

## Chapter 2

### Cooperatives, mutuals and member-owned firms

2.1 The committee received evidence during the inquiry which used the terms co-operative, mutual or member-owned firm interchangeably. The approach taken in this report is informed by the Business Council of Co-operatives and Mutuals (BCCM), who describe their member organisations as Co-operative Mutual Enterprises (CMEs). The statement by Mr Graeme Nuttall, who in 2012 reviewed employee ownership in the UK for the Department for Business, Innovation and Skills, probably put it more succinctly by stating that, '*All co-operatives are mutuals, but not all mutuals are co-operatives*'.<sup>1</sup> The committee would add...*but both are member-owned firms*.

2.2 As the peak representative body for CMEs in Australia, the BCCM contends that:

...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.<sup>2</sup>

2.3 Contextually, BCCM sees CMEs contributing widely to the Australian economy.

...They distribute wealth, control and ownership...they 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.<sup>3</sup>

2.4 The BCCM doesn't distinguish the two business models, rather it combines the two types of enterprise and differentiates them only in terms of the regulatory environment they operate in, and their contrast with other business models:

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

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1 UK Government, *Sharing Success: The Nuttall Review of Employee Ownership*, November 2012, Annexe A – Background to the Review, p. 74.

2 Business Council of Co-operatives and Mutuals, Submission No 3, p. 2.

3 Business Council of Co-operatives and Mutuals, *Submission No 3*, p. 2.

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.<sup>4</sup>

**Table 1.1 – Types of cooperatives and mutuals**

Type	Description	Examples
Consumer owned	<ul style="list-style-type: none"> <li>Members jointly purchase programs and services, improving value for money and access to expert advice.</li> <li>Formed by members to increase their bargaining power in the market (e.g. bulk buying from suppliers to gain volume discounts).</li> </ul>	<ul style="list-style-type: none"> <li>Consumer retail societies: The Barossa Community Store Co-op</li> <li>Collective purchasing cooperatives: The Co-op (University Bookshop) (also see consortium enterprises)</li> <li>Customer owned banks and credit unions: Teachers Mutual Bank, bankmecu</li> <li>Motoring clubs: NRMA, RAC WA</li> <li>Health mutuals and non-profit health insurers:</li> </ul>
Employee owned	<ul style="list-style-type: none"> <li>Provide members with an income as well as empower employees with a stake in the organisation's decision-making process.</li> <li>Pursue long-term strategies that smooth out the peaks and troughs of the business cycle.</li> </ul>	<ul style="list-style-type: none"> <li>Employee benefits trust cooperatives: Sunderland Homecare Cooperative</li> <li>Worker cooperatives: Cooperative Home Care, Nundah Community Enterprise Cooperative</li> <li>Not all employee-owned businesses are cooperatives (for example, accounting and legal firms are limited liability partnerships).</li> </ul>
Enterprise owned	<ul style="list-style-type: none"> <li>Enable self-employed members and member businesses or community groups to band together and find strength in numbers.</li> <li>Includes secondary cooperatives, a consortium cooperative where all members are cooperatives and consortium mutuals which umbrella organisations with like needs.</li> </ul>	<ul style="list-style-type: none"> <li>Consortium cooperatives: Community Child Care Cooperative</li> <li>Community cooperatives: Dandenong and District Aboriginal Cooperative</li> <li>Agricultural cooperatives: Murray Goulburn, CBH Group; Coleambally Irrigation Cooperative Limited</li> <li>Market trader cooperatives: Capricorn Society, Hunternet</li> <li>Artisan cooperatives: Associated Newsagents Cooperative SA, Hairdressers' Cooperative</li> </ul>
Hybrid – multi-stakeholder	<ul style="list-style-type: none"> <li>Hybrid cooperatives combine any elements of the three other types of cooperatives.</li> </ul>	<ul style="list-style-type: none"> <li>Housing cooperatives: Common Equity Housing Ltd – a consumer and enterprise cooperative</li> </ul>

2.5 Table 1.1 (above), produced by Ernst and Young (EY) describes the typical types of CMEs currently operating in Australia, and provides examples of each type.

