting co-operatives

A common additional theme in feedback were issues arising from the interaction of the requirement of co-operatives legislation with industry-specific regulation, where this other regulation had not been developed with recognition of co-operatives. The BCCM has not made recommendations in relation to these issues but they are important to note as examples of why sustained formal communication between co-operative regulators and other regulators, including at Commonwealth level, is crucial for long-term improvement of the regulatory environment for co-operatives.

Housing regulation

Housing co-operatives respondents raised concerns about the interaction of co-operatives legislation with other legislation:

- State and territory residential tenancy legislation does not recognise co-operative tenure or allow for effective enforcement of active membership provisions in rental co-operatives.
- State and territory retirement village legislation requires resident-owned and incorporated retirement villages to effectively repeat governance processes under the incorporation legislation and then in a slightly different form under the retirement village legislation.
- There are concerns that NSW flood recovery grant guidelines have not been designed to equitably include residents of land co-operatives.

Social care regulation

The new Commonwealth Aged Care Act requires all registered aged care providers to have a majority independent non-executive board. This makes worker co-operative models almost unworkable in this sector and creates unnecessary legal ambiguity for consumer or community-owned co-ops.

Other regulated social care sectors such as the NDIS may look to reform governance requirements using the Aged Care Act as a best practice template and thereby inadvertently reproduce the same issue.

BCCM has advocated for co-operative governance models to be recognised in the regulated social care sectors.[10] According to the Department of Health and Aged Care, draft rules covering co-operative governance will be published for consultation in February 2025.

Charity regulation

Some co-operatives that are charities noted the discrepancy in directors' duties between charitable companies and other charities. Ongoing dual reporting to the Registrar and the ACNC was also noted. These issues are included in the final report of the Productivity Commission's recent inquiry into philanthropy (Future foundations for giving, 245-6; 256).

[10] See for example BCCM-Submission-in-response-to-Aged-Care-Bill-2023-Exposure-Draft

Sustainability reporting

The new provisions of the Corporations Act relating to sustainability reporting for large businesses have been finalised since this consultation commenced. They do not apply to co-operatives. This is another example of new regulation that has been developed with limited consideration of whether and how it should apply to corporations other than companies.

BCCM has made submissions to the Treasury and ASIC on this matter.[11]

[11] See for example BCCM-submission-to-ASIC-re-CP380

Appendix 1 – Method and list of consultation respondents

A Discussion Paper was published in August 2023 providing an overview of the BCCM's view on key issues with Co-operatives National Law and a set of consultation questions. The Discussion Paper was published on the BCCM website and sent by email to BCCM members, approximately 500 co-operatives, The Co-op Federation, Co-ops WA and the Australian Co-operative Housing Alliance, collectively representing approximately 400 co-operatives, and advisors to co-operatives for feedback via an online survey, email or video conference.

An Interim Findings and Recommendations Paper was then published in September 2024 summarising the feedback on the consultation questions received from co-operatives and setting out some draft recommendations. This was published on the BCCM website and sent by email to BCCM members, the co-operative federations and all previous respondents for further feedback to inform this final report.

The following is a list of respondents who provided feedback during the consultation process:

Name	Type	State or territory
BAL Lawyers	Advisor	ACT
Broomehill Village Co-op	Non-distributing	WA
CBH Group	Non-distributing	WA
Cohousing Co-operative	Non-distributing	TAS
Community Power Agency Co-op	Non-distributing and advisor	NSW
Co-operative Bonds	Distributing and advisor	VIC
Co-ops WA	Federation	WA
Eyre Peninsula Co-operative Bulk Handling	Distributing	SA
Folk Art Co-operative Society	Non-distributing	QLD
Geraldton Fishermen's Co-operative	Distributing	WA
Independent Liquor Group Co-operative	Distributing	NSW
Master Butchers Co-operative	Distributing	SA
Moorleigh Ceramic Co-op	Non-distributing	VIC
Norco Co-operative	Distributing	NSW
The Co-op Federation	Federation	NSW
The Trashy Artisan Co-operative	Non-distributing	QLD
Union Co-op Society	Distributing	QLD
Warrandyte Retirement Village Co-op	Non-distributing	VIC
United Housing Co-operative	Non-distributing	VIC
Yenda Producers Co-operative	Distributing	NSW
Anonymous		
Anonymous		
Anonymous		
Anonymous		

Appendix 2 – Case studies of recent co-operative formations involving disqualified persons and related issues

