



BUSINESS COUNCIL  
OF CO-OPERATIVES AND MUTUALS



Ms Kathryn Greiner AO  
Retirement Villages Inquiry  
NSW Fair Trading  
PO Box 972  
Parramatta 2124

Via email: [rvinquiry@finance.nsw.gov.au](mailto:rvinquiry@finance.nsw.gov.au)

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Dear Ms Greiner

### **Submission to the NSW Fair Trading inquiry into NSW retirement villages**

The Business Council of Co-operatives and Mutuals (BCCM) and Common Equity Housing NSW (CENSW) welcome the opportunity to make a submission to the Fair Trading inquiry into the NSW Retirement Village Sector.

The purpose of this joint submission is to demonstrate that co-operative housing is a viable alternative to retirement villages and contributes to enhanced resident choice and control leading to better outcomes for residents. The BCCM and CENSW are of the view that co-operative housing models address many of the public concerns about transparency, management fees and fairness in retirement villages that have prompted this inquiry.

We acknowledge there are regulatory changes needed to the Retirement Villages Act to address deep community concern about the efficacy of the retirement village business model. However, we consider an outcome from this inquiry is to also consider alternative housing options for older Australians. As the regulator of both co-operatives and retirement villages in New South Wales, Fair Trading is uniquely placed to consider and implement regulatory and policy changes that encourage growth in co-operative models of independent living for older people.

BCCM and CENSW believe that a recommendation from this inquiry could be to work with the co-operative and mutual housing sector to develop a discussion paper exploring opportunities for growing co-operative housing (co-housing) as an alternative to retirement villages. The involvement of Fair Trading in this would provide important signals to the market about the importance of having diversity and choice in housing options for older Australians.

Our submission is structured as follows:

1. About the BCCM
2. About CENSW
3. About co-operative enterprises and co-operative housing models
4. Response to Terms of Reference

5. The motivation of providers influences outcomes in human services
6. Recommendations

The BCCM and CENSW are happy to provide further information about co-operative and co-housing models and we look forward to having an opportunity to expand on this submission.

Yours sincerely

**Melina Morrison**  
CEO  
Business Council of Co-operatives and Mutuals

**James Brown**  
CEO  
Common Equity NSW

## 1. About the BCCM

The BCCM is the peak body for Australian co-operatives, mutuals and member-owned businesses. The BCCM represents a diverse range of businesses operating in sectors including agriculture, finance and banking, insurance, motoring services, health services, aged care, disability employment, education, indigenous services, housing and retail.

The BCCM advocates for recognition of the sector and for measures that create a level playing field between co-operatives and other organisation forms, including implementation of the recommendations of the Senate Economics References Committee report into cooperative, mutual and member-owned firms.<sup>1</sup>

## 2. About CENSW

CENSW formed in 2009 as the peak body for housing co-operatives in NSW. CENSW is the registered housing provider (Tier 2) under the National Accreditation System supporting 33 housing co-operatives across NSW.

CENSW is governed by a Board of Directors, a mix of technical experts and residents of co-operatives. The co-operative model delivers housing in a way that empowers residents and with a level of self-governance within a broader supporting framework that enables a range of benefits to be created for both the residents and Government. These benefits are social, economic, health and wellbeing as well as community benefits.

## 3. About co-operative enterprises and co-operative housing models

### *Co-operative and mutual enterprises in Australia*

Co-operative and mutual enterprises are a significant contributor to the Australian economy: 8 in 10 Australian adults are members of at least one CME. Annual turnover of the top 100 CMEs (excluding member-owned superannuation funds) reached \$30.5 billion in FY2014/2015.<sup>2</sup> Together with mutual superfunds, it is estimated that the CME sector contributes up to 8 per cent of Australia's GDP.

CMEs are generally incorporated and regulated under one of two legislative regimes:

- State or Territory-based Co-operatives National Law (the CNL)<sup>3</sup>
- The Commonwealth Corporations Act  
A co-operative or mutual which is formed under the Corporations Act must have an appropriate company constitution in order to be considered a CME.

