



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

Submission to the Senate Standing Committees on Economics
inquiry into the Commonwealth Registers Bill 2019 and four
related bills

March 2019

The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to make a submission to the inquiry into the Commonwealth Registers Bill 2019 and related bills to modernise business registers and introduce Director Identification Numbers.

The BCCM supports initiatives to reduce red tape for businesses and to combat the incidence of director malpractice. The BCCM submits that the benefits from these initiatives should flow to all business forms, not just those that are regulated under Commonwealth laws.

Co-operatives are registered under State and Territory laws. They carry on business nationally and compete in the same markets as companies. Co-operatives not only make a significant contribution to GDP they also deliver business support to more than 160,000 independent businesses and provide a robust model for new start-ups in the Australian economy.

Excluding co-operatives from initiatives developed under the National Business Simplification Initiative agreed between all jurisdictions magnifies competitive barriers for co-operatives that operate under eight disconnected State and Territory registry systems. Attached is a comparison of the administrative processes for companies and co-operatives.

The Co-operatives National Law (CNL) is the uniform legislative scheme in place in all States and Territories except Queensland. Section 596 CNL allows each State or Territory Registrar to appoint an agency to carry out any functions, including registry functions, under the CNL. The Commonwealth Registers Bill 2019, however, does not permit the Commonwealth Registrar to undertake referred functions other than those from another Commonwealth agency. Indeed, the definition of *excluded law* may specifically exclude functions under the CNL.

We strongly urge the Committee to recommend an amendment to the legislation that would allow States and Territories the option to refer functions to the Commonwealth.

The following amendment to clause 7 of the Commonwealth Registers Bill 2019 would facilitate the inclusion of co-operatives in a modernised business registry environment.

7 Functions

The Registrar's functions are:

- (a) Such functions as are conferred on the Registrar by or under this Act or any other law of the Commonwealth (other than an excluded law) or any other law of a State or Territory; and*
- (b) Such functions as are prescribed by rules for the purposes of this paragraph; and*
- (c) Such functions as are incidental to the functions mentioned in paragraph (a) or (b).*

The BCCM stands ready to assist the Committee further should that be required.

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Impact of the federal Modernising Business Registers Project (MBR) for co-operatives compared with companies.

About the Modernising Business Registers Project (MBR)

MBR project will combine the registry functions across all 31 registers maintained by ASIC and the Australian Business Register (ABR). Technology platforms for each register will be updated to meet modern demands and linked to enable a single point of contact for users across all business registration activities.

The project requires the creation of a separate statutory office of Commonwealth Registrar who will undertake registry and data collection functions. Regulatory functions remain with existing regulatory agencies. Draft legislation allows the referral of registry functions from other Commonwealth regulators such as the ACNC, but excludes referral of functions by State or Territory regulators.

[Note: section 596 of the Co-operatives National Law (CNL) the Registrar of co-operatives to appoint an agent to carry out any of its functions under the CNL. Section 596 would be sufficient to enable the Registrar of co-operatives to appoint the Commonwealth Registrar as its agent in respect of functions relating to the public register under the CNL.]

The expected benefits to federally regulated businesses, community and government from the MBR are:

- Enabling efficient entry of new participants;
- Improving access to business information about an individual's legal status and adherence to industry standards;
- Assisting the development of new products and services through comprehensive data sets; and
- Better targeting of existing and new government services to business and broader social needs.

Impact of changes under MBR for Co-operatives

Registration and business statutory reporting functions for co-operatives are outdated and well behind the standards and facilities available to companies.

The MBR project will further improve these systems for companies creating an even larger gap in the regulatory and administrative systems that support co-operatives.

Current business regulatory system for co-operatives

The registration, ongoing reporting and lodgement requirements for co-operatives are managed through separate State and Territory Registrars. Each administrative contact with the Registrar is paper based with some Registrars accepting electronic documents via email.



Search functions performed by the Registrar are done by way of paper request with varying response times. Free searches of basic registration information are not available other than a limited search function offered by the Victorian Registrar. Searches for information about particular co-operatives must be directed to the Registrar in the State or Territory in which it was registered, there is no centralised or national public register.

