



Ms Lisa Baxter
Executive Officer
Economic and Finance Committee
Parliament House
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Adelaide SA 5000
Via: Lisa.Baxter@parliament.sa.gov.au

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Dear Ms Baxter

Inquiry into Retail Supply Issues Faced by South Australian Primary Producers

The Business Council of Co-operatives and Mutuals (BCCM) is pleased to make a further submission to the Economic and Finance Committee Inquiry into Retail Supply Issues Faced by South Australian Primary Producers.

In this supplementary submission we respond to the Issues Paper under the following headings:

1. The regulatory and legislative barriers to starting and operating a co-operative in South Australia
2. An update in relation to whether the ESCSA has conducted a review of the entire grain supply chain, and, how producers' costs could be reduced or passed along the supply chain
3. Recommendations

For background information on the BCCM and the co-operative and mutual sector in Australia please refer to our first submission to this inquiry.

The BCCM is happy to provide further information or comment on any aspect of this submission.

Yours sincerely

Melina Morrison
CEO

1. The regulatory and legislative barriers to starting and operating a co-operative in South Australia

The BCCM welcomes the Committee's 'committ[ment] to exploring how to increase the negotiating power of local producers', including through investigation of the role of co-operatives and mutuals and any legislative or regulatory barriers for those types of organisations.¹

The BCCM takes this opportunity to provide more information on the current legislative and regulatory framework for co-operatives and mutuals in South Australia and any barriers to starting or operating a co-operative that are caused by this framework and the surrounding policy environment.

The legislative and regulatory framework for co-operatives and mutuals in South Australia

There are two key legislative and regulatory frameworks for co-operatives and mutuals in South Australia.

In the eyes of the law, co-operatives are a specific form of state-registered limited liability corporation, regulated by a co-operative Registrar. Only these corporations (with a few exceptions²) can use the word 'co-operative' or 'co-op' in their name. In South Australia, these co-operatives are regulated under **the Co-operatives National Law**.³ The directors' duties in the Co-operatives National Law are imported from the Federal Corporations Act, but are interpreted in line with the co-operative principles.⁴ It should be noted that the Co-operatives National Law, and any regulations related to it⁵, are relevant to this inquiry and should be included alongside the legislation that was listed on page 16 of the Issues Paper.

However, some co-operatives and almost all mutual⁶ enterprises choose to use the company form, and are therefore regulated at the Federal level under **the Corporations Act**. Whether a company is a co-operative or mutual will depend on the contents of its constitution, rather than the legislation under which it is registered. It is worth noting that mutual banks and credit unions, irrespective of what State they are based in, have been moved under the Corporations Act.⁷

¹ Issues Paper, 9.

² A key exception, unique to South Australia, is housing co-operatives, which were registered under the separate *South Australian Co-operative and Community Housing Act 1991 (SA)*. This Act has been repealed, with the housing co-operatives transitioning to registration under the new *Community Housing Providers (National Law) Act 2013 (SA)* allowed to continue using the word 'co-operative' or 'co-op' in their name. See s6(b) *Co-operatives Regulations 2015 (SA)*.

³ The *Co-operatives National Law Act 2013 (SA)* adopts Co-operatives National Law in South Australia. Schedule 1 contains the Co-operatives National Law proper. See http://www.austlii.edu.au/au/legis/sa/consol_act/cnlaa2013439/sch1.html

⁴ See section 10, CNL.