The distinguishing feature of all CMEs, regardless of what legal form they use, is that they are owned by their members and operate for member benefit. Member benefit can mean a wider range of social or non-financial benefits compared with the financial returns enjoyed

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<sup>1</sup>[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Cooperatives/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report)

<sup>2</sup> Business Council of Co-operatives and Mutuals, National Mutual Economy Report 2016, 17.  
<http://bccm.coop/wp/wp-content/uploads/2016/11/BCCM-NME-Report-2016.pdf>

<sup>3</sup> The Co-operatives National Law has been adopted in all States and Territories except Queensland. Western Australia has adopted consistent legislation.

by a shareholder. Membership is tied to contributing to or making use of the CME; this ensures the CME is made up of people who share its common purpose.

### *Co-operative housing models*

Co-operative housing has existed in many parts of Australia for decades as a means of providing affordable housing.

Co-operatives are a flexible structure and allow for a wide range of affordable housing solutions. The two basic models of housing co-operative are:

- rental co-operatives operating in the social, community or affordable housing sector, where the members of the co-operatives gain secure, affordable tenancy, and;
- equity co-operatives operating in the private sector, where the members have an individual ownership stake.

The rental co-operative model is currently the more prevalent in Australia with over 175 co-operatives of this type. In parts of Europe and North America housing co-operatives account for up to 40% of the total housing stock.

We refer the inquiry to sections 3-5 of BCCM's recent submission to the Commonwealth Treasury consultation on the National Housing Finance and Investment Corporation, which outlines in more detail different co-operative housing models in Australia and internationally. This submission is attached.

#### **4. Response to Terms of Reference**

The BCCM and CENSW consider that the community is losing trust in the retirement village sector because there are too many examples of unfair and complicated contracts, concerns about resident safety and service quality, and a lack of transparency in a financial model that favours operators over residents. We believe a more diverse housing sector providing choice for older Australians would go a long way to addressing the community's concerns about the retirement village sector. This would also address community concerns by enhancing resident choice, consumer control and deliver outcomes associated with positive social and economic wellbeing.

Since the Global Financial Crisis, policymakers worldwide are increasingly acknowledging the value of diverse markets. For example, financial markets with a strong co-operative and mutual sector proved more resilient during the GFC.<sup>4</sup> Where a significant part of a market is co-operative or mutual, the market as a whole is often disciplined to deliver value to consumers (price, quality).<sup>5</sup> The housing sector is also likely to be more resilient and more likely to deliver ongoing positive consumer outcomes where there is a diversity of social, community, co-operative and private housing stock (and a diversity of options under each of these categories).

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<sup>4</sup> ILO (2013), Resilience in a Downturn: The power of financial cooperatives. [http://www.ilo.org/empent/Publications/WCMS\\_207768/lang--en/index.htm](http://www.ilo.org/empent/Publications/WCMS_207768/lang--en/index.htm)

<sup>5</sup> For example, mutual health insurance funds pay 88.9% of contributions as benefits compared with 84.8% for the big three investor-owned health insurers. See Commonwealth Ombudsman, *State of the Health Funds Report 2016*, 25. <http://www.ombudsman.gov.au/publications/state-of-the-health-funds-report>

The co-operative housing model is particularly well suited to deliver better outcomes for older people and demonstrates a workable model that should be more broadly adopted across the retirement housing sector. Co-housing models are also more flexible than retirement villages in that they can provide for inter-generational housing and a mix of tenure forms making housing more affordable.

Housing co-operatives can have a number of economic advantages over other models. Co-operatives can be a vehicle to pool members' equity, which can be used to support the development of more co-operative housing. Furthermore, significant savings can be realised across a range of support services due to the self-help nature of co-operatives; this efficiency of service delivery is of benefit to member-residents and other stakeholders including government.

Not all the benefits of the co-operative model are easily accounted for on the balance sheet. There is considerable evidence demonstrating that loneliness, social isolation and an absence of purpose are major health risks.<sup>6</sup> Co-housing addresses these health risks in a number of important ways including establishing social and support networks and building a sense of community that encourages active member participation and provides opportunity for residents/tenants to contribute in new ways and learn new skills. CENSW has established a Seniors Network to connect older people across co-operatives to share knowledge, promote learning and benefit from the experience of others. Some CENSW Seniors Co-operatives have been established targeting specific ethnic groups, which helps concentrate benefits such as overcoming the negative impacts arising from language barriers.

