



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

Business Council of Co-operatives and Mutuals

Submission to the Senate Economics
References Committee into Co-operative,
Mutual and Member-owned firms

June 2015

Cover Letter

The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to make a submission to the Senate Economics Reference Committee on the role, importance and overall performance of co-operative, mutual and member-owned firms in the Australian economy.

Firms owned by, or governed to benefit, their members operate in every sector of the economy. This overlooked part of the economy provides goods and services for eight in ten Australians who are members of at least one co-operative or mutually owned business¹.

Communities are increasingly turning to self-reliance and entrepreneurial responses to meet their needs. Mutual businesses offer direct solutions to local problems.

The collapse in commodities prices and the ongoing effects of the global financial crisis have brought home the need for a mixed economy as a countervailing balance to corporate monoculture. The current focus on the role of small business in the economy has been important in showing the economy to be composed of and strengthened by its diverse parts. A robust mutual sector helps provide diversity across the economy aiding economic resilience.

This submission contends that with appropriate regulatory recognition, nationally consistent legislation, encouragement through education and innovative capital raising, co-operatives and mutuals can flourish in order to provide a greater range of goods and services for all Australians, and in so doing, empower citizens and generate shared value.

Business Council of Co-operatives and Mutuals

1 July 2015

About the Business Council of Co-operatives and Mutuals

The BCCM is the peak cross-sector body for co-operatives, mutuals and member-owned businesses.² Its purpose is to promote recognition of the important role of co-operative and mutual businesses in the economy and community development of Australia.

The sector represented by the BCCM is significant to the Australian economy. Including member owned superannuation funds; the contribution of the sector to GDP in 2012/2013 was 7 per cent.³

¹“Who knew Australians were so co-operative? The size and scope of mutually owned co-ops in Australia”, Institute Paper 10, The Australia Institute, Dennis, R. & Baker, D (2012)

² The BCCM unites the diverse range of co-operative and mutual businesses including grain handlers, dairy producers, motoring organisations, insurers, health funds, customer owned banks and retailers, purchasing and marketing groups, community housing providers and community health practices. The BCCM works closely with its peak body members including the Customer Owned Banking Association (COBA). A list of the members of the BCCM is attached to this submission. See Appendix A for full details.

³ “2014 National Mutual Economy Report”, Business Council of Co-operatives and Mutuals (2014)

THE 'TRIPLE' EFFECT

Co-operatives and mutuals build a more inclusive and prosperous economy in 3 ways

OUTCOMES

Economic success

Co-operatives and mutuals create employment, they lead to lower production costs and higher productivity; they are innovative, profitable and resilient to economic downturn. They enhance competition and provide market diversity.

Social success

Co-operatives and mutuals unleash entrepreneurialism, increase consumer choice and can deliver effective social services in markets that are small, remote, complex or specialised.

Environmental success

Co-operatives work for the sustainable development of their communities through policies approved by their members. Many co-operatives seek to minimise their environmental impact and offer sustainable products and services.

CHARACTERISTICS

Principles

Voluntary and open membership, democratic control and member economic participation, autonomy, education and training, co-operation among co-operatives, concern for community.

Values

Self help, responsibility, democracy, equity, equality.

Ethics

Open, honest, socially responsible, care for others.

DIFFERENCES

Ownership

The organisation is owned and used by members; or it is owned exclusively to benefit the members.

Profits

Whether back to the business or for the benefit of their community, all profits are reinvested for members.

Control

Democratic ownership means decisions are made for common good.

Blueprint for an enterprising nation⁴

⁴Blueprint for an enterprising nation: How Australia's co-operative and mutual businesses can contribute to our nation's growth and prosperity", Business Council of Co-operatives and Mutuals, 2014

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1. Executive Summary

This submission proposes co-operative and mutual enterprises (CMEs) are not well understood in markets or by regulators in Australia. They are formed to pursue different purposes from investor-owned companies but they exist and compete in the same markets as those entities. A greater understanding of their purpose and their governance model will provide a basis for the development of policies that enable Australia to obtain the best value from this business model.

The first part of the submission will demonstrate that CMEs are formed for the dual purposes of financial sustainability and social purpose.

They contribute strongly to the national economy in a variety of sectors. They distribute wealth, control and ownership of Australian enterprise among the broad Australian community. CMEs are self-help organisations that bring diversity, competitive forces and consumer choice to markets. They address market failure by enabling smaller market participants, enterprises or individuals, to compete in markets that favour larger entrants.

Finally, they present an alternative public service delivery model for government that combines commercial focus, community ownership and a commitment to the pursuit of the social purpose. The submission will provide a comparison between the privatisation and the mutualisation of government services and assets.

The second part of the submission identifies existing barriers to innovation, growth and free competition for the co-operative and mutual sector by highlighting

- how the regulatory framework for the sector is disjointed, and focussed on investor-owned business models resulting in
 - o barriers to entry
 - o difficulties in accessing capital
 - o inappropriate financial metrics and
 - o anti competitive regulatory imposts
- the lack of education and awareness of the business model at tertiary and secondary level, leading to the lack of professional expertise appropriate to the model
- the lack of any formalised data collection about co-operatives and mutuals to support the development of any consistent or suitable policy for this important and unique sector of the economy.

The third part of the submission proposes a number of recommendations to develop an integrated policy for the co-operative and mutual sector that ensures:

- competitive neutrality;
- appropriate regulation;
- no barriers to entry; and
- equitable access to government programmes for enterprise development.

This inquiry is an important opportunity to improve awareness and knowledge of the sector with a view to developing an integrated policy to inform regulation and administration. It is also an opportunity to discuss areas where the sector and government might work together to create a more enabling environment for co-operatives and mutuals.

2. Key recommendations

The BCCM proposes 6 key recommendations to address the barriers to growth, innovation and free competition affecting the co-operative and mutual sector. Specific recommendations are listed in Part 3 of this submission.

2.1 Examination of regulatory policy by all levels of government

The BCCM has developed a Mutuals Charter that proposes principles for governments to examine regulatory policy to better ensure competitive neutrality for co-operatives and mutuals.