⁵ Primarily the *Co-operatives Regulations 2015 (SA)*, <https://www.legislation.sa.gov.au/LZ/C/R/CO-OPERATIVES%20%28SOUTH%20AUSTRALIA%29%20REGULATIONS%202015.aspx>

⁶ Both co-operatives and mutuals are member-owned. The difference is that mutuals are owned by customers or policyholders, and derive their income from trade with the membership (the concept of mutuality) while a co-operative could have, for example, supplier-members and gain income from trade with non-member customers (for example, a milk processing co-operative owned by dairy farmers). Furthermore, while co-operatives must adhere to the seven co-operative principles, mutuals do not have to subscribe to all of these principles (though they often do operate in line with all or most of these principles). In sum, it can be said that some co-operatives are mutual, and some mutuals are co-operative, but there is not a complete overlap. <http://ica.coop/en/whats-co-op/co-operative-identity-values-principles>

⁷ By way of background see <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2FCC606%22>

The legislative and regulatory barriers for co-operatives and mutuals in South Australia

One of the major historical barriers for state-registered co-operatives was the lack of uniform legislation across state borders. State-registered co-operatives were burdened with many dual-regulation requirements when operating across state borders. This has largely been overcome by the adoption of the Co-operatives National Law by South Australia and all other States and Territories except Queensland.⁸

The following are the most pressing areas for improvement in the regulatory and policy environment for State-registered co-operatives:

1.1 Improving the information about co-operatives on the South Australian Consumer and Business Services website in line with best practice in Australia.⁹ The BCCM is asking all States and Territories that have adopted the Co-operatives National Law to provide consistent information on co-operatives.

1.2 Streamlining of co-operative registration and regulatory processes through the use of “reg-tech” solutions and inclusion of co-operatives within the ambit of the Simpler Regulation Unit. We thank the South Australian Co-operative Registrar for undertaking to include a link to the newly developed Co-op Builder tool¹⁰ on the Consumer and Business Services website. As far as the BCCM is aware, South Australia will be the first jurisdiction to share this tool that streamlines and reduces the potential costs of the co-operative formation process for the registry and for the membership of the co-operative.

1.3 Collection, collation and publication of the following data by the South Australian Co-operative Registry so a clear picture of the sector can be developed:

- Name, registration number, ABN and date of incorporation of all co-operatives;
- The distributing or non-distributing status (and any change thereof in a given year) of all co-operatives;
- The amount of registrations in any given year; and
- The amount of de-registrations in any given year.

The BCCM is calling on all States and Territories to collect data to this standard.

1.4 Parity of information, advice and eligibility for co-operatives (compared with other business structures) in relation to South Australian government business grants, business programs or procurement policies. For example, business advisors working in government business programs and the frontline staff who regulate businesses should have equal knowledge of co-operatives as other business structures such as associations or companies. The BCCM recommends that the South Australian government undertake an audit of its grants, programs and procurement policies to this end. The BCCM has already offered to run workshops or information sessions on co-operatives for relevant South Australian government departments.

Broader policy barriers and opportunities for co-operatives in South Australia

⁸ Note that Western Australia has adopted legislation that is *consistent* with the Co-operatives National Law.

⁹ To give one example where an improvement could be made, the Consumer and Business Services website currently states that co-operatives are ‘a company’, which is a misclassification; companies and co-operatives are both types of limited liability *corporation*. <https://www.sa.gov.au/topics/family-and-community/community-organisations/types/co-operatives> For a comparison with the information about co-operatives provided in New South Wales see http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/About_cooperatives.page?

¹⁰ <http://co-opbuilder.agworks.com.au/>

The following are two examples where a more developed regulatory and policy framework could lead to increased use of co-operatives by the South Australian community for job creation and economic development purposes.

1.5 Employee Buyouts - Fleurieu Poultry Association¹¹

Employee buyouts can offer an opportunity for South Australian producers to maintain access to vital local processing facilities.

The closure of the Aldinga turkey processing factory by Ingham is one example where it may have been possible, with industry and government support, to achieve an employee and community buyout solution that captured value for local producers and their community.¹²

Two examples of best-practice policies from international jurisdictions are:

- First right to buy laws for employees or the community to give employees or community adequate time to consider a buyout; and
- Government financial incentives to facilitate private (community, employees and their unions, co-operative and mutual sector) investment in a buyout.¹³

The BCCM would support a consultation process to consider industry support programs designed to facilitate employee or community buyouts.¹⁴

1.6 Industry Clusters - HunterNet Co-operative¹⁵

HunterNet Co-operative, formed in 1991 with \$30,000 Commonwealth seed funding, is a hugely successful example of an industry “cluster”. Its members are a wide range of manufacturing and engineering firms in the Hunter and Central Coast regions of New South Wales.