There is no national database of information about co-operatives. Information about the size of the sector the types of businesses that operate as co-operatives and their impact on the Australian economy is not available through any formalised public register. Currently the Business Council of Co-operatives and Mutuals along with the University of Western Australia collect information each year by requesting data from each State and Territory Registrar. The form in which the data is made available is not consistent across Registrars and is incomplete. Other information is relied upon to augment data about turnover, assets and employees. Whilst being the best available, the data is not of a quality that would be available through a modern centralised registry.

All co-operatives must obtain an Australian Business Number (ABN), however, until recent times, the Australian Business Register did not allow for an entity to be described as a co-operative. A search of the Australian Business Register cannot provide an accurate number of registered co-operatives.

Current business regulatory systems for companies

Business registration and administrative functions for companies are already able to be conducted online with immediate confirmation of lodgement or receipt of search results.

Under the proposed MBR projects these functions will be improved. The registration, start-up and administrative obligations for companies will be more efficient. Companies setting up enterprises that require multiple licenses or registrations will be able to achieve these through a single Registrar. Ongoing reporting obligations will also be managed through a single portal.

Access to business information will be improved through modern search technology and access to an aggregation of registration information through a single portal.

1. Enabling efficient entry of new participants

By combining the multiple registers that hold information about a company's registration and any other authorities or registrations it holds, businesses are able to communicate with each regulatory agency through a single Registrar. While the majority of businesses will only need to register or deal with three registers – the Company register, Australian Business Register and the Business Names Register – combining these three points of contact will save time. For businesses operating in industries requiring authority or licensing, for example an Australian Financial Services license, access to this can be facilitated through and ultimately recorded on the same register.

Ongoing regulatory compliance for businesses, such as annual returns, licensing renewals and changes to company particulars can also be managed through the same single register.

Federally regulated entities, companies and managed investment schemes, are currently served by systems enabling online and instant interaction with the Australian Securities and Investments Commission (ASIC). Changes under the MBR regime will enhance and simplify these interactions.

Co-operatives regulated under State and Territory laws do not have the benefit of online registry systems. Interactions between co-operatives and State or Territory Registrars are paper-based with some allowance for email lodgements at best.

Table 1 is a comparison between the registration and compliance processes for companies and co-operatives at present.

Table 1 Comparative registration and compliance processes

Companies	Co-operatives
<p>Registration</p> <p>Application for registration can be completed online or using an authorised company formation service.</p> <p>Selection of company name is done by search on ASIC registers.</p> <p>Registration fee payment is online.</p> <p>Registration occurs within 24 hours</p>	<p>Registration</p> <p>Registration is a three-stage process that is paper based. Some registries accept electronic documents by email, most require lodgement of documents in person or by post. There are no authorised co-operative formation services.</p> <p>The process necessarily requires:</p> <ol style="list-style-type: none"> 1. initial approval of governance document and (for distributing co-operatives) a disclosure document. Approval times vary across each jurisdiction. Statutory time limit is 28 days for approval. 2. Promoters to meet and formally agree to form the co-operative and lodge an application for registration. 3. Application processing time is approximately 7 working days with certificate of registration being sent either by email or in some jurisdictions by post. <p>Selection of a co-operative name requires approval by Registrar. Applicant searches ASIC register for name availability, however, the Registrar may veto the choice of name because of its similarity to another co-operative name. The word 'co-operative' or 'co-op' is restricted to registered co-operatives. The time taken to progress through the registration process creates a risk that the name will not be available when the registration takes place.</p>

Annual or financial reporting and changes of company details	Annual or financial reporting and changes of co-operative details
<p>Financial reports or review date lodgements are online. Lodgement and confirmation of lodgement is instant.</p> <p>Changes of company details are lodged online with instant confirmation.</p>	<p>Financial reports or annual returns are lodged by email or post. No confirmation of lodgement is received. Some jurisdictions send reminders of reporting dates, others do not.</p> <p>Changes of co-operative details are lodged by email or post. No confirmation is received. Lodgements that are rejected are advised by post resulting in delays to updating details.</p>

2. Improving access to business information about an individual’s legal status and adherence to industry standards

Markets operate more efficiently when reliable information about participants is available quickly and cheaply through search facilities.