Unlike other organisational forms, these principles about active member participation and co-operatives supporting other co-operatives, are designed into the DNA of the co-operative business model.

Specific responses to the inquiry's terms of reference are as follows:

**b) Clarity of fees and contractual rights and obligations for prospective residents and their families**

Housing co-operatives are set up for the sole benefit of member-residents who receive affordable, secure housing by way of membership. There is no value or rationale for complicated contracts or fee structures in a housing co-operative. Indeed, it is in the co-operative's own interests to simplify its rules, policies and fee structures so that informed members can fully participate in the running of the co-operative and remain committed members.

The rules of a co-operative are a contract between members and the co-operative and are informed by the international co-operative principles. The following are a few examples of how these principles, embedded in the relationship between members and the co-operative, play out in practice:

- In line with the principle of voluntary membership, exiting from co-operative housing is relatively easy and low-cost. This reduces the cost to the individual and

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<sup>6</sup> Holt-Lunstad J, Smith TB, Layton JB (2010) Social Relationships and Mortality Risk: A Meta-analytic Review. PLoS Med7(7): e1000316. <https://doi.org/10.1371/journal.pmed.1000316>.

reduces transaction costs generally for people moving to the appropriate type of housing for their life stage.

- In line with the principle of economic participation, member-residents contribute economically to the housing co-operative by contributing to property management and payment of rent or sharing overhead costs. Co-operative members have an incentive to maintain the property efficiently because it translates to reduced rent or overheads.
- In line with the principle of democratic member control, member-residents have ultimate control of the co-operative and decide on rule changes from time to time in the best interests of the co-operative. Members are empowered and independent.

Co-operative residents report a greater sense of empowerment and pride in their properties and this translates to lower levels of property damage and reduced costs to property owners whether they be government, private owners or the co-operative itself.

Without the need for paid staff, co-operatives and their residents can engage with service providers (including government funded service providers) to promote very efficient delivery of external services such as homecare or medical appointments. This presents a tremendous opportunity to Governments to deliver streamlined, quality services at much lower costs.

Member-residents in co-operatives tend to communicate and engage better, delivering a greater range of social and community benefits.

### **c) suitability and fairness of village maintenance and operational practices to maintain resident safety**

As mentioned above, one of the great advantages of the co-operative model is that it encourages active member participation. Under the co-operative model, member-residents contribute to property maintenance and management. Economic savings can be derived for the benefit of members from this approach to property maintenance. The specific level of voluntary contributions from members and service provision from outside can vary from co-operative to co-operative. The crucial point is that the co-operative, namely the residents, are ultimately in control of maintenance and operational practices.

Housing co-operatives that are members of CENSW are supported by way of education, training and skill development in order to properly maintain properties, including safety practices. Residents in co-operatives establish suitable and fair maintenance and operational practices because it is in their own best interests to do so and they are operating within a structure that enables this to occur.

In the co-operative model there is no cross-subsidisation of sites or services and administration is kept to a minimum. Each co-operative is autonomous and determines what is in the best interests of members. Co-operatives come together in their peak body, CENSW, to pool resources and achieve efficiencies. Traditional retirement villages, and the larger organisations that often own them, are not structured to provide residents with this level of choice and control.

#### **d) availability and cost-effectiveness of dispute resolution mechanisms**

Co-operatives have cost-effective dispute resolution mechanisms in place, with the majority of disputes being resolved voluntarily through internal procedures.

Disputes in co-operatives are generally dealt with in accordance with according to the rules, policies and governance arrangements of the co-operative and through the action of co-operative members. Matters are settled in ways that are agreeable to members and in the interests of all members. Equitable outcomes are an important principle that is embodied in the way co-operatives operate.

CENSW provides support services to co-operatives in the area of training for dispute resolution. CENSW also acts as an independent mediator or arbiter of disputes when these cannot be resolved locally.

Fair Trading and the Registrar of Co-operatives also provide additional mechanisms for dispute resolution for residents/tenants should any issue not be resolved using the mechanisms available in the co-operative and from CENSW.

#### **e) fairness of arrangements to levy maintenance fees to maintain the village and address building defects**

Under the co-operative model, all fees and charges levied to residents are determined by the residents themselves. Members have control over what constitutes a fair fee arrangement in the co-operative.