2.6 In their submission, EY submitted that the difference between co-operatives and mutuals is historical, except for the fact that co-operatives have to subscribe to the seven principles of the International Co-operative Alliance (*see para 2.10*). Their submission added that historically the term mutuals referred to 'member-owned businesses in banking, superannuation and healthcare.'<sup>5</sup>

## Definitions

2.7 The following definitional sections provide descriptions of the types of co-operatives and mutuals that fall under these business models.

### *Co-operatives*

2.8 The defining characteristic of a co-operative is that it is owned by their members and acts in the interests of their members, rather than to provide benefit to shareholders or investors. Two types of cooperatives are provided for under current Australian law: Distributive and Non-Distributive.

2.9 A Distributive Co-operative, commonly known as a Trading Co-operative, is typically a commercial enterprise where members may share the financial surplus. Whereas a Non-Distributive Co-operative uses any surplus to 'further the activities of the co-operative'.<sup>6</sup>

2.10 Co-operative Development Services Ltd provides a list on their website of further characteristics that both types of co-operative typically have. A trading co-operative is characterised by the following:

- A member must support an activity associated with the primary activity of the co-operative, e.g. a dairy farmer is required to deliver an agreed quantity of milk to the co-operative in any given period to remain an 'active' member.
- A trading co-operative must have a share capital.
- Disclosure statements are required for formation and issuing shares.
- Bonus shares can be issued to members upon asset sale or revaluation.
- Shares can be issued at a premium.
- Members may be required to subscribe to more shares or lend money to the co-operative.
- Surplus funds can be distributed to members by way of a 'limited' dividend on shares held, bonus shares and/or a rebate in proportion to the business done by the member with the co-operative.

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5 Ernst & Young, *Submission 44*, p. 9.

6 Mercury Centre Cooperative Ltd, *Submission No 43*, p. 5.

- Surplus funds from winding up is distributed to members in proportion to share capital held by a member.

2.11 A trading co-operative or distributive co-operative, can provide a pecuniary benefit to members, and as such, is subject to a disclosure regime under Australian co-operatives legislation. A non-trading co-operative is not subject to the disclosure regime. Surplus funds from winding up are distributed to another similar 'not-for-profit' organisation approved by members of the co-operative.

2.12 A non-trading co-operative has the following features:

- A member must maintain a relationship with the co-operative associated with its primary activity, e.g. a parent must have a child enrolled in a child care co-operative to be an 'active' member. Payment of a regular subscription by a member is also sufficient to establish 'active' membership of a non trading co-operative.
- No disclosure statement required for formation (except NSW) or issuing shares.
- Shares cannot be issued at a premium.
- Bonus shares cannot be issued either from asset revaluation or sale, or from profits.
- Members cannot be compelled to acquire more shares or lend money to the co-operative.
- Profits made from trading are reinvested in the co-operative and/or distributed to a charitable organisation.<sup>7</sup>

2.13 To mark the UN International Year of Co-operatives in 2012, the Australian Bureau of Statistics published an article setting out the typical characteristics and activities. The article described how both the distributive and non-distributive co-operatives would 'require their members to maintain an active relationship with the co-operative'....and this can 'include purchasing or supplying goods or services, paying an annual subscription, or being a tenant of a housing co-operative.' The article also described the range of activities that are often undertaken by co-operatives in Australia:

[C]onsumer (buying and selling goods to members at a competitive rate); marketing (branding, marketing and distributing members' products and services); service (providing services to members, such as health, electricity or housing); and community (resource, information and skill sharing that encourages ownership and participation). Financial co-operatives comprise credit unions, mutual building societies and friendly societies.<sup>8</sup>

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7 Co-operative Development Services Ltd, *Australian legal structures*, available at: <http://www.coopdevelopment.org.au/typesofcoops.html>, (accessed 25 February 2016).

8 Australian Bureau of Statistics, *Co-operatives in Australia – An Overview*, Available at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Featu res~Co-operatives%20in%20Australia%20-%20an%20overview~285>, (accessed on 22 February 2016).

