



# Addressing corporate misuse of the Fair Entitlements Guarantee

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Submission to the Department of Employment and Workplace Relations

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6 May 2025

## Introduction

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The Business Council of Co-operatives and Mutuals (BCCM) thanks the Department of Employment and Workplace Relations for the opportunity to make this submission about the misuse of the Fair Entitlements Guarantee (FEG).

The BCCM is the national peak body representing the co-operative and mutual enterprise movement across all sectors of the economy.

**We support the submission and a broad-based regulation to give employee directors access to the FEG as proposed by Employee Ownership Australia (EOA).** The purpose of our submission is to provide additional information on co-operatives as one type of business that is disadvantaged by the current FEG treatment of employee directors, and to propose drafting to ensure that employee directors of co-operatives are covered in any regulatory solution.

## The FEG and co-operatives

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Co-operatives are member-owned enterprises that operate under internationally-agreed principles.<sup>1</sup> These principles include member economic participation, democratic governance and concern for community.

From a legal perspective, a co-operative in Australia is an entity that has been registered under the Co-operatives National Law (CNL).<sup>2</sup> Co-operatives registered under this legislation are limited liability corporations, may be for-profit or not-for-profit and may or may not have a share capital. Section 444 CNL applies the Corporations Act provisions in relation to winding up (including section 556) to co-operatives, with some modifications<sup>3</sup>.

As such, employee directors of a co-operative are treated in the same way as employee directors of a company in relation to the FEG, as set out in EOA's submission.

## Employee directors and worker co-operatives

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One type of co-operative is the worker co-operative, where membership is based on having an employment relationship with the co-operative. Such co-operatives generally have a corporate purpose of generating secure and quality work for their members.

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<sup>1</sup> See [Cooperative identity, values & principles | ICA](#)

<sup>2</sup> The harmonised national scheme consists of the Co-operatives National Law in all states and territories except Western Australia, which has adopted the consistent Co-operatives Act 2009 (WA).

<sup>3</sup> There are specific modifications listed at s444 CNL, as well as some general modifications set out in s13(3) CNL.

Examples of worker co-operatives in Australia include The Co-operative Life, Galactic Co-operative and Nundah Community Enterprises Co-operative.

The CNL requires the internal governance of the co-operative to be organised democratically in accordance with the co-operative principles. Amongst other things, the board of a co-operative must include a majority of directors elected by and from the membership.<sup>4</sup> Therefore, a worker co-operative in Australia must have a majority employee board.

The current treatment of employee directors under the FEG effectively acts as a disincentive towards the formation of worker co-operatives in Australia because the majority of directors of the enterprise must be prepared to forego access to the FEG.

This is the case even where the employee director has no involvement in management or any notable economic interest in the enterprise other than their employment relationship.

## Employee directors in other models of co-operative

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Co-operatives other than worker co-operatives may include employee representation on their board.

On the one hand, this could be a non-member director position provided for under the rules of the co-operative. The rules will set out the arrangements for election or appointment by the board itself, members, employees or another arrangement. For example, a consumer-owned retailing co-operative may decide that one director is elected by the employees of the co-operative in their capacity as employees (not as members).

On the other hand, co-operatives can introduce employee representation by adopting a multi-stakeholder membership model where both employees and one or more other classes of member will have allocated levels of representation on the board of directors. Models where employees are the dominant member class can be understood as a further development of the worker co-op model described in the previous section<sup>5</sup> while inclusion of employees as a minority member class is also possible.

Through the Commonwealth-funded Care Together Program, the BCCM is promoting innovative co-operative models for social care delivery in regional Australia, with a special focus on empowering care workers through co-operative models that can provide decent, meaningful work and high-quality, safe care.

One project that Care Together is supporting is a new multi-stakeholder co-operative in Eurobadalla<sup>6</sup> that will accept both employees and independent workers as members and allow both to stand for election to the board. This multi-stakeholder model makes sense in the social

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<sup>4</sup> S174(2) CNL.

<sup>5</sup> This model of co-operative where workers and other minority classes such as local community organisations or volunteers are included as members is sometimes called a 'social co-operative', for example in Italy.

<sup>6</sup> See [Eurobadalla Community Care Co-op initiative](#)

care context, where many workers are already working as sole traders and the role of the co-operative is to provide these workers with administrative support, rather than an employment relationship. In this type of co-operative, member-directors who are employees will still have a duty to represent the interests of all members and the co-operative (not only the employees).

Employee representation in co-operatives, including in multi-stakeholder co-operatives, is disincentivised by the current FEG settings because employee directors must be prepared to forego access to the FEG.

## Recommendation

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We are not aware of any policy reason why this disincentive to employee directors in co-operatives should be perpetuated.

**The BCCM recommends that regulatory relief is provided to enable FEG access for a broad range of employee directors, inclusive of employee directors in co-operatives.**

To achieve this we suggest that a regulation is developed to specifically cover co-operative member-directors, in addition to what is proposed in the submission made by EOA:

*Where section 556 of the Corporations Act 2001 applies to the winding up of the employer a person is not an excluded employee under that section in relation to the employer if they are either:*

- a. a member-director in a registered co-operative who had no executive function in the management and administration of the employer at any time during the period of 12 months ending on the relevant date; or
- b. a director in any entity solely because they were elected or selected as a director to represent the interests of all employees of the employer and had no executive function in the management and administration of the employer at any time during the period of 12 months ending on the relevant date.

The BCCM stands ready to provide further information on the matters outlined in this submission.

## About the BCCM

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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 12.8 million individuals and 60,000 businesses.

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

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