Recommended Mutuals Charter

- Co-operatives, mutuals and member owned businesses should be able to compete freely and on fair terms with all types of business
- Government should champion these business forms alongside other types of corporate ownership
- Government policy should recognise the value of these businesses and provide appropriate incentives for their creation and development
- Fiscal measures should promote co-operatives, mutuals and member owned businesses as much as share ownership of publically listed companies
- Legislation and regulation for these firms should match the best standards for any business
- It should be as cost effective and straight forward to set up and run a co-operative, mutual or member based businesses as any other type of business

2.2 Co-operatives National Law (CNL) and Corporations Law reform

CMEs are a significant and relevant part of the Australian economy. It follows that the sector needs a nationally consistent legislative framework and a clear administrative policy to enable it to compete with other corporate forms.

Mutuals are currently not ideally served by the Corporations Act and the mutual form is not defined in law. The mutual form requires better support in the Corporations Act to allow for more clarity for organisations operating under this legal model.

There should be active consideration by government and regulators of changes in the relevant legislation to enable the raising of different forms of capital by CMEs.

The state based legislative regime for co-operatives is inconsistent and in some jurisdictions there remains an obligation for dual registration in order to carry on business. It is proposed the Senate Committee recommend that all states and territories yet to adopt the uniform scheme of co-operative laws, - The Co-operatives National Law (CNL), should do so and, that all states and territories should develop uniform administrative procedures and policies that are accessible and reasonable.

2.3 Policy fitness and government business advisory services

In order for CMEs to compete on fair terms with all other types of business, it is proposed that government should introduce a policy fitness test that can be applied to specific proposals. An appropriate place for this is at question four of the Australian Government Guide to Regulation, which sets out requirements for regulatory impact statements (RISs).

All regulators are required to consider the impact of a regulatory proposal on business. This includes a specific consideration of impacts on small business, and community organisations. We recommend that categories of businesses should be clearly expressed to include co-operatives and mutuals because they are subject to different regulation and the impact of any proposed regulatory change may be different for these business types.

All business support that is funded by federal or state government should be equally available to provide support to co-operatives and mutual, rather than being restricted to certain business types as is sometimes the case.

2.4 Public interest in public services

CMEs have a common purpose with government in the provision of community services. They are community owned and customer focused. They aim to deliver shared value for members and the community and do so on a commercial basis. Governments should more readily consider the mutual model as an alternative to privatisation to an investor owned entity by adopting public interest principles when considering altering the corporate status of public service providers.

This submission refers the Committee to the separate submission by the National Public Service Mutuals Taskforce regarding recommendations for public service delivery.

2.5 Data collection

Government should ensure that regular official statistics measuring diversity of business ownership are collected at state level, and combined at federal level to permit annual comparisons. This should commence with mandating the Australian Bureau of Statistics to collect relevant data on the CME sector.

2.6 Education

Lack of education about and for CMEs remains an important barrier for the sector. Government should ensure that the education system includes modules that teach students about diverse business ownership in all relevant business curricula. Modules on mutual ownership should be developed and introduced into professional development programmes for business advisors, lawyers and accountants.

3. PART 1. Role, importance, and overall performance of co-operative, mutual and member-owned firms in the Australian economy

3.1 What are co-operative and mutual enterprises?

Co-operative and mutual enterprises (CMEs) are member based business owned by or on behalf of their customers, employees, a group of like-minded producers or a combination of these.

The purpose of these firms is different from other businesses: they exist to serve their members rather than to reward capital investors.

CMEs include both not for profit and for profit entities. They run lean and efficient business operations for their members and their communities.

There are regulatory differences: **co-operatives** are incorporated and regulated under state and territory laws, **mutuals** are regulated under the federal Corporations Act.

Despite regulatory differences, CMEs share important characteristics that distinguish them from companies. They are a self-help response to the mutually identified needs of individuals or organisations. They are driven to meet both financial and social goals.

Both the context of their formation and their dual purpose leads to financial objectives of long term sustainability and a different governance culture.

CMEs ascribe to the following principles in their governance:

- Member ownership and control.
- Democratic governance.
- Autonomy and independence.
- Re-investment of profits and surpluses in communities.
- Creation of both social and commercial value for members and future members.

The CME difference is well demonstrated in the following short case examples

Capricorn Society Limited

Capricorn Society Ltd (CSL) started in 1970 with 12 West Australian service station owners forming a common purpose to increase profitability and improve the design of their service stations through combined purchasing power. Today CSL is the fifth largest Australian co-operative by turnover with \$1.33 billion member payments and receipts for 2014. Capricorn supports over 16,000 members across Australia and New Zealand. 2,000 are supplier members providing goods and services to other members. CSL supports approximately 100,000 jobs in the automotive industry in Australia, many in remote and rural communities.

Australian Unity Limited

The story of Australian Unity began 175 years ago, in 1840, in a Melbourne pub when eight men of various professions including newspaper proprietor, surgeon, chief constable, carpenter and grazier met to discuss the need for social protection for ordinary people in times of hardship, chronic injury and illness or death. Australian Unity today provides healthcare, preventative health programmes, chronic disease management programmes, financial services and retirement living to more than three quarters of a million Australians. It employs more than 2,000 staff across Victoria, New South Wales, South Australia and Queensland.

National Health Co-operative Ltd

The National Health Co-operative (NHC) was begun in December 2006 by local residents and community groups in West Belconnen, ACT to address the lack of medical practitioners in a growing suburban area. Its first clinic was opened in Charnwood in March 2010 and it today operates seven bulk billing general practise clinics across the ACT. It now has 30,000 members who benefit from affordable medical and allied health services provided by the co-operative that they own and control.

The Co-operative Bookshop Ltd (The Co-op)

Four university students founded The Co-op in 1958 to provide affordable access to text books. It first traded from a garden shed on the University of Sydney campus. Today it is Australia's largest member-owned retailer, with 1.8 million members and 60 retail stores on more than half of Australia's tertiary campuses. The Co-op is the largest campus provider of educational, professional and learning resources both online and in-store. The Co-op has given more than \$60 million to community and education projects, including university scholarships and support for students.