The impetus for formation was the need for small manufacturers in Newcastle to improve their standards and grow their markets (at the time being reliant on a limited number of large firms such as BHP for contracts) and a belief in the power of networking. HunterNet has been crucial in the maintenance of a strong manufacturing base in the Hunter, focusing on defence, infrastructure management, energy and resources and advanced manufacturing.

The BCCM believes a similar networking approach can be applied for the benefit of primary producer co-operatives and small producers, indeed, this has already been recognised in the business programs and policies developed by the South Australian government.¹⁶ With an improved regulatory and policy environment, greater information on government websites and among government business advisors, more clusters could consider the benefits of forming a co-operative. The BCCM is of the view that government programs supporting clusters or industry collaboration will be more effective when participants have a genuine opportunity to consider all the business structures available for collaboration, including the co-operative business structure.

¹¹ <http://www.fleurieupoultry.com/>

¹² For further background see <http://www.victorharbortimes.com.au/story/3213687/aldinga-turkeys-ex-workers-raise-support-for-new-poultry-plan/>

¹³ See <https://www.thenews.coop/98000/sector/retail/marcora-law-effective-tool-active-employment-policy/?v=79cba1185463>

¹⁴ Including consideration of existing South Australian programs:
<http://statedevelopment.sa.gov.au/industry/manufacturing/manufacturing-programs-and-initiatives/unlocking-capital-for-jobs>

¹⁵ <https://hunternet.com.au/>

¹⁶ See generally <http://statedevelopment.sa.gov.au/industry/smallbusiness/small-business-statement>
For example: http://www.pir.sa.gov.au/premium_food_and_wine/innovation_clusters

The role of co-operatives in helping smaller producers in retail negotiations

The Issues Paper asked for examination of successful examples of co-operatives, mutuals and industrial associations in giving small producers increased bargaining power in retail negotiations. In response to this question the BCCM notes that co-operatives can increase the bargaining power of small producers vis-à-vis retailers indirectly or directly. Producer co-operatives work to increase the returns to their members, whether the co-operative directly bargains with retailers or not. For example, South Australia's CCW Co-operative is primarily a grape supply co-operative (with approximately 10% of Australia's crop). As a supply co-operative, CCW primarily bargains with processors in the supply chain rather than retailers, but it has also developed its own wine production and branding to capture more value for its members.

We also refer to our initial submission to this inquiry, which provided a number of examples of successful South Australian producer co-operatives. It is worth noting that because of their democratic governance, co-operatives can have a range of small and big producers as members. The small members and big members equitably benefit (i.e. based on their patronage of the co-operative) from increased direct or indirect bargaining power in relation to other players in the supply chain.

2. An update in relation to whether the ESCOSA has conducted a review of the entire grain supply chain, and how producers' costs could be reduced or passed along the supply chain

In response to points 3 and 4 of the Issues Paper¹⁷, the BCCM highlights the submission made by Grain Producers SA to the Essential Services Commission of South Australia inquiry into the South Australian bulk grain export supply chain costs.¹⁸ In their submission, Grain Producers SA provide a comparison of cost per tonne between CBH Group (as a third party handler) and Vittera, the main handler in South Australia. The comparison shows Vittera's cost to producers to be \$16 more per tonne.¹⁹ Grain Producers SA state that 'The reason for [Vittera's] escalating cost per tonne is unknown. The benefit of economies of scale and lower average operating costs does not appear to have flowed through to lower charges for users of the bulk grain export supply chain.'²⁰ Grain Producers SA suggest there is a lack of transparency in handling costs in South Australia. The BCCM agrees, and suggests that producer-owned co-operatives are more likely to provide price transparency to producers.

