



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

Submission in response to the Treasury Modernising Business Registers Program Consultation Paper, July 2018

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The Business Council of Co-operatives and Mutuals (BCCM) is pleased to provide comment and feedback to the consultation paper following the first roundtable consultations in respect of the project to modernise business registers.

The nature and scope of this project gives rise to significant issues for co-operative and mutual enterprises.

The transfer of regulatory responsibility for companies to the Commonwealth under the Corporations Act 2001, impacted the co-operative and mutual sector. Under Commonwealth legislation, the company model became the dominant business model in Australia, whilst knowledge and professional expertise in respect of co-operative and mutual enterprises (CMEs) dwindled. Combining the many Commonwealth business registers to achieve a single, modern and efficient registry and data system is likely to further marginalise the CME sector unless CMEs are included.

CMEs have been a part of the fabric of Australian life and business since the mid 1800s. They provided a business platform for small agricultural producers, community settlement programs, housing and financial and insurance services to Australians. They continue to serve with 8 in 10 Australians being members of a co-operative or mutual organisation. CMEs carry on business in a range of primary, secondary and tertiary industries.

Interest in this model of doing business is growing, both internationally and in Australia. CMEs proved their resilience by surviving the global financial crisis, while many investor-owned firms collapsed.

Formed in 2013 following the United Nations International Year of the Co-operative, the BCCM aims to educate, inform and advocate for recognition of the sector and for measures that create a level playing field between co-operatives and other businesses. The need for government action to include CMEs in regulatory and policy development is evident from the findings and recommendations of the Senate Economics References Committee Inquiry into Cooperative, mutual and member-owned firms, and the Hammond Review into Access to Capital for CMEs.

The BCCM supports the program to modernise business registers, but contends in this submission that the CME sector is entitled to the same modern and simplified system for business registration matters as any other business model.

The BCCM stands ready to provide further information and assistance to develop a simplified and modern regulatory environment for all business models.

Yours faithfully



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1 Executive Summary

The BCCM makes the following comments about the program for modernising business registers:

- As participants in the competitive Australian economy, State and Territory registered co-operatives are entitled to be treated even-handedly.
- A business registry system that reduces compliance cost through combining regulatory obligations under a single national register should include State and Territory registered co-operatives.
- Federally registered co-operatives and mutuals, having characteristics that differentiate them from investor-owned companies, should be identifiable within the national registry system as incorporated mutual companies.
- Including co-operatives within a single business registry service can be achieved through a transfer of functions to hold and maintain public registers in the same manner as proposed for the Corporations Act.

2 A modern business register must include business registration obligations for all business enterprises

The co-operative sector, regulated by State and Territories, is an important part of the Australian economy. Co-operatives operate and compete in the same national market as companies and other firms. Accordingly, the co-operative sector is entitled to a regulatory environment that is modern, national and even-handed in its treatment of business models.

Co-operative organisations bring diversity and value to the Australian economy and contribute to stability and competition.

In particular they:

- are a path for new entrants into the market by enabling new entrepreneurs to combine within a limited liability model;
- give small businesses leverage in a competitive market through aggregation;
- address market failure where community and broader social needs are not met by investor-owned firms; and
- bring competitive pressure to markets because their cost base does not include external investors and their democratic model enhances responses to the needs of their customer members.

2.1 Co-operatives need the same modern business registry services as other business entities

The arguments that compel a review of the system of business registers at federal level are the same as those that apply to State and Territory registered co-operatives.

2.1.a High compliance costs and regulatory burden exist for all business models

Co-operative businesses must interact with the same proliferation of registers as companies. Where companies must deal with ASIC, co-operatives must deal with the relevant State or Territory Registrar of Co-operatives.

The transfer to the Commonwealth of regulatory power in respect of business names and personal property securities during 2010 - 2012 resulted in clarity and uniformity for Australian businesses. Business names and personal property securities registers operate to hold data for all business forms, including co-operatives. The registry services have delivered useability and data integrity for these business activities.

The BCCM contends that

- any cost savings to business resulting from a single modern national register should be available to all business forms, and
- a transfer of public register services for co-operatives would not only deliver clarity and useability of data for the co-operatives sector, but across the Australian business sector through improvements to search functionality.