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### *Australian tax law*

2.14 Co-operative companies are defined in Australian tax legislation as a company that has certain limitations on its shareholding and trading, and that has one, or all, of the following as its object:

- (a) the acquisition of commodities or animals for disposal or distribution among its shareholders;
- (b) the acquisition of commodities or animals from its shareholders for disposal or distribution;
- (c) the storage, marketing, packing or processing of commodities of its shareholders;
- (d) the rendering of services to its shareholders;
- (e) the obtaining of funds from its shareholders for the purpose of making loans to its shareholders to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business.<sup>9</sup>

### *International Co-operative Alliance principles*

2.15 The International Co-operative Alliance sets out a list of principles that guide how co-operatives should operate, and that distinguish them from other forms of enterprise:

#### **1. Voluntary and Open Membership**

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

#### **2. Democratic Member Control**

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

#### **3. Member Economic Participation**

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

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9 *Income Tax Assessment Act 1936*, ss. 117(1).

#### **4. Autonomy and Independence**

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

#### **5. Education, Training and Information**

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

#### **6. Co-operation among Co-operatives**

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

#### **7. Concern for Community**

Co-operatives work for the sustainable development of their communities through policies approved by their members.<sup>10</sup>

### ***Mutuals***

2.16 Similarly, the distinguishing characteristic of a mutual organisation is that it 'is owned by its members, and run exclusively for their benefit, rather than for the benefit of outside investors'.<sup>11</sup>

2.17 Internationally, mutuals tend to be larger organisations than co-operatives, and specialise in specific business sectors. In Canada mutuals are often insurance companies where the policy holder is a participant in the business.<sup>12</sup> According to Co-operatives and Mutuals Canada this results in a 'very stable and successful business model'.<sup>13</sup>

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10 International Co-operative Alliance, *Co-operative identity, values and principles*, available at: <http://ica.coop/en/whats-co-op/co-operative-identity-values-principles>, (accessed 1 March 2016).

11 UK Government, Department for Business Innovation & Skills, *A guide to Mutual Ownership Models*, November 2011, p. 2.

12 Co-operatives and Mutuals Canada, *Co-operatives and Mutuals, What is a Mutual?*, available at: <http://www.canada.coop/en/co-operatives-and-mutuals/what-co-op-what-mutual>, (accessed on 23 February 2016).

13 Co-operatives and Mutuals Canada, *Co-operatives and Mutuals, What is a Mutual?*, available at: <http://www.canada.coop/en/co-operatives-and-mutuals/what-co-op-what-mutual>, (accessed on 23 February 2016).

2.18 In the UK the Communities and Local Government Committee used the definition of a mutual from Mutuo who described mutuals in similar terms to co-operatives:

...organisations which are owned by, and run for the benefit of their current and future members. These are different to social enterprises in that a large proportion of the business should be owned by either employees and/or the local community.

2.19 However the UK committee's report also pointed out the differences between the two concepts, differentiating them on the basis that co-operatives subscribe to the following principles of the International Co-operative Alliance:

An autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise...<sup>14</sup>

2.20 The advantages of the mutual model in comparison to other business structures was highlighted by Regis Mutual Management set out what it sees as the economic benefits unique to mutual enterprises:

**Cost effectiveness** – Mutuals deliver better value, broader and more appropriate insurance protection for members as well as a reduction in overhead costs.

**Increased Competition** – Mutuals drive competition and diversity into the market. This is particularly important in the financial services sector.

**Supporting Australian Financial Services Sector** - Insurance or reinsurance business that might otherwise be ceded to foreign markets can be retained within the domestic market.

**Creating Jobs** - The use of mutual structures has the potential to create greater domestic employment in areas which benefit the community.<sup>15</sup>

### The scale and extent of the sector

2.21 The scale of CMEs in Australia and internationally is significant. The UN's International Year of Cooperatives (IYC) was launched in recognition of the scale of the sector, citing the International Cooperative Alliance's membership of 800 million alone.<sup>16</sup>

2.22 The UN IYC was also promoted on the basis that cooperatives have the ability to extend far beyond the reach of other businesses in areas such as job creation, social inclusion and achieving positive environmental outcomes:

Cooperatives represent a model of economic enterprise, which when effectively implemented, promotes democratic and human values as well as

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14 UK Parliament, House of Commons, Communities and Local Government Committee, *Mutual and co-operative approaches to delivering local services*, 2012, Chapter 2, para 10.