We also point the Committee towards an article by Tim Mazzarol, Elena Mamouni Limnios and Richard Simmons' entitled "To be or not to be a co-operative? The case of Australia's grain co-operatives CBH and ABB Grain"²¹, which provides a high level comparison of the trajectory of grain handling in Western Australia and South Australia over the past 100 years. In this article Mazzarol, Limnios and Simmons note that 'the decision by members of SACBH to demutualise and form AusBulk-UGH led ultimately to a loss of grower control under ABB Grain, although members did not intend this when the process was first proposed', and later, 'The process of demutualisation and conversion into an investor owned firm had altered its

¹⁷ Issues Paper, 10.

¹⁸ See Grain Producers SA, *Submission to the ESCOSA inquiry into South Australian bulk grain export supply chain costs*, <http://www.escosa.sa.gov.au/ArticleDocuments/1073/20170519-I-SABulkGrainSupplyChainCostsTORSubmission-GrainProducersSA.pdf.aspx?Embed=Y>

¹⁹ Grain Producers SA, *Submission*, 4

²⁰ Grain Producers SA, *Submission*, 5

²¹ Tim Mazzarol, Elena Mamouni Limnios and Richard Simmons', "To be or not to be a co-operative? The case of Australia's grain co-operatives CBH and ABB Grain" in Tim Mazzarol et al (ed.), *Research Handbook on Sustainable Co-operative Enterprise: Case Studies of Organisational Resilience in the Co-operative Business Model* (Edward Elgar, 2014), 113

purpose from delivering efficient bulk grain handling to growers, to returning capital investment gains and dividends to shareholders.²²

Finally, the BCCM notes that the co-operative sector has expressed some concerns about point 4.2 of the Issues Paper, namely whether a minimum price should be imposed on produce including wine grapes. Co-operatives allow producers to work together to ensure sustainable farmgate returns in competitive markets. The BCCM believes improving the regulatory and policy environment for the formation and operation of agricultural co-operatives will do more to ensure the long-term sustainability and competitiveness of South Australian primary production.

3. Recommendations

The BCCM believes that the following steps will address the barriers to the development of producer and other co-operatives in South Australia outlined in this submission:

- 3.1 **The BCCM recommends that the South Australian government develop a whole-of-government strategy for management of the Co-operatives National Law in South Australia, with consideration of the position of the Inter-Jurisdictional Committee on the Co-operatives National Law and the recommendations of the Commonwealth Senate Economics References Committee inquiry into cooperative, mutual and member-owned firms.** This is the starting point for continual improvement of the policy, legislative and regulatory environment for co-operatives.
- 3.2 **The BCCM recommends that information about co-operatives on the South Australian Consumer and Business Services website is improved in line with best practice in Australia.**
- 3.3 **The BCCM recommends that registration and regulation of co-operatives in South Australia is continuously streamlined through the use of “reg-tech” solutions and inclusion of co-operatives within the ambit of the Simpler Regulation Unit.**
- 3.4 **The BCCM recommends that the Co-operative Registry in South Australia collects, collates and publishes data on co-operatives.**
- 3.5 **The BCCM recommends that the South Australian government undertake an audit of current government business grants, programs and procurement policies to determine the eligibility of co-operatives and the level of information and advice available about co-operatives to participants.**
- 3.6 **The BCCM recommends that a South Australian Co-operatives Reference Group is formed with representatives of co-operatives and mutuals headquartered or with significant operations in South Australia.** The Reference Group would provide corporate knowledge, mentorship and information on formation of co-operatives at minimal cost to the South Australia government and develop proposals for the best way for government to provide a supportive environment for co-operative development in South Australia in line with the BCCM’s other recommendations above. Among other things, this Reference Group could consider the best way of developing new programs or adapting existing programs to support co-operative industry clusters and community buyouts.

The BCCM is willing assist the South Australian government by providing access to information and expertise on co-operatives and facilitating workshops or information

²² *Ibid.*, 129-131.

sessions about co-operatives as appropriate for the implementation of the above recommendations.