Community First Credit Union (CFCU)

CFCU was formed in 1959 as the Sydney Water Board Employees Credit Union. In 1974, the credit union commenced its conversion from an industry-bonded credit union to a community credit union by opening its first branch office in Penrith.

CFCU lives its values through competitive pricing and socially responsible finance products. Its McGrath Foundation Pink Visa card provides the lowest interest rate and provides half its annual fee income to support the McGrath Foundation. It has a market leading personal loan product to support the purchase of environmentally friendly products such a solar PV panels, double glazing and rainwater tanks. CFCU has over 65,000 members and \$800 million in assets.

3.2 Where are they and how big is the sector?

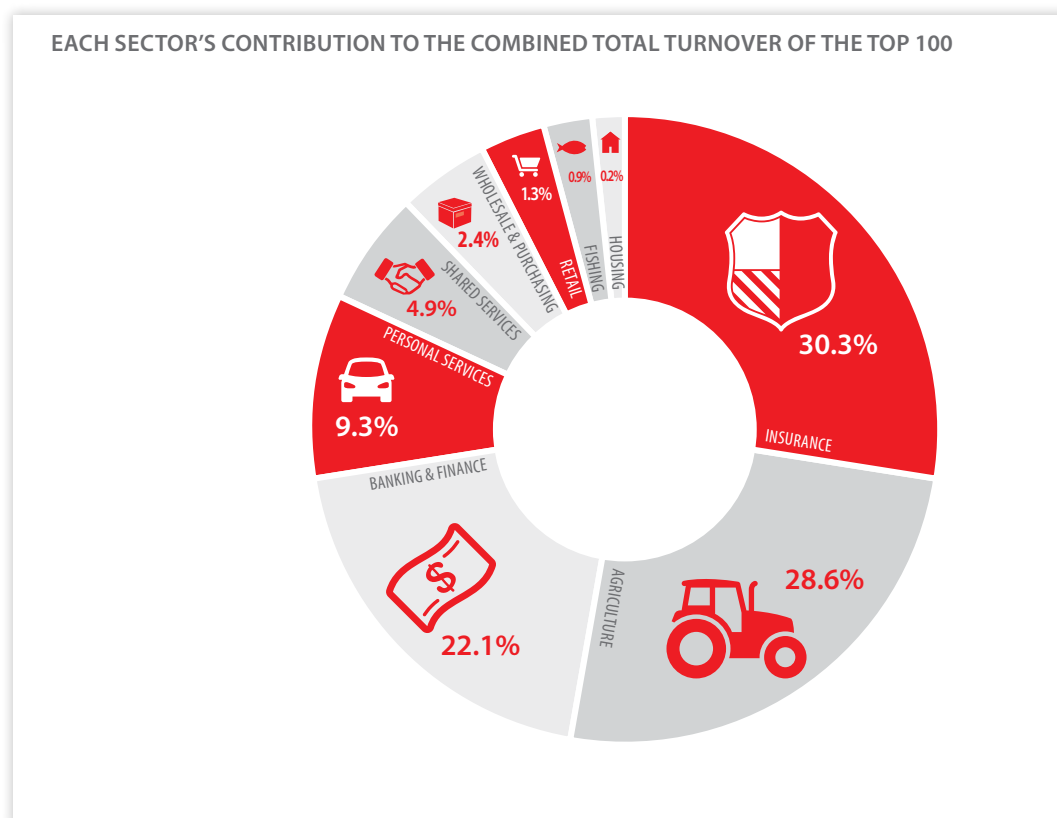
CMEs operate in all sectors of the Australian economy, including in agriculture, banking and finance, insurance, retail, manufacturing, human services, education, housing, health, aged care and childcare and motoring services, among others. CMEs have a long history in Australia going back to the second half of the nineteenth century.

In 2014 there were over 1700 CMEs in operation in Australia. They operate in every state and territory and because these businesses are housed in Australia and do not have offshore shareholders their revenue remains in Australia for the benefit of Australians. Currently, three of the top ten Australian enterprises in the IBIS World Top 500 are co-operatives, two of which are in the top five.⁵

The top 100 CMEs have income of \$25 billion excluding the turnover of member-owned superannuation funds. When the income of the top 10 member-owned funds is included, turnover is \$105.25 billion. There are 13.5 million members of CMEs, over double the number of ASX shareholders (6.68 million)⁶.

79 per cent of Australians are members of co-operative or mutually owned organisations⁷.

Top 100 Australian Co-operative and Mutual Enterprises FY 2012/13 by Sector



⁵"Mutual ownership within Australia's Top 500 Private Companies", Sustainable Co-operative Enterprise Research Program, White Paper No. 1, Mazzarol, T (2013)

⁶Above n3.

⁷Above n1.

3.3 CMEs play an important role in many parts of the Australian economy

Co-operatives account for significant agricultural markets. Western Australian co-operative grain handler, CBH Group, ships an average of 40 per cent of Australia’s grain harvest every year. The world’s biggest exporter of rock lobster is Geraldton Fisherman’s Co-operative. Victorian dairy co-operative, Murray Goulburn, processes a third of Australia’s milk supply.

Agricultural co-operatives are local employers. CBH Group employs over 1100 permanent staff and a further 1800 casual staff during harvest. Oz Group, a blueberry co-operative near Woolgoolga in NSW, packages 35 per cent of Australia’s blueberry crop and employs 70 full time equivalent employees. Northern Co-operative Meat Company is the largest employer in the northern New South Wales electorate of Page.