ASIC makes a range of information about companies available free of charge through its website. Other information is available on a further search enabled by online request payment and subsequent receipt.

There is no national database of information about co-operatives. Each State and Territory Registrar maintains a public register that has no connectivity with other registers maintained either by ASIC, the Australian Business Register or the ACNC. Co-operative numbering systems are idiosyncratic and bear no relation to the co-operatives type, year of registration or place of registration.

Table 2.1 compares the type of free information available about companies compared with co-operatives and Table 2.2 compares the cost of information for an extract from each of the public registers.

Interaction with State and Territory Registers is still predominantly paper based. Table 2.3 compares the processes and times to retrieve search information from each of the public registers.

Table 2.1 Free search information available

Companies	Co-operatives
ASIC Company register online provides: Company name ACN and ABN Registration date Company type Registered office address Whether it has charitable registration with the ACNC	NSW: Fair Trading Undated alphabetical list of co-operatives with Co-op number Registered office address
	VIC: Consumer Affairs Searchable list of co-operatives with Co-op number Registered office address
	WA: Department of Mines, Industry Regulation and Safety Undated alphabetical list with Co-op number Registered office address
	SA: Consumer and Business Services No fee search information

	QLD: Fair Trading (via generic Qld Government website) No free search information
	TAS: Consumer, Building and Occupational Services No free search information
	ACT: Access Canberra No free search information
	NT: Business and Industry (via generic NT.gov.au website) No free search information

Co-operatives registered in some States are also recorded on the ASIC Organisations and Business Names Register. Co-operatives registered in Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory do not appear on the ASIC Organisations and Business Names Register.

Table 2.2 Comparative search fees for a public register extract

Companies	Co-operatives
Most extract information can be viewed free online: \$9.00 for a specific extract document	NSW: \$20 + \$1 per additional page
	VIC: \$31.80
	WA: \$13.90 + \$1.70 per additional page
	SA: \$27.00 inspection fee + \$6.00 to copy first page
	QLD: \$18.40
	TAS: Fee not published
	ACT: \$24 to inspect register
	NT: Fee not published

Table 2.3 Comparative search processes and times

Companies	Co-operatives
Search application made online, payment online and returned electronically same day.	NSW: Form can be emailed or posted Register extract returned by email or post in 3 working days. Other searches subject to a quote per page (5 working days) and then provided within 3 working days.
	VIC: Search forms only acceptable by post.

	WA: Search request first requires a quote obtained by phone and then subsequent lodgement of form.
	SA: Online search form, but cannot be completed without knowing the co-operative's registered number. Form to be lodged by post.
	QLD: Online search forms. Results sent within 10 working days.
	TAS: Search form to be lodged by post. No time specified for delivery.
	ACT: Form to be lodged by email or post, payment to be made by attending Access Canberra offices.
	NT: No information on website about searches. Contact NT Licensing and fees.

3. Comprehensive data availability

The further benefits of MBR relate to the availability of data that will assist the development of new products and services and better target existing and new government services to business and broader social needs.

Company formation statistics are published monthly by ASIC along with statistics about insolvency, and other license matters. The ACNC publishes statistics in respect of charitable organisations, some of which are also co-operatives.

There is no published statistical data from State and Territory Registrars about the number of co-operatives, their types and new formations or dissolutions. It is not possible to determine how many co-operatives are not for profit, for profit or registered charities.

Data from the Australian Business Register does not disclose the total number of co-operatives nationally as the Register was not able to permit classification of the co-operative entity type until recently.

The ASIC Organisations and Business Names register does not include co-operatives from all States and Territories. The inclusion of co-operatives on this register relies on State and Territory regulators to forward information about registered co-operatives in their respective jurisdictions.

The Business Council of Co-operatives and Mutuals, assisted by the University of Western Australia, has published the National Mutual Economy Report since 2014.

The collection of data for this report requires an individual request to each State and Territory Registry for statistics. The data provided is inconsistent between jurisdictions and limited in scope. For larger co-operatives, financial data is obtained from published annual reports and employment data is obtained from the Workplace Gender Equality Agency. Whilst this report is compiled with the

best available data, it does not have the same integrity to provide the market, government or the community with evidence to support the development of new products or services nor to provide a basis for regulatory review.