2.1.b Current co-operative data integrity is poor, not universally accessible and user demands are not well served

A public register for co-operatives is maintained by each State and Territory. The public register

is required to hold registration details, details of directors and officers and information about lodgements such as annual returns.

These public registers do not serve the needs of the co-operative sector or of those persons or businesses wishing to trade with co-operatives for the following reasons:

- a. Idiosyncratic registration numbering systems in each jurisdiction have no internal check digit like an ACN and bear no resemblance or relationship to the co-operative's ABN;
- b. Only Victoria permits a free search of registered co-operatives in that State. New South Wales and Western Australia publish an undated list of co-operatives;
- c. No State or Territory publishes statistics of numbers of registered co-operatives, new formations or de-registrations to inform policy or legislative review;
- d. The ABN register incorrectly records many co-operatives as 'other incorporated entity' or 'unincorporated entity';
- e. Searching for extracts or copies of publicly held documents reveals a system typical of registry services from the last century. There are delays of 3 or 5 days, in some jurisdictions the request can only be lodged by post and it is apparent that most administration is still paper based.

2.1.c Co-operatives face risk from directors disqualified under the Corporations Act

The *Co-operatives National Law* (CNL) provides for disqualification of persons as directors in similar circumstances to provisions for disqualification under the *Corporations Act*. Yet, there is no formal link between the register of disqualified directors maintained by ASIC and disqualification provisions for directors under the CNL. Extending a system for Director Identification Numbers (DIN) would ensure that persons seeking election as a director of a co-operative were not already disqualified or otherwise involved in failed companies.

3 Mutual companies should be readily identifiable under a modern registry service system

Mutuals, like co-operatives, are businesses owned by or on behalf of their customers or users, rather than by external investors. They issue member shares, not investor shares. Mutuals include building societies, credit unions, friendly societies, customer owned banks, superannuation funds and health insurers. There are companies that operate as co-operatives but they are registered under the Corporations Act, often because of the restrictions under earlier State-based co-operative laws. These co-operative and mutual enterprises (CMEs) may be registered as public company limited by shares, by guarantee or (in limited cases) by shares and guarantee. They have a constitution based around member ownership and control.

Federally registered CMEs do not have the same access to nor can they treat their share capital in the same way as other companies. These CMEs are not able to be identified as mutual or co-operative enterprises on any public register.

Following recommendations from the recent Hammond Review, the BCCM is engaging with the federal government to implement a new definition under the *Corporations Act* for a Incorporated Mutual Company.

The differences in how these entities carry on their business and their use of share capital is an important distinction for a modern economy. Accordingly, the BCCM argues that the character of mutual entities should also be captured on any modern system of business registry services.

4 Solution

The BCCM agrees that the proposal to create an office of 'Registrar' under federal legislation with responsibility for holding and maintaining a single national register of businesses is an appropriate step forward. The proposed legislative solution that preserves the regulatory functions of ASIC under the *Corporations Act* would be appropriate in respect of the office of the Registrar of Co-operatives under co-operatives legislation.

Achieving modernisation and combination of registry services for State and Territory co-operatives requires consultation with each jurisdiction.

There is a history of consultation and co-operation across jurisdictions for changes such as these.

The transfer of power in respect of companies resulted in the transfer of State based public registers for companies.

Under the COAG project for a Seamless National Economy, concluded in 2012, responsibility for the management of business names transferred from States and Territories to a register maintained by ASIC and personal property securities registers were combined in a single national register under *the Personal Properties Securities Act 2010*.

Each of these legislative programs have contributed to building a simplified and modern regulatory environment for all businesses, including CMEs.

5 Conclusion

The BCCM supports efforts to modernise business registry requirements. It is clear that a single national register will provide strong data integrity that will serve the needs of a modern economy and the ability for business to register, report and search a single national database will reduce regulatory duplicity, and consequently reduce regulatory cost to both government and business.

The availability of data that is sensitive to different business model characteristics will provide excellent information for regulatory reform and adaptation as the economy grows.