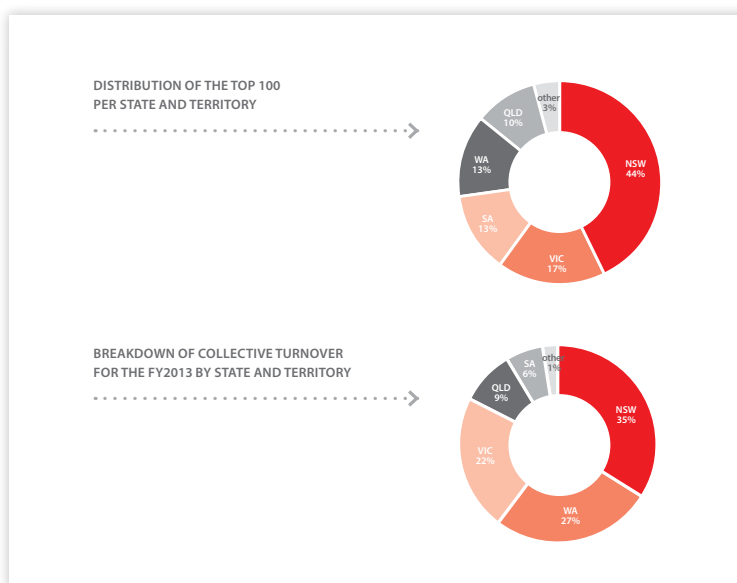
In the banking and financial services sector 75 credit unions, 6 building societies and 12 mutual banks with \$91.9 billion in combined assets serve 4 million customer owners. Financial mutuals provide access to competitive banking services across metropolitan, regional and rural areas.

Retail co-operatives protect economic diversity and consumer choice in regional Australia with locally based and domiciled firms.

Consumer co-operatives provide social support, jobs and training for young people who live locally. They also buy goods and services from local businesses and understand the challenges of the community: The Barossa Co-operative has operated since 1944. The co-operative employs 300 local people and acts as an incubator for business in the region by sourcing many of its products from the local area. Its new retail precinct development will provide ongoing employment for over 200 individuals.

CMEs play an important role in the delivery of human services. Co-operatives deliver child care, home care, aged care, disability employment, health and broader social or cultural services to communities. They are well placed to deliver services to their members in the new customer focussed funding environment because of their strong focus on understanding the needs of their members and customers.

Co-operatives and mutuals are increasingly seen as a good choice for providing public services. Australia can lead the way by enabling new mutual businesses to provide high quality and efficient services, whilst maintaining a public service ethos. The importance of the CME sector in contributing to diversity, innovation and choice in the delivery of human services has been articulated in the widely accepted recommendations of the BCCM in its White Paper on Public Service Mutuals released in 2014.⁸



⁸“Public Service Mutuals: A third way for delivering public services in Australia”, Business Council of Co-operatives and Mutuals, (2014).

3.4 They bring diversity and stability to the economy

The CME sector is important to the prosperity of Australia because it helps to create a diverse economy that works in the interest of the widest number of people by sharing power in, and the rewards of, business.

They provide a way of marshalling the social and economic contributions of people, who may not be able or inclined to strike out on their own. In doing so they are innovators and enhance the diversity of market offerings.

They play a vital role in supporting the sustainability of small and medium enterprises giving Australia's business entrepreneurs the opportunity to compete in a global market that favours larger entrants.

The global financial crisis exposed the risk to leading economies of having markets dominated by similarly structured businesses that were focused on the same short to medium term economic outcomes.⁹

CMEs differ because they do not need to respond to short-term stock market pressures, enabling them to adopt longer-term business strategies. Their continuing presence in areas such as health insurance, retail and liquor supplies, agriculture and manufacturing ensures that there is diversity and independent operators in otherwise highly concentrated markets.

3.5 Co-operatives and mutuals share wealth through shared ownership

Profits or surplus are shared with members through lower prices, loyalty distributions or dividends. Financial mutuals consistently provide financial services to their members at lower than average interest rates and fees than the four major banks¹⁰. Agricultural co-operatives provide marketing, processing and broad agribusiness services at the best long-term cost to their members. Shared services co-operatives provide members with products and services designed specifically to meet their needs so that the members can remain autonomous enterprises.

CMEs reinvest a high proportion of their profits in the community, for example through health research and support for community groups. Community contributions as a percentage of pre-tax profits at a global level averaged 1.46 per cent (London Benchmarking Group). The result for Teachers Mutual Bank was 4.55 per cent, more than 12 times higher than the average result achieved by its financial sector peers.¹¹

Co-operatives facilitate community groups to find a market for their activities. In South Australia, retrenched meat works employees are using a co-operative structure to attempt a buy-out of plant facilities to create long term sustainable employment for themselves and the community.¹² In western Victoria, residents have bought a local butcher shop to ensure they have local access to these goods and services.¹³ There are numerous community owned renewable energy projects across Australia.¹⁴

⁹Resilience in a downturn: The power of financial cooperatives," Birchall, J (2013) Birchall, J., (2013)

¹⁰ Above n1.

¹¹ Customer Owned Banking Association submission to the Senate inquiry into co-operatives, mutuals and member-owned firms, July 2015 (pg 20.)

¹² <http://www.fleurioupoultry.com>

¹³ <http://www.abc.net.au/local/photos/2015/05/08/4232284.htm#.VVVA6U68oms.twitter>

¹⁴ <http://www.embarc.com.au/display/WebsiteContent/Home>

3.6 Competition and choice for consumers is enhanced by the presence of CMEs

Surveys demonstrate that CMEs are perceived as having strong local links to community, that they operate equitably, are trustworthy and customer focused.¹⁵

Co-operatives provide a legal structure for consumers to gain advantages of scale and increase their bargaining power in the market. This is becoming increasingly important for consumers in fragmented markets such as the National Disability Insurance Scheme where co-operatives of budget holders could form CMEs to provide market access.

Co-operatives enable businesses in different parts of the supply chain to jointly purchase programs and services such as access to marketing, manufacturing and export facilities, improving value for money and access to expert advice. Examples are Community Child Care Co-operative, a shared services co-operative for non profit community childcare providers, and Independent Liquor Group, a wholesale and marketing co-operative owned by independent bottle shop operators.