15 Regis Mutual Management, *Submission 33*, p. 5.

16 United Nations, International Year of Cooperatives, Launch Programme, p. 3. Available at: <http://social.un.org/coopsyear/documents/launchprogramme.pdf>, (accessed 23 February 2016).

respect for the environment...Cooperatives help create, improve and protect income as well as they generate employment opportunities and contribute to poverty reduction. As of 2007, cooperatives were responsible for more than 100 million jobs worldwide. Cooperatives also promote social integration and cohesion as they are a means of empowering the poor and marginalized groups. As such, they also play an ever-increasing role in the promotion of gender equality and the social and economic empowerment of women.<sup>17</sup>

2.23 In Australia the Australia Institute estimates that eight in ten Australians are members of some form of CME, but tellingly, only a fraction of that number actually realise it.<sup>18</sup>

2.24 The Australia Institute also estimated the size of the sector in Australia and worldwide, the economic and social impact it has through the creation of jobs, and the types of industries where cooperatives and mutuals thrive:

**Table 1.2: Overview of member owned businesses**

Worldwide	Australia
1,000 million members	13.5 million members (estimated)
\$1,700 billion annual turnover	1,600 co-operatives
100 million employed	103 financial mutuals
Three billion livelihoods secured	\$83 billion combined total assets of financial mutuals
23% share of global insurance market	\$17 billion: top 100 turnover in 2011
196 million credit union members	Seven million automobile club members

Source: Cooperatives UK (2011); The UK co-operative economy 2011 – Britain’s return to co-operation; World Council of Credit Unions; ABS (2012); socialbusiness.coop, Cooperatives Australia (2012).

### **Measuring CMEs**

2.25 A key element in measuring the economic and social impact of the work of CMEs is the collection of data that illustrates the work of CMEs across a variety of sectors, as well as the effect the Co-operatives National Law (CNL) is having on the sector.

2.26 Robyn Donnelly, a former employee of the NSW Registry of Co-operatives who was on the intergovernmental committee that developed the CNL, submitted that the paucity of data on the breadth of activity by CMEs is preventing a full picture of

17 United Nations, International Year of Cooperatives, Launch Programme, p. 3. Available at: <http://social.un.org/coopsyear/documents/launchprogramme.pdf>, (accessed 23 February 2016).

18 The Australia Institute, *Who knew Australians were so co-operative? The size and scope of mutually owned co-ops in Australia*, 2012, Institute Paper 10, available at: [http://www.tai.org.au/sites/default/files/IP%2010%20Who%20knew%20Australians%20were%20so%20co-operative\\_4.pdf](http://www.tai.org.au/sites/default/files/IP%2010%20Who%20knew%20Australians%20were%20so%20co-operative_4.pdf), (accessed 22 February 2016).

the sector being developed, and thus hindering the development of appropriate policies to address the issues facing the sector:

The development of good policy requires information. There is no national database for co-operatives. State Registrars do not generally publish statistics about the number of co-operatives in their jurisdictions or the number of co-operatives that transfer incorporation or that are deregistered. Unlike the monthly publication of statistics by companies there is very little information to test the impact of any regulation for co-operatives.<sup>19</sup>

2.27 The Mercury Centre in Sydney contended that the lack of data and subsequent understanding of co-operative and mutual enterprises (CMEs) in key government agencies is systemic and detrimental:

The BCCM summary identified that the key barriers are those areas of recognition, education and regulation. The Mercury Centre concurs with this assessment, particularly in the context of government regulation,...However, the Mercury Centre considers that further important issues include (1) structural efficiency and organisational capacity, (2) measurement and impact and (3) community and public asset ownership.<sup>20</sup>

2.28 To help alleviate this lack of data around the sector, BCCM commissioned the University of Western Australia's Co-operative Enterprise Research Unit (CERU) to undertake a study into the top 100 CMEs in Australia. Dovetailing with this work is the continued development of the Australian Co-operative and Mutual Business Index (ACMI) that commenced in 2012, also being undertaken by the Co-operative Enterprise Research Unit (CERU) within the University of Western Australia (UWA) Business School. The research is designed to map the size and structure of the sector, to provide a 'better understanding of these Australian Co-operative and Mutual businesses and their contribution to the national economy.'<sup>21</sup>

2.29 The initial findings estimated the combined turnover of these enterprises was approximately \$25 billion, while their combined assets amounted to \$108 billion.<sup>22</sup> The pie chart (Figure 1) below illustrates the diversity of the sector, with CMEs active in a number of key industries.