Co-op Name	Jurisdiction	Year of registration	Potential issues
Pilbara Liveable Villages Co-op	WA	2019	The co-op was registered with eligible directors, but it turned out the main promoter behind the business was a disqualified person. The co-op was subsequently deregistered in 2020. See: Veronica Macpherson, mastermind of suspected WA Ponzi scheme, returns with new property business
Lotus Energy Co-operative	VIC	2019	The co-op promoters include persons who have previously been (not currently) disqualified from managing companies. It is unclear if funds raised in the co-op with a relevant disclosure statement or through a subsidiary. See: Cricket superstars and mum & dad investors caught out
C.H.A Co-operative	NT	2022	The co-op was registered in the Northern Territory with an undischarged bankrupt as a founding director. The promoters were from Victoria with limited evidence of a connection to the Northern Territory. See this article about one of the promoters of the co-op: Ex-Victorian agent pays price for $100k trust account withdrawal

Photo: Independent Liquor Group Co-operative (NSW) provides warehousing and logistics support to more than a 1000 small businesses and organisations across the east coast.

Appendix 3 – Comparison of fees and search processes in each jurisdiction[12]

Jurisdiction	Is there a free list of co-ops available?	How are co-op documents accessed?	Fees for extract	Fees for other (non-certified) public document	Is basic registration information shared with ASIC?
NSW	Yes, Website search function (but no master list function - free)	Fill out form, return by post or email, wait 3-5 business days, pay fee	$36	$36 (<20 pages); $95 (>$20 pages)	Yes
VIC	Yes, Website hosts list in PDF form (free)	Fill out form, return by post, wait for processing.	$35	$25.40 first page, $2 thereafter, up to $124.	Yes
QLD	No, request extract, pay online, $10 for first page, $1.85 thereafter	Fill out online form, payment via online gateway	$10 first page, $1.85 thereafter	$10 first page, $1.85 therefater	Yes
SA	No, request extract, pay $7.40 for first page and $2.05 thereafter.	No published process	$7.40 for first page and $2.05 thereafter	$7.40 first page and $2.05 thereafter	No, not in last 5 years
WA	Yes, Website list (free)	Fill out form, return by post or email, pay online by secure gateway	$17 (uncertified); $36 (certified)	$17 first page, $1.90 thereafter, up to $86.60 per document.	No
TAS	No, no information on how to access.	No information on how to access.	No fees published.	No fees published.	Yes
ACT	Yes, Website list (free)	Fill out online form	Flat fee of $25	Flat fee of $25	No
NT	No, no information on how to access.	Direction to contact Licensing NT	No fees published.	No fees published.	Yes

[12] Current as at September 2024

Appendix 4 - Legislative drafting errors

CNL	Co-operatives Act 2009 (WA)	Drafting error	Action
s467(1)(c)	s253A	Wrongly refers to a member only offer (s338 CNL, s252 WA).	Replace s338 with s337 (CNL) Replace s252 with s262 (WA), noting that s262 refers to a statement rather than a disclosure statement.
s347	s250	Applies financial accommodation provisions to CCUs as though they are debentures, thereby requiring appointment of a trustee. Overlooks fact that CCUs are capital.	Amend s347 (CNL) and s250 (WA) to clarify the trustee requirement for debentures does not apply to CCUs.
CNR	**Co-ops Regulation 2010 (WA)**		
Reg 5.2(2)	s466	Wrongly requires a cross-border offer of shares to lodge disclosure with ASIC or seek exemption from ASIC.	Repeal Reg 5.2(2) (CNR) Repeal Reg 37 (WA)
Reg 5.3(2)	s467	Wrongly requires a cross-border offer of CCUs or debentures to lodge disclosure with ASIC or seek exemption from ASIC.	Repeal Reg 5.2(2) (CNR) Repeal Reg 38 (WA)

Photo: Lakewood CMC (Vic), an 82-member rental housing co-op. Co-op housing is established across most of Australia and has potential to grow as part of a diverse, secure and affordable housing system.

Photo: Nundah Community Enterprises Co-op (Qld). A pioneering worker-owned social enterprise that generates stable employment for workers with cognitive and psycho-social disabilities.

About the BCCM

The Business Council of Co-operatives and Mutuals 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 more than 12.8 million people and businesses – the members of these enterprises.

The BCCM is a member of the International Co-operative Alliance (ICA) with access to world-wide networks.

For more information about the BCCM and Australian co-operatives and mutuals, visit the Council's website: www.bccm.coop

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Business Council of Co-operatives and Mutuals (BCCM)

GPO Box 5166, Sydney, NSW 2000

E: info@bccm.coop | P: +61 (02) 8279 6050 | www.bccm.coop