CMEs can also help address market failure in larger consumer markets such as the property insurance market in Northern Queensland and the Northern Territory. Government is examining whether a community-owned mutual insurer could provide cyclone-specific or other adverse weather-specific cover where the market has been unable to deliver affordable and stable price levels over time.¹⁶

HunterNet was formed as a co-operative in 1992 in response to the shifting manufacturing climate which saw many smaller engineering and manufacturing enterprises competing in a more limited market. Small to medium enterprises needed to create new opportunities for themselves and the region to survive. By combining their skills, expertise and the power of many, these enterprises were able to compete globally.

The co-operative has over 200 small to medium enterprises. HunterNet markets the combined capability of members, provides business development and training opportunities and promotes the Hunter region as a manufacturing and engineering region of excellence.

Unimutual is the leading provider of asset and liability risk protection for Australia's universities. It was founded in 1989 when four of the leading Group of Eight Universities, led by the Universities of Queensland, Melbourne and Sydney, came together to form a mutual association to initially address a need for liability cover that the conventional insurance market was unable to satisfy. The cover provided by Unimutual quickly extended to property and today the mutual protects asset values exceeding \$60bn for its 27 University members and 25 other higher education sector entities.

Owned by its member-customers, Unimutual operates on a not for profit basis with surpluses being used to either reduce the cost of cover or provide broader benefits for members, including practical risk management advice and assistance. Unimutual has paid back to its members in excess of \$200m in claims settlements whilst at the same time supporting this major sector of the Australian economy with cost effective risk protection.

¹⁵ Above n1, p11.

¹⁶ Northern Australia Insurance Premiums Taskforce

Recent recognition of the CME sector in Federal Government inquiries

The Draft and Final Report of the **Competition Policy Review (Harper Review)**: The draft review noted that despite the commitment to competitive neutrality, there is a concern that small businesses, start ups and markets where both government and private enterprises operate are not well served in the context of the mix of federal and state regulation. The Review Panel recommended a process to review and update policies and the establishment of a new institution, jointly charged with authority to oversee competition policy at state and federal level. The Review Panel also noted the need to raise awareness of co-operatives in the context of collective bargaining exemption processes that attempt to address unequal market bargaining power¹⁷.

In respect of the role of CMEs in the delivery of human services, the Panel endorsed the BCCM's White Paper on Public Service Mutuals noting, amongst other matters, their potential to increase diversity in public sector markets, increase consumer choice and control and stimulate public service innovation. It was recognised that developments in other jurisdictions in this sector were the result of public policy and capacity building activities.¹⁸

The **McClure Review of Australia's Welfare System** recommended that government "work with the Business Council of Co-operatives and Mutuals, to ensure an enabling regulatory, economic and social environment to support mutuals and co-operatives..."¹⁹ It recognised the significant role CMEs can play in reducing welfare dependency and generating positive social outcomes for people and communities.

The **Agricultural Competitiveness Green Paper** has highlighted the role co-operatives in particular play in ensuring a strong and resilient agricultural sector and more equitable access to market supply chains for producers in Australia. It said that government should work to ensure the implementation of the Co-operatives National Law to create an enabling environment for the sector, thereby allowing for greater use of co-operative structures in the sector.

The uneven level of market power through the supply chain was seen as a major cause for lower returns to farmers. The green paper addresses what the Australian Government can do to foster more co-operatives in the agriculture sector, and says that the Government wishes to understand obstacles to establishing new co-operatives.²⁰

The **Joint Standing Committee on Foreign Affairs, Defence and Trade** in its report on **Partnering for the greater good** noted the resurgence of interest in co-operatives as collaborative problem solving organisations and the body of evidence suggesting that co-operatives, as combined structures for smaller businesses help overcome challenges in developing countries because of the mutual support and capacity building nature of these entities. The co-operative model represents a self-help model that builds community resilience and sustainability. Over time this resilience lessens the dependence on aid subsidies.²¹

¹⁷ "Competition Policy Review: Final Report", Commonwealth Government, Harper, I & Anderson, P, McCluskey, S, O'Brien, M, 2015, p65.

¹⁸ Above n 18, p247.

¹⁹ "A New System for Better Employment and Social Outcomes: Report of the Reference Group on Welfare Reform to the Minister for Social Services: Final Report", Commonwealth Government, McClure, P p183.

²⁰ "Agricultural Competitiveness Green Paper", Commonwealth Government, 2014

²¹ "Partnering for the greater good: The role of the private sector in promoting economic growth and reducing poverty in the Indo-Pacific region", Commonwealth Government, 2015

3.7 The total value of CMEs

3.7.1 *Financial metrics do not capture the true value of CMEs*

The CME sector contributes more than financial value to the economy. As enterprises, with strong community links and member ownership and control, their value is more significantly comprised in:

- Fostering social capital and building community ownership structures,
- Taking a long term view of community needs unburdened by the need to generate short term profits,
- Addressing market failures by providing a collective bargaining mechanism for smaller enterprises,
- Reinvesting profits in the local community,
- Commitment to social, ethical and co-operative values through inclusion and democratic governance and
- Commitment to broader social purposes such as the environment, employment, education and community preservation.

International developments for Integrated Reporting to include greater emphasis on intangible assets of an enterprise such as human, social and natural capital dictates the need to focus on broader value measurements. Standard financial and accounting metrics are inadequate to capture their full value. Research by Ernst & Young in 2014 shows that for every \$1 spent in a co-operative enterprise 76% of value was added to its community²².

3.7.2 *Mandated financial reporting standards work against CMEs*

Australian Accounting Standards have incorporated International Financial Reporting Standards developed to provide consistent information for investor-owned firms. These financial reporting standards were applied in 2005 to all reporting entities regardless of whether they are investor-owned or member-owned. The result of the application of these standards to CMEs was dramatic. The different nature of a share in a co-operative or a mutual meant that it was classed as a liability whereas in a company it was classed as equity. Virtually overnight, many CMEs with a share capital were rendered undercapitalised.

The inability of financial metrics to capture the social value of CMEs and the operation of Financial Reporting Standards results in inadequate recognition of the value and importance of the CME sector.

²² "Sticky Money: Recognising the total value created by Australian Co-operatives and Mutuals", Ernst & Young, 2014.