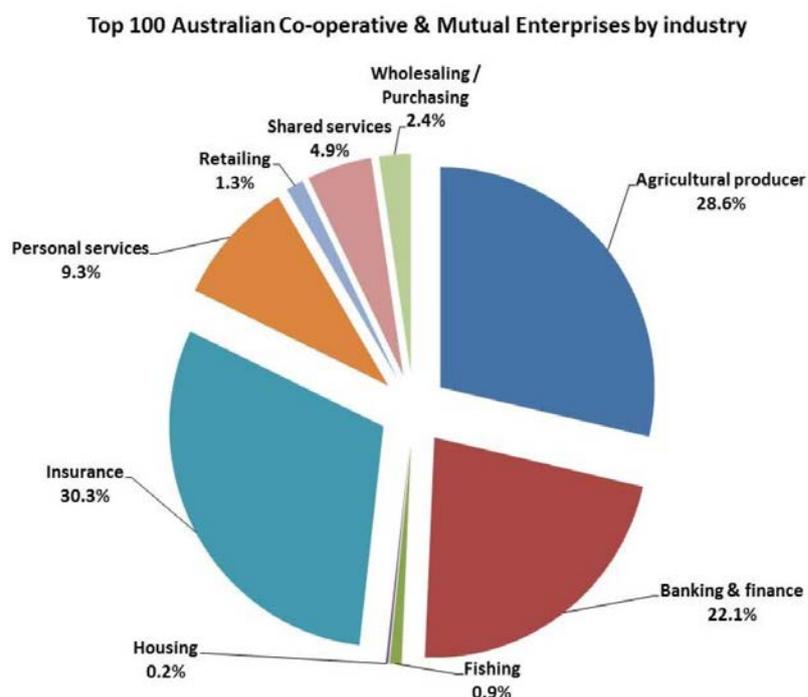
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19 Ms Robyn Donnelly, *Submission 57*, p. 5.

20 Mr Peter Tregilgas, Mercury Centre Co-operative Ltd., *Committee Hansard*, 29 October 2015, p. 57.

21 Centre for Entrepreneurial Management and Innovation, *Australia's Leading Co-operative and Mutual Enterprises in 2014*, p. 5. Available at: [http://www.cemi.com.au/sites/all/publications/CEMI\\_DP1403-Mazzarol-Limnios-Soutar-Kresling-2014.pdf](http://www.cemi.com.au/sites/all/publications/CEMI_DP1403-Mazzarol-Limnios-Soutar-Kresling-2014.pdf), (accessed 1 March 2016).

22 The Conversation, *Australia's co-operative and mutual enterprises deserve greater recognition*, available at: <http://theconversation.com/australias-co-operative-and-mutual-enterprises-deserve-greater-recognition-34284>, (accessed 1 March 2016).

**Figure 1**

Australia's Top 100 CME by industry sector T. Mazzarol (2014)

2.30 A breakdown of these figures by industry and overall value, including earnings and net profit after tax is set out in Table 1.3 below:

**Table 1.3 Top 100 Australian Co-operative and Mutual Enterprises<sup>23</sup>**

Sector	Number	Combined Turnover (\$m)	Median Turnover (\$m)	Median EBIT (\$m)	Median NPAT (\$m)	Combined Assets (\$m)
Agricultural sector	13	7 217.2	210.0	0.4	0.8	4 376 700
Banking and Finance	38	5 570.9	78.5	7.1	4.6	84 476 700
Fishing	2	228.8	114.4	1.7	1.3	66 700
Housing	1	41.2	41.2	1.8	1.8	683 800
Insurance	25	7 638.8	106.4	9.0	9.0	10 781 100
Personal Services	6	2 336.6	477.6	38.8	36.2	7 003 300
Retailing	7	335.9	28.7	0.4	0.3	168 500
Shared Services	2	1 237.8	618.9	9.8	7.1	110 500
Wholesale/Purchasing	6	601.6	83.3	0.6	0.4	186 100
<b>Total</b>	<b>100</b>	<b>25 208.8</b>				<b>107 853 000</b>

Notes to table: EBIT = earnings before interest and tax; NPAT = net profit after tax.