Training and support provided to co-operative members ensures decisions are made on the grounds of well-founded practices and for the benefit of members. Inefficient and short-term decision making is self-corrected because the best overall and long-term interests of the members will be preferred over inferior alternatives.

Building maintenance is completed to the standard agreed by members, at a time agreed by members and through a delivery channel agreed to by members.

The standard rules of a co-operative provide for special levies of members if unforeseen circumstances arise.

Traditional retirement village models are not structured to respond to the changing needs of residents from time to time in the way that housing co-operatives are.

### **5. The motivation of providers influences outcomes in human services**

Since releasing a White Paper in 2014<sup>7</sup>, the BCCM has been advocating for more co-operatives and mutuals in human services as a way to add diversity and choice in the market. In its submission to the Productivity Commission Human Services Inquiry<sup>8</sup>, the

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<sup>7</sup> Business Council of Co-operatives and Mutuals (August 2014) Public Service Mutuals: a third way for delivering public services in Australia. White Paper.

<sup>8</sup> BCCM (July 2016) Submission to Productivity Commission Inquiry into increased competition and user choice in human services, [http://www.pc.gov.au/data/assets/pdf\\_file/0008/204938/sub216-human-services-identifying-reform.pdf](http://www.pc.gov.au/data/assets/pdf_file/0008/204938/sub216-human-services-identifying-reform.pdf)

BCCM argued the motivation of service providers in human services matters and that some types of organisations are more likely to deliver better outcomes on social and economic wellbeing than others. In taking this position, we have been guided by the work of Professor Sir Julian Le Grand, the Richard Titmuss Professor of Social Policy at the London School of Economics and Political Science.<sup>9</sup> Professor Le Grand was appointed by the UK Government to chair the UK Mutuals Task Force.<sup>10</sup> In just over a decade, over 100 mostly employee owned mutuals formed in the UK and provided diversity and choice in the market at a time when public services were being commissioned to be delivered outside of government. This innovative approach to public sector reform of health and human services demonstrated that member-owned organisations were more productive than other comparisons with higher levels of customer and staff engagement. They have also been more resilient in adapting to market changes in a world of increased competition and user choice.<sup>11</sup>

The primary motivation of for profit and listed companies is to deliver financial returns to shareholders. Sometimes this means that quality and customer outcomes are secondary considerations. In contrast, the motivation of most not-for-profit organisations is achieving its mission or social purpose. Sometimes their not-for-profit status masks inefficiency including a lack of transparency about consumer and community outcomes.

In most contestable markets for human services such as retirement villages where some residents are vulnerable, if the aim is for higher quality, greater consumer and worker wellbeing, more community involvement and greater accountability at an efficient price, then the best kind of organisations can be mutuals of some kind. The type of mutual might vary in different markets, sometimes consumer-owned, sometimes employee-owned, sometimes multi-stakeholder or community owned. Theory and practical evidence suggests that well-designed mutuals will generally perform better on almost any productivity criteria than the alternatives.<sup>1213</sup>

## 6. Recommendations

**BCCM and CEHNSW recommend that the Inquiry Report:**

6.1 Includes a recommendation that Fair Trading works with the BCCM and CENSW to prepare a discussion paper on opportunities for Government policy to facilitate the growth of co-housing models as an alternative to retirement villages.

6.2 Acknowledges the concept of consumer control embodied in the business model of housing co-operatives has considerable merit and should be a guiding principle for further policy or guidance issued to the retirement village sector to address community concerns.

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<sup>9</sup> [Julian Legrand bio](#)

<sup>10</sup> Le Grand, Julian (2012) Public Service Mutuals: The Next Steps. A Discussion Paper. Cabinet Office London UK [Next Steps Report](#)

<sup>11</sup> UK Office for Public Management (December 2010) Shared Ownership in practice Findings from case studies of employee and community ownership of public services. Public interest report.

<sup>12</sup> Le Grand, Professor Sir Julian (July 2016) Advisor to BCCM in submission to Human Services Inquiry

<sup>13</sup> Le Grand, Julian and Roberts, Jonathan (August 2016) The public service mutual: theories of motivational advantage. Marshall Institute, London School of Economics

6.3 Acknowledges the potential for housing co-operatives to play a more significant role in housing older Australians and enhancing consumer choice and control through market diversification.