3.8 Mutual ownership vs. private sale of publicly held assets and services

Across Australia, the Commonwealth and the States directly provide public services through departments of government or publicly owned enterprises. So far, the desire to achieve independence and efficiency for service providers has led to the binary choice between public ownership and privatisation.

By combining the discipline of business with a commitment to public service that is accountable to taxpayers, co-operatives and mutuals can offer a third way of serving the public interest.

The potential role of mutuals in human service delivery is made in the separate submission to this inquiry of the National Public Service Mutuals Taskforce.

A key place to consider mutual ownership is in the investment in and upgrading of infrastructure. Areas of infrastructure that benefit from co-operative investment include irrigation, transport and energy generation.

The opportunities for mutualisation of infrastructure companies and assets in some contexts was a recommendation of the B20 Investment and Infrastructure Taskforce reporting to the G20 meetings in 2014.²³

In the United States the major provider of rural electricity is a co-operative. NRECA is the national service organisation for more than 900 not-for-profit rural electric co-operatives and public power districts providing retail electric service to more than 42 million consumers in 47 states and whose retail sales account for about 12 per cent of total electricity sales.

In Britain, Glas Cymru (Welsh Water) and Network Rail are both mutual corporations for the benefit of the public, with members rather than investor shareholders.

Post Office UK is now in the process of converting into a mutual. Its membership is a combination of customers, community, postmasters and staff and the conversion will represent the largest single mutualisation of a public sector operation.

The co-operative structure is the standard corporate structure used for irrigation schemes in Australia for the past 20 years. These were often originally privatised government assets, but in recent years the structure has been used to finance new irrigation infrastructure.

A mutualisation could have the following advantages over a traditional privatisation:

- The business would remain Australian owned
- It could pursue a business strategy focussed on maintaining services
- It would directly empower its main stakeholders
- It could be maintained as a public interest business in perpetuity

²³ B20 Infrastructure and Investment Taskforce Policy Summary, July 2014 (pg 19.)

²⁴ NRECA Co-op Facts and Figures

Summary

CMEs help to create an economy and society that works in the interests of the widest number of people by sharing ownership and the rewards of business.

They spread wealth and prosperity to many Australians and provide commercial services that work in the interests of consumers and organisations that protect the public interest.

CMEs are a systemically important part of the Australian economy. They aid economic sustainability through diversification, reinvestment, and through their long-term focus.

They are home-grown, Australian native companies, deeply embedded in the communities they serve. The future of these businesses is, and always will be, married to the future of Australia.

CMEs are bottom up, civil society organisations with fiercely-guarded democratic principles.

CMEs support agricultural producers, market supply chains, and independent businesses as well as, importantly, SMEs.

CMEs promote a fair society, and are firmly wedded to the idea of mutual assistance, ensuring that every member receives a 'fair share of the pie'.

CMEs work hard in the Australian economy, to secure Australia's future.

Co-operatives and mutuals are good for Australia and Australians

Co-operatives and mutuals can help Government to grow the Australian economy by contributing towards a range of public policy objectives:

- Create diversity in business, which will act as a counterbalance to mitigate systemic risk to the economy
- Establish longer-term business strategies
- Provide competition and choice for consumers in a range of markets
- Provide employment opportunities for Australians
- Spread wealth throughout the country
- Re-build and maintain public trust in business
- Provide business structures for public service providers that keep them accountable to their users and taxpayers

Blueprint for an enterprising nation²⁵

²⁵ Above n4. Government, 2015

4. PART 2. Current barriers to innovation, growth, and free competition, and the impact of current regulations

Mutuals and co-operatives succeed without outside help but too often their contribution to the Australian economy and society has been overlooked. As a result, the level of awareness of mutual business by federal and state governments is surprisingly low, which has made doing business harder for these firms.

The challenges for the sector are threefold namely the lack of an overall guiding policy, inconsistent and disjointed regulation and lack of education.

4.1 Regulatory barriers

Regulatory guidance publications issued by the Australian Securities and Investments Commission for financial mutuals are limited. The focus of the Corporations Act is to regulate investor-owned entities and ensure the stability and transparency of financial securities markets.

The mutual sector is not investor-owned. The nature of its obligation to serve members is not well understood from a regulatory perspective. Mutuals must raise capital by generating surpluses and retained earnings. This is a long term process and does not match the flexibility of external capital raising by investor-owned firms.

The current regulatory framework and policy guidance prevents mutuals from developing innovative capital raising tools to enable ongoing competition.

The current regulatory and legislative barriers for customer owned banks is examined in the submission to this inquiry by the Customer Owned Bank Association (COBA) the peak body for customer-owned banking institutions.

Despite many years of negotiation, drafting and supervision by the COAG forum on Consumer Affairs, the uniform scheme of co-operative laws – The Co-operatives National Law (CNL) – has yet to commence in all jurisdictions²⁶.

The legislative regime for co-operatives remains inconsistent and as previously mentioned, in some jurisdictions there remains an obligation for dual registration in order to carry on business.

Administration of the CNL or other co-operatives legislation is inconsistent and inadequately resourced. Formation processes for co-operatives are lengthy and unduly complex compared with formation processes for other entity types.

Persons wishing to form co-operatives frequently have to rely on expensive legal advice to draft constituent documents, when company counterparts generally are able to use standardised rules at a fraction of the cost.

There are instances of dual and inappropriate regulatory compliance obligations for co-operatives. As a result of the division of regulatory authority for corporations and financial markets, co-operatives that wish to issue shares or other securities where a potential subscriber resides in another state or territory must comply with disclosure requirements under both state co-operatives legislation and disclosure regulations developed for investor-owned companies under the Corporations Act.

The operation of state and territory co-operatives laws, including the CNL, in respect of business trading activity across state and territory borders is unclear with regard to the operation of provisions under the Corporations Act dealing with registration of Australian Registrable Bodies. This results in confusion about the need for dual registration under state and federal laws. The interplay between these regulatory regimes requires clarification so that co-operatives are not required to undertake dual registration in order to carry on their enterprises.