2.31 To supplement this research BCCM recommended that data should be collected at a state and territory level and then collated at a federal level. An initial

23 Centre for Entrepreneurial Management and Innovation, *Australia's Leading Co-operative and Mutual Enterprises in 2014*, p. 5. Available at: [http://www.cemi.com.au/sites/all/publications/CEMI\\_DP1403-Mazzarol-Limnios-Soutar-Kresling-2014.pdf](http://www.cemi.com.au/sites/all/publications/CEMI_DP1403-Mazzarol-Limnios-Soutar-Kresling-2014.pdf), (accessed 1 March 2016).

first step in this process should be for the ABS to begin regular collecting/disaggregating and reporting on relevant data across the CME sector.<sup>24</sup>

## **Recommendation 1**

**2.32 The committee recommends that the Commonwealth Government ensures that a national collection of statistics and data is undertaken to provide an accurate picture of the scale and extent of the co-operative and mutual sector.**

### *The diversity of co-operatives*

2.33 As illustrated at Figure 1 above, CMEs operate in almost every sector of the economy. The committee received evidence from a cross section of these organisations.

2.34 The Voluntary Parents Services Co-operative appeared before the committee in Sydney and explained how they provided a service which brought parents together in fundraising efforts for schools across NSW. The co-operative has reportedly raised \$100 million.<sup>25</sup>

2.35 Also in the education field, Australia Scholarships Group (ASG) is a co-operative of parents established more than 40 years ago to assist them to plan for the children's education. As the largest member-owned education services provider in Australia and New Zealand, ASG provides a range of education plans across public, independent and private school systems, to more than 155 000 members.<sup>26</sup>

2.36 Supporting the tertiary education sector is the Co-op Book Shop, an institution across Australian university campuses. It operates in half of Australia's universities with 60 book shops and is Australia's largest co-operative with nearly two million members.<sup>27</sup>

2.37 Yenda Producers Co-operative are a growers' co-operative of around 1550 producers in the Riverina region of New South Wales. The committee heard that while they have similar goals to other business entities in that they have to make a profit, the impact of their activities in the local community goes well beyond that:

In the local area, we employ 80-odd local people and their families who contribute to our local community. The wages bill is around \$4½ million in the year just gone. As well as that, we support over 100 local charities and schools—you name it; if someone puts their hand up, generally we are there to support them in the local area. We are a distributing co-op, so we do pay rebates and dividends back to our shareholders. In the last five years, those dividends and rebates have amounted to over \$7 million back into the local community.<sup>28</sup>

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24 Business Council of Cooperatives and Mutuals, *Submission 3*, p. 7.

25 Voluntary Parents Services Co-operative, *Committee Hansard*, 29 October 2016, p. 1.

26 Australian Scholarships Group, *Committee Hansard*, 30 October 2016, p. 52.

27 The Co-op, *Submission 38*, p. 2.

28 Yenda Producers Co-operative, *Committee Hansard*, 29 October 2016, p. 24.

2.38 A very different co-operative of bus operators in Victoria also provided evidence to the committee. The Bus Association Victoria (BusVic) is a member-owned, voluntary professional association for Victoria's private, accredited bus and coach operators. The co-operative represents its members in a variety of ways including advocacy with respect to their relations with government, which includes contract negotiations and legislative and regulatory compliance issues.<sup>29</sup>

2.39 The Central New South Wales Renewable Energy Co-operative Ltd (CENREC) and the Community Power Agency Co-operative Ltd are two organisations in the growing co-operative energy sector. CENREC was formed by a number of community members in Bathurst and Orange to invest in a proposed project by Infigen Energy to develop a windfarm at Flyers Creek.<sup>30</sup> Community Power Agency Co-operative Ltd provides support some of the 60 community energy projects around Australia.<sup>31</sup>

2.40 Another organisation established to assist and support other co-operatives and social enterprises, is the Mercury Centre Co-operative. The Mercury Centre advises business on how to establish and develop social enterprise business models through collaboration and shared resources built on community and ethical values.<sup>32</sup>

