



The Treasury
Via: online submission portal

6 September 2017

Dear Sir/Madam

Submission in response to Modernising Business Registry Services discussion paper

The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to provide a submission in response to the above discussion paper.

The contribution of the Co-operative and Mutual Enterprise (CME) sector to the Australian economy is significant not only in financial terms, but also in terms of the delivery of organisational diversity and resilience to the economy, the enhancement of competition and provision of local employment around Australia.

Understanding the impact of the CME sector and developing good policy and better regulation is undermined by the lack of reliable statistical information about these entities. Indeed, the Senate Economics References Committee (SERC) inquiry into cooperative, mutual and member-owned firms acknowledged the centrality of good quality data on CMEs when its first recommendation was 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.'¹

In this response we outline a couple of ways in which the first recommendation of the SERC can be implemented through the process of business registry modernisation. The BCCM is of the view that enhancing data about CMEs in business registries aligns with the underlying functions of the government business registry services, including: enabling market entry and competition; providing access to useful business information for individuals and other businesses; informing policy; and, identifying business needs and trends.

Our submission is structured as follows:

1. About the BCCM
2. About Co-operative and Mutual Enterprises
3. Response to discussion paper

The BCCM is happy to provide further information about CMEs and how business registry services can better capture data and statistics about CMEs.

Yours faithfully

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CEO

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http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report,
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1. About the BCCM

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

The BCCM advocates for recognition of the sector and for measures that create a level playing field between co-operatives and other businesses, including implementation of the recommendations of the Senate Economics References Committee report into cooperative, mutual and member-owned firms.²

2. About Co-operatives and Mutual Enterprises

Co-operative and mutual enterprises (CMEs) are a significant contributor to the Australian economy: 8 in 10 Australians are members of at least one CME and annual turnover of the top 100 CMEs (excluding member-owned superannuation funds) reached \$30.5 billion in FY2014/2015.³ Together with mutual superfunds, it is estimated that the CME sector contributes 7 per cent of Australia's GDP. There are 15 million individual members of CMEs in Australia.

The distinguishing feature of all CMEs, regardless of what legal form they use, is that they are owned by their members and operate for member benefit. Member benefit can mean a wider range of social or non-financial benefits compared with the financial returns enjoyed by a shareholder. Membership is tied to contributing to or making use of the CME; this ensures the CME is made up of people who share its common purpose.

The vast majority of CMEs are incorporated and regulated under one of two legislative regimes: the State/Territory-based Co-operatives National Law (the CNL)⁴ or the Commonwealth Corporations Act. Whether a company under the Corporations Act is a co-operative or mutual will depend on its constitution.

3. Response to discussion paper

The BCCM addresses two matters that impact on the CME sector in response to the Modernising Business Registry Services discussion paper:

- i. Business registry services, particularly the Australian Business Register (ABR), should more accurately reflect the diversity of businesses in the Australian economy by including identifiers for co-operatives and mutuals; and
- ii. Responsibility for and management of the reservation and allocation of names for co-operatives should be centralised along with Australian Company Names and Business Names.

Addressing these matters will enable users to access clear information about all businesses in the Australian economy, and will assist the development of government policy that is sensitive to the very different needs of each sector of the economy.

Understanding the impact of CMEs and developing good policy and better regulation is undermined by the lack of reliable statistical information about these entities. The nature of

²http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report

³ Business Council of Co-operatives and Mutuals, National Mutual Economy Report 2016, 17.
<http://bccm.coop/wp/wp-content/uploads/2016/11/BCCM-NME-Report-2016.pdf>

⁴ The CNL has been adopted in all States and Territories except Queensland. Western Australia has adopted consistent legislation.

these organisations is often not well understood by individuals, professionals, business and government policy makers. The review and modernisation of Business Registry Services and the inclusion of 'community and government representatives, including state and territory governments, registry staff and end users of registry services' in the consultation process, provides a singular opportunity to design a registry service that will serve not only business, but government policy making at all levels, whilst providing a more accurate and reliable source of accessible information to end-users.

i. Identifying CMEs in the Australian Business Register (ABR)

Identifying CME companies

The Companies Register fails to identify those public companies that are mutuals. CME companies have restrictions on their shareholdings or are limited by guarantee and are purposed to provide services to their members. By serving their members rather than external shareholders, these entities are significantly different from investor-owned public companies.

Currently there is no definition of a mutual organisation under the Corporations Act⁵, and no means for them to be identified as mutual entities on the Companies Register. Improved identification of these organisations will allow government to be better informed when developing policy that affects CMEs, whether incidentally or by design.

The distinct nature of CMEs was explored by the SERC in its inquiry into cooperative, mutual and member-owned firms. The Committee recommended 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.'⁶

Improved identification, definition and information about CMEs was seen by the Committee as a crucial step in removing barriers to innovation, growth and competition for these entities.

Identifying state or territory-based co-operatives

There is no national register of state and territory co-operatives.

Co-operatives records are maintained as separate public registers within each State or Territory. Each State or Territory employs different numeric identifier systems, many of which are not recognised by other governmental agencies. Whilst the responsibility for these public registers is a matter for the regulator in each State or Territory, all co-operatives are required to obtain an Australian Business Number and, consistent with any Australian business, are thereby required to provide information about their corporate model.

Regrettably, the manner in which this information is collected is not well managed under the present system from the point of view of state-registered co-operatives. The BCCM is aware of co-operatives being listed on the ABR as "other incorporated entities", whilst some are listed as "co-operative". The online application for an ABN does provide co-operative as an option, but it is initially listed under the category 'Company', which may prove confusing for some applicants. These inaccuracies and inconsistencies damage the integrity of the

⁵ The BCCM notes that Recommendation 4 of the Senate Economics References Committee report into cooperative, mutual and member-owned firms is to develop a definition of mutuals in the Corporations Act. This recommendation (along with recommendations 16 and 17) was recently reviewed by Mr Greg Hammond OAM; we understand that his findings are currently under consideration.

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http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report, xi.

business registers and reduce their utility in the development of policy and appropriate regulation.

Relevantly, the SERC recommended that ‘the Commonwealth Government work with states and territories to ensure the continual improvement to advice, guidance and information provided at all stages in the establishment, governance and regulation of co-operatives.’⁷

The BCCM recommends that the ABR should be the primary register for all businesses and that it should accurately record all business types. In particular, the ABR should provide clear information and categories for entities to identify whether they are a CME, including whether they are distributing or non-distributing co-operatives.

ii. Management of Business Names

The responsibility for the allocation of Business Names was referred to the Commonwealth in 2011. Under these arrangements, ASIC has the responsibility for the search and allocation of business names for federal and state or territory entities. ASIC also has responsibility for the allocation of Australian company names under the Corporations Act 2001. As well as maintaining search functions, and allocating names, ASIC has power to reserve a company name.

The referral of these responsibilities to the Commonwealth (ASIC) has left a gap in the process for state and territory co-operatives. It is not possible under these arrangements for persons wishing to form a co-operative to reserve a co-operative name in the same way that a company may reserve a name in anticipation of its registration. Persons wishing to form a co-operative are required to search for the availability of a name using the ASIC register search facility, but must submit that name for approval by the relevant state or territory Registrar when they submit other documents for approval. The period of time between submission of the name and other documents and subsequent approval, may take some months. There is no guarantee that the name will still be available over that time lapse.

The BCCM recommends that persons be permitted to reserve a name for a co-operative using a similar process for the reservation of a company name.

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