²⁶ CNL has commenced in NSW (March, 2014), Victoria (March, 2014) and South Australia (May, 2015). Tasmania has enacted its enabling laws (May, 2015). Western Australia has a co-operatives statute that is similar, the ACT and NT have not yet passed the law and Queensland has withdrawn from the process.

4.2 Policy barriers

Despite its size and impact in the economy, there has never been any considered national policy that covers the sector. This is an opportunity that the Senate inquiry could address.

Existing economic and business policies have been developed with investor owned models in mind, resulting in regulatory systems, education policies and government administration that are focused on publically listed companies.

There is no single government body charged with the purpose of managing, regulating or developing the CME sector at either federal or state level. No Australian political parties have articulated a co-operative policy as part of their business agenda.

Co-operatives are part of the national economy, but they are not visible in the relevant business or economic policy portfolios at federal or state level. Regulatory responsibility is at state level within consumer affairs portfolios. There is no regulatory appetite at state level to develop uniform administrative policies or data collection processes. Policy development is either ad hoc or non-existent.

There is no regular statistical information collected about the CME sector. Statistics collected by ASIC as a regulator of mutuals do not distinguish between mutuals and companies. State and territory regulators maintain registers of co-operatives in their jurisdictions, but there is no capacity to link this data to a national database. The Australian Bureau of Statistics does not collect any specific information about CMEs.

Given the financial and social value that this sector brings to the Australian economy the lack of national statistical data represents an information gap that is a problem for policy makers, researchers, and CMEs themselves.

Business development services provided by governments at all levels are remiss in omitting the availability of development services to co-operative and mutual organisations in this regard.²⁷

4.3 Educational barriers

The CME sector is not well understood by the public.²⁸ The focus on corporate regulation in Australia has led to little or no educational content at secondary or tertiary level regarding other business models. There is a notable lack of professional services able to provide financial, management or legal advice to co-operative and mutual enterprises.

Co-operative and mutual business forms are not well understood by policy makers, lawyers and accountants or other business advisors. As a result, business advice for those wishing to set up a co-operative or mutual is inconsistent and ad-hoc at state level, and too often, the different business purpose that mutuals have is ignored, leading to inappropriate regulation and treatment from authorities.

Governance in co-operative and mutual organisations needs strengthening. The BCCM is addressing the fragmented provision of governance training through its strategic partnerships with leading industry education and training providers like the Australian Institute of Company Directors.

²⁷ "The inclusion of co-operatives by Australian governments in business development support," Business Council of Co-operatives and Mutuals, Seaborn, L, 2015

4.4 Capital barriers

Generally, mutuals can only access capital through retained earnings and debt. This can limit their capacity to invest for growth or compete in a market.

The flow-on effects are limits on the diversity of corporate forms within an economy. This has been recognised in a number of other jurisdictions including the United Kingdom where new legislation has been enacted to provide for capital raising shares in friendly societies and mutual insurers.

Australian law and regulation should be amended to enable the issue of such securities by mutual organisations.

Under the Co-operatives National Law, co-operatives can issue a new form of security called a Co-operative Capital Unit (CCU). CCUs are hybrid securities that can be traded on a securities exchange. Holders of CCU securities do not have voting rights in the co-operative. The members still democratically manage the co-operative.

All co-operatives, regardless of size, have the power to issue these securities making it possible for large co-operatives to access public finance markets and smaller co-operatives to access local community investment to support their local economies.

Research by the University of Western Australia shows that these flexible securities could significantly open up access to capital for co-operatives without compromising the democratic control and purpose of a co-operative.²⁹

But, due to the limited knowledge of them their potential is yet to be fully explored.

In the United Kingdom regulators work closely with peak bodies such as Co-operatives UK to develop policy that recognises the nature, purpose and value of CMEs. As a result the procedures for formation of co-operatives are simplified and there is a strong growth in community investment of social enterprises through innovations such as community share offerings managed through crowdfunding platforms, like Microgenius.

The BCCM is producing free guidance documents for communities wishing to raise community investment to fund their collaborative enterprises.

4.5 Barriers to free competition

The Agricultural Competitiveness Green Paper has highlighted the role co-operatives play in ensuring more equitable access to market supply chains for producers in Australia. The paper suggested that government should work to ensure the implementation of the Co-operatives National Law to create an enabling environment for the sector, thereby allowing for greater use of co-operative structures in the sector.

The uneven level of market power through the supply chain was seen as a major cause for lower returns to farmers. The green paper addresses what the Australian Government can do to foster more co-operatives in the agriculture sector, and says that the government wishes to understand obstacles to establishing new co-operatives.

The Competition Policy Review (Harper Review) noted that despite the commitment to competitive neutrality, there is a concern that small businesses, start ups and markets where both government and private enterprises operate are not well served in the context of the mix of federal and state regulation. The Review Panel recommended a process to review and update policies and the establishment of a new institution, jointly charged with authority to oversee competition policy at state and federal level. The Review Panel also noted the need to raise awareness of co-operatives in the context of collective bargaining exemption processes that attempt to address unequal market bargaining power.

As noted, CMEs play an important role in safeguarding consumer interests. Regulations like the Parallel Import Restrictions negatively impact home grown Australian business like The Co-op, which exists to return all profits to members and the education economy. A policy fitness test as recommended would help to address issues, which arise for CMEs as a result of policy and legislative changes.

²⁸ Above n1.

²⁹ Mamouni Limnios, E., Watson, J., Mazzarol, T. & Souter, G., Co-operative Capital Financing as a solution to Co-operative Financing.

The UK experience

In the United Kingdom, the growth and development of the co-operative and mutual sector has been a policy goal of successive governments since 2000. This objective has been supported by a series of policy-led initiatives and a number of legislative interventions.