2.41 The community and social housing sector also features many co-operative organisations. SouthEast Housing Co-operative Ltd. in Victoria told the committee that while the sector is relatively small in Australia to date, internationally it is the preferred model for the provision and maintenance of social housing.<sup>33</sup>

2.42 In response to community concerns around the lack of affordable GPs and healthcare, the National Health Co-operative was established in 2006 in the West Belconnen community of North Canberra. The co-op is now open at six locations in Northern Canberra. These clinics are fully accredited to the RACGP 4th Edition Standards and Charnwood is also accredited as a GP Registrar training practice. Regular clinics are also conducted at six nursing homes closely located to the practice sites. Members have access to bulk-billed GPs and allied health visits (subject to MBS guidelines and regulations), and 30,000 people have now registered as patients.<sup>34</sup>

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29 Bus Association Victoria, *Submission 5*, p. 5.

30 Central New South Wales Renewable Energy Co-operative Ltd, *Committee Hansard*, 29 October 2016, p. 42.

31 Community Power Agency Co-operative Ltd., *Committee Hansard*, 29 October 2016, p. 43.

32 Mercury Centre Co-operative, *Submission 43*, p. 8

33 SouthEast Housing Co-operative Ltd., *Committee Hansard*, 30 October 2016, p. 46.

34 National Health Co-operative, *Welcome*, available at: <http://www.nhc.coop/>, (accessed 2 March 2016).

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## **Mutuals**

2.43 Many of the largest mutuals provided evidence to the committee. The Customer Owned Banking Association (COBA) is the peak body for Australia's credit unions, building societies and mutual banks. The sector represented by COBA are collectively the largest holder of household deposits outside the four major banks.<sup>35</sup>

2.44 The National Roads and Motorists' Association (NRMA) are another one of Australia's most well-known and largest mutuals with 2.4 million members in NSW and the ACT. They, along with other motorists' organisations and car clubs under the banner of the Australia Automobile Association, have seven million members. The NRMA is a for-profit organisation.<sup>36</sup>

2.45 Australian Unity is a large mutual organisation that has been operating for 175 years, and provides health care, aged care and financial services to around 850 000 people. Again, it is run on a for-profit basis, but as with all mutuals, these profits are re-invested in the organisation for the benefit of its members.

2.46 Another area where mutuals have a strong presence is the insurance industry. Hirmaa appeared before the committee representing 18 health insurance organisations. These organisations collectively provide insurance to around one million people, and comprise a variety of the business structures, with mutuals or member-owned insurers being the most prevalent.

2.47 Superannuation is also a field where the mutual structure is heavily favoured. Industry Super appeared before the committee and set out the scale of their operations. From relatively small beginnings where the industry funds had 200 000 members and managed \$2.5 million in assets, they now have a membership of nearly five million and hold assets of around 376 billion.<sup>37</sup>

## **Current state and federal legislation governing co-operatives and mutuals**

2.48 The development of the Co-operatives National Law (CNL) began in 2012 through the Council of Australian Governments (COAG). The intention was that each state and territory would pass uniform legislation or legislation consistent with the CNL by May 2014.<sup>38</sup>

2.49 New South Wales are the lead jurisdiction for the legislation which is intended to reduce red tape and subsequent business costs involved in registering and governing a co-operative across jurisdictions. To date NSW, Victoria, Tasmania,

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35 Customer Owned Banking Association, *Committee Hansard*, 29 October 2016, p. 47.

36 National Roads and Motorists' Association, *Committee Hansard*, 29 October 2016, p. 53.

37 Industry Super Australia, *Committee Hansard*, 30 October 2016, p. 25.

38 Tasmanian Consumer Affairs and Fair Trading, *Co-operatives National Law – A Tasmanian Perspective*, p. 1. Available at: [http://www.consumer.tas.gov.au/data/assets/pdf\\_file/0007/247930/Summary\\_of\\_national\\_approach\\_-\\_Tasmanian\\_perspective.pdf](http://www.consumer.tas.gov.au/data/assets/pdf_file/0007/247930/Summary_of_national_approach_-_Tasmanian_perspective.pdf), (accessed 29 February 2016).

South Australia and the Northern Territory have adopted the legislation.<sup>39,40</sup> WA has amended its *Co-operatives Act 2009* (WA Act) to align with the CNL.