Government-led policy initiatives have included, for example:

- Creation of 'Supporters Direct' to enable fan ownership of football and rugby clubs
- Creation of NHS Foundation Trusts to establish NHS hospital trusts as community controlled mutuals
- General Practice out of hours health services transferred to new mutuals on Government sponsored model
- Co-operative variant of 'Trust Schools' model authorised to facilitate parental and staff engagement in schools
- Establishment of 'Mutuals Task Force' to promote employee led spin-outs from state and municipal service providers
- Department for Business led a stakeholder engagement programme to prepare for the creation of Post Office mutual

Since 2001, the UK Parliament has supported legislation in line with this cross-party objective. New laws and updates to existing legislation have facilitated a major growth in the UK sector.³⁰

Examples of legislation enacted include:

- **Industrial & Provident Societies Act 2002:** To modernise co-operatives legislation
- **Employee Share Schemes Act 2002:** To promote collective schemes for employee share ownership
- **Health & Social Care (Community Health & Standards) Act 2003:** To reform healthcare provision and introduce a new corporate form 'public benefit corporations' under which NHS hospitals would be transferred to mutual ownership
- **Co-operatives & Community Benefit Societies Act 2003:** To make further updates to co-operative legislation in order to level the playing field with proprietary companies
- **Building Societies (Funding) Mutual Societies (Transfers) Act 2007:** To permit greater flexibility for building society capital raising and to facilitate mergers between different categories of mutuals
- **Co-operatives & Community Benefit Societies & Credit Unions Act 2010:** Further updates to modernise legislation
- **Postal Services Act 2011:** To facilitate the transfer of Post Office Ltd to a new mutual entity
- **Co-operatives & Community Benefit Societies Act 2014:** A consolidation Act to bring together various changes made since 1965.
- **Mutuals Deferred Shares Act 2015:** Creates new capital raising shares for Friendly Societies & Mutual Insurers

³⁰ Today many hundreds of new mutual organisations have been established, collectively turning over circa £40 billion per year. More than 2 million citizens have joined these mutuals.

5. PART 3. Specific Proposals for Action

Recommendations

The CME sector can be an even more effective part of the Australian economy if government makes several structural changes that do not require significant bureaucracy or cost. The BCCM believes that the first step is for the Senate Committee to recommend:

1. Federal and state governments examine regulatory policy for co-operatives and mutuals to ensure:
 - i. Competitive neutrality across all business models,
 - ii. No barriers to entry to a co-operative or mutual model and
 - iii. Equitable access to business advisory and development programs at government level.
2. The adoption of a Mutuals Charter by governments to inform its examination of regulatory policy.
3. Active consideration by government and regulators to changes in the Corporations Act to support the mutual form and enable different forms of capital raising.
4. The initiation of policies at federal and state level to collect information and statistical data about the co-operative and mutual sector.
5. The inclusion of studies about co-operatives and mutuals in business, accounting and economics courses at secondary, tertiary and professional levels.
6. That governments at all levels adopt policies that require consideration of co-operative or mutual structures when considering the disposal or devolvement of publicly held assets and public service delivery.
7. Support the establishment of a new competition policy institution as recommended by the Harper Review with the clear role to deal with education and complaints handling for co-operatives and mutuals.

The BCCM further recommends that the Senate Committee consider identifying the following matters as appropriate for immediate action:

1. Adopt the Co-operatives National Law in all states and territories.
2. Develop uniform administrative procedures and policies under the Co-operatives National Law that are accessible and reasonable in all states and territories.
3. Remove dual regulatory requirements for co-operatives under the federal Corporations Act.
4. Review financial reporting standards and whether they are appropriate for member-owned enterprises.
5. Amend the Australian Government Guide to Regulation, which sets out requirements for regulatory impact statements to include a specific reference to CMEs.
6. Appoint a representative from the CME sector to the Prime Minister's Business Advisory Council, or other business forums as appropriate.

6. Conclusion

In this submission the BCCM has outlined what CMEs are, described their importance to the Australian economy, outlined the opportunities for mutuals to play an expanded role in specific markets and provided examples of barriers preventing them from maximising their contribution to our economy and society.

This submission contains an achievable and specific set of recommendations to fulfill the Committee's charge to identify ways the CME sector can be strengthened.

We have kept the government's fiscal situation front of mind, avoiding proposals that will require major expenditures or the creation of significant new bureaucracy. Instead, we have focused on actions government can take to unleash the potential of this important sector to grow and thereby diversify our economy.

The BCCM also understands that government action is only one component of needed action. The sector itself must lead the effort to improve the environment for CMEs. The BCCM is a tangible example of how the sector is doing this. The BCCM will continue to work with government, industry and academia to both build greater public awareness of the sector and to enact policies that offer a fair opportunity for the sector to compete with companies.

Sector initiatives of the BCCM

Get Mutual: Free self-help online tool for Australians wishing to start a co-operative or mutual.

Pathfinders: Guides for new public service mutuals based on successful Australian CMEs

Community Shares Manual: Free self-help manual for people wanting to crowdsource funding using co-operative investment vehicles.

National Mutual Economy Report: Annual benchmarking research on the size and contribution of Australian co-operatives and mutuals.

CME Chairmans' Forum: National roundtables in partnership with the Australian Institute of Company Directors.

Governance training: In partnership with industry providers.

"Blueprint for an enterprising nation": National cross-sector industry plan

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8. Appendix

Appendix A:

Members of the BCCM:

Full members

Australian Friendly Societies Pharmacies Association

Australian Scholarships Group (ASG)

Australian Unity

bankmecu

Beyond Bank

Capricorn Society

CBH Group

Common Equity Housing Limited (CEHL)

Common Equity NSW

Community First Credit Union

Co-operatives WA

Customer Owned Banking Association

Defence Bank

Employers Mutual

HCF

Members Equity Bank

Murray Goulburn

National Health Co-op

Northern Co-operative Meat Company

NSW Federation of Co-operatives

NRMA

Rabobank

RAC WA

RACQ

Teachers Mutual Bank

The Co-op

Associate members

Australian Institute of Management, Western Australia

Australasian Mutuals Institute

Bus Association Victoria Inc

The Co-op (Barossa Community Co-operative Store)

Consult Point

Co-operative Federation of South Australia

Cuscal

Department of Environment and Primary Industries

Employee Ownership Australia & New Zealand

Encompass Credit Union Limited