2.50 Nevertheless, some inconsistencies remain. While Queensland has withdrawn from the agreement altogether, there are indications that it may yet amend its existing legislation to be consistent with the national law. ACT is planning the introduction of its enabling laws in 2017.<sup>41</sup>

2.51 There are four elements to the legislation, the enabling Act, the Co-operatives National Law, the Co-operatives National Regulations and the local regulations. All jurisdictions that adopt the law will have these elements.

2.52 The NSW government provided information to the committee explaining the objects of the CNL, and the expected outcomes. One of the overriding objectives is to 'ensure that there are no competitive advantages or disadvantages for co-operatives as compared to corporations'.<sup>42</sup> The main reforms to achieve this are:

- Improved consistency of co-operatives legislation through the introduction of uniform template laws with the option to use alternative consistent legislation;
- Cross border business reform, with automatic authorisation arrangements replacing the requirement for a co-operative to register in each State or Territory in which it wants to do business;
- Simplification of financial reporting and audit requirements for small co-operatives;
- More flexible options to raise funds from members or external sources through the introduction of co-operative capital units (CCUs) in all jurisdictions;
- Responsibilities and duties of directors and officers of a co-operative updated and made consistent with the *Corporations Act 2001 (Cth)* (the Act);
- Improved consistency and referencing of the Act where it can be appropriately applied to co-operatives, such as certain administration and winding up matters;
- Setting out the responsibilities of the secretary of a co-operative and the consequences of not meeting those responsibilities;

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39 Ms Robyn Donnelly, *Submission 57*, p. 3.

40 Commencement dates for the each state or territory to date are: NSW and Victoria – 3/3/14; SA – 22/05/15; Northern Territory – 1/07/15; Tasmania – 1/09/15.

41 Bright Law, *Co-operatives National Law Update 2016*, available at: <http://www.brightlaw.com.au/corporate-governance/co-operatives-national-law-update-2016/> (accessed 29 February 2016).

42 NSW Fair Trading, *Submission 59*, p. 4.

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- Removing the requirement for a formation disclosure statement for a proposed non-distributing co-operative, unless requested to provide this statement by the regulator;
  - The naming of the types of co-operatives was changed from 'trading' and 'non-trading' co-operative to 'distributing' and 'non-distributing' co-operative to better reflect the nature of the co-operative;
  - Former members' rights have been reduced from 5 years to 2 years duration in line with stakeholder feedback. Schedule 3 (1) of the CNL provides for a savings provision in the CNL Adoption Act of a jurisdiction, to maintain the existing former members' rights under their Co-operatives Act before the commencement of the CNL;
  - Capacity for enforceable undertakings between a person and the regulator has been introduced to enable a cost effective means of ensuring compliance by co-operatives with the law;
  - In NSW, about half the fees in its CNL Local Regulations have been reduced, when compared with the corresponding fee under the previous NSW Co-operatives Regulation 2005;
  - Introduction of a fee for the lodging of annual returns or annual reports by a co-operative, to help to recoup the costs of the NSW Registry Services in reviewing these documents for compliance with the CNL.<sup>43</sup>

2.53 To support transition to the new regulatory environment the states and territories that have enacted the CNL have put in place administrative arrangements to provide information and assistance to those seeking to establish a co-operative, or for established organisations.

2.54 Consumer Affairs and Fair Trading in Tasmania for example has published a number of fact sheets on the CNL as well as documentation on the new fees and registration processes.<sup>44</sup> While Consumer and Business Affairs in South Australia has a new section on its website which includes administrative and governance arrangements as well as information and advice on how to run a co-operative.<sup>45</sup> Chapter 3 includes further discussion of the adequacy of information and advice from state and federal agencies, as well as commentary on the CNL.

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43 NSW Fair Trading, *Submission 59*, p. 5.

44 Government of Tasmania, Consumer Affairs and Fair Trading, *Co-operatives*. Available at: [http://www.consumer.tas.gov.au/forms\\_and\\_fees](http://www.consumer.tas.gov.au/forms_and_fees), (accessed 1 March 2016).

45 Government of South Australia, Consumer and Business Services, *Co-operatives*. Available at: <http://www.cbs.sa.gov.au/licensing-and-registration/co-operatives/>, (accessed 1 March 2016).

