



9 February 2024

# Philanthropy Inquiry Draft Report

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Submission to the Productivity Commission

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## Introduction

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The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to respond to the Productivity Commission's draft report of its inquiry into philanthropy.

The BCCM is the national peak body representing co-operatives and mutuals, representing 100 leading co-operatives and mutuals with a combined membership base of 11 million Australians.

Of the 1,843 co-operatives and mutuals in Australia, a quarter (more than 480) are registered charities.

Co-operatives and mutual charities operate in a range of sectors including health (Rumbalara Aboriginal Co-operative), housing (Common Equity Housing Limited), arts and culture (Harrington Street Artists Co-operative), sport, recreation and heritage (Zig Zag Railway Co-op), environmental services and recycling (Reverse Garbage Co-op), social care (The Co-operative Life), industry development (Co-operative Bulk Handling) and disability employment (Nundah Community Enterprises Limited). They have an estimated combined turnover of nearly \$9bn, showing that mutual aid is an important method by which Australians come together to deliver on charitable objectives.

Our submission focuses on:

- The characteristics and strengths of co-operative and mutual charities
- Dual regulation of charitable co-operatives
- Inconsistency of duties for directors of charities using different legal structures

We would be pleased to provide further information on any matters raised in this submission.

## Co-operative and mutual charities

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Co-operatives and mutuals are globally recognised for their current and potential contribution to sustainable development, thanks to their unique entrepreneurial ecosystem, the scale of their social impact and their ethical values and principles.<sup>1</sup>

- **Unique entrepreneurial ecosystem:** The global apex body for co-operatives and mutuals, the International Co-operative Alliance is one of the oldest non-governmental organisations; founded in 1895 with the purpose of uniting, representing, and serving cooperatives worldwide.<sup>2</sup>
- **Social impact at scale:** The co-operative movement accounts for at least 12% of humanity, with the top 300 cooperatives generating \$2.17 trillion USD in turnover. Co-ops provide jobs or work opportunities to 10% of the world's employed population.
- **Ethical values and principles:** Co-operatives operate under internationally-agreed [values and principles](#) that are stewarded by the International Co-operative Alliance, endorsed by international organisations such as the ILO and UN, and enshrined in Australian co-operatives legislation.

The United Nations has recognised the importance of the socio-economic role of co-operatives and mutuals in twice declaring an International Year of Co-operatives (2012 and 2025). Last November member states unanimously adopted resolution A/C.3/78 L11. L11 entitled "Cooperatives in Social Development" calling for the UN to support the development of co-operatives and to declare 2025 the International Year of Cooperatives – for the second time. The UN adopted resolution L11 in recognition that co-operatives and mutuals are people-centred businesses especially relevant in the post-pandemic period for creating decent jobs and supporting a resilient, sustainable and inclusive recovery for more of humanity.<sup>3</sup>

Co-ops and mutuals typically form through people uniting in response to market failure and therefore represent an equitable model for communities to address unmet need. They are owned and democratically controlled by their members, who can be consumers, producers, workers, community members or a combination of these stakeholders. They are guided by seven principles to deliver benefits to members and the community:

1. Voluntary and open membership
2. Democratic member control
3. Member economic participation
4. Autonomy and independence

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<sup>1</sup> See [2023 UN Secretary General report](#)

<sup>2</sup> The ICA participates in high-level discussions through its consultative status with the [United Nations Economic and Social Council \(ECOSOC\)](#) and was one of the first non-governmental organisation to obtain ECOSOC consultative status in 1946. The ICA has bilateral partnerships with UN agencies including the [International Labour Organization \(ILO\)](#), the United Nations Department of Economic and Social Affairs (UNDESA), the [Food and Agriculture Organization of the United Nations \(FAO\)](#), and participates in the [UN Inter-Agency Task Force on Social and Solidarity Economy](#).

<sup>3</sup> See [UN TV \(from 25:00 - 32:00 minutes\)](#).

5. Education, training and information
6. Co-operation among co-operatives
7. Concern for community

The non-distributing co-operative structure is chosen by co-operative members where the agreed objective is to reinvest surpluses for the collective benefit of members and the wider community (consistent with [Principle 7: Concern for the community](#)). Together with other not-for-profit legal structures, non-distributing co-operatives and mutuals obtain charitable status if the objects of the organisation are consistent with charitable purposes.

BCCM welcomes the focus in the Draft Report on how philanthropy can generate social capital, particularly when it involves working together with others in some way:

*When philanthropy, be it financial or non-financial giving, is provided to do good together with others, it can build societal bonds. However, when provided in isolation for others, social capital is unlikely to be developed (Putnam 2000, p. 117).*

Co-operatives, due to their structure, purpose and principles, are a model where 'doing good together' is fundamental and social capital can be a significant resulting benefit. Co-operatives and mutuals with a charitable purpose provide a model whereby philanthropic stakeholders (donors, employees, beneficiaries, etc) can have a voice and accountability in relation to how benefits are delivered. In addition, the participatory opportunities in co-operatives can support members to enhance their social networks and their skills, also building more resilience and socially cohesive communities in which they operate.

#### **Case study: Nundah Community Enterprises Co-operative**

*Nundah Community Enterprises Co-operative (the co-op) is a charitable co-operative that was formed in 1998 to create sustainable employment and training opportunities for people with mental illness, psycho-social disability, learning difficulties or intellectual disability. The co-op's members are its workers and a community organisation.*

*The co-op focuses on:*

- *Supporting people with cognitive disability to find and retain long-term meaningful paid work*
- *The employment needs of people with dual diagnoses*
- *Supporting people with cognitive disability who also face social disadvantage such as leaving care, being homeless or exiting the criminal justice system.*

*The co-op has successfully adopted a community economic development model to build opportunities for people with a disability to achieve social and economic outcomes over the medium to long term. The co-op now operates four social enterprises in hospitality and maintenance as well as a youth co-op, and now has more than 42 workers.*

*Many members were previously unable to find stable employment but have now been employed by the co-op for more than 20 years.*

*Beyond the social enterprise strategy, the empowerment and additional social capital that comes from making the beneficiary group the members of the charity is a key to its high level of social impact. One worker-member of the co-op noted that it means:*

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*'I get to vote and have a part/say, if I think something's not right, I can put up my hand and say, 'hey I disagree with this'*

## Streamlining regulation of charitable co-operatives

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The BCCM welcomes the focus on streamlining of charity regulation in the Draft Report, particularly the acknowledgement that 'charities structured as co-operatives must submit separate and inconsistent annual reports to two regulators'.

We are supportive of this being addressed by the ACNC and state and territory co-operative regulators and through the [Competition Review](#). Until it is addressed, co-operatives are at a regulatory disadvantage compared to other legal structures.

The BCCM is supportive of recommendation 7.4 and advocates for more collaboration between states, territories and Commonwealth in relation to co-operatives regulation.

## Fairness in duties applying to charity directors and organisations using different legal structures

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On page 225, the Draft Report notes the discrepancy in duties applying to directors of a charity registered under the Corporations Act and under other incorporation legislation such as the Co-operatives National Law.

The BCCM believes that in many cases differences in regulatory treatment of different legal forms are justified (and in fact are often lacking). Different legal forms serve groups and institutions with different purposes, governance models and values, including when that group or institution needs a legal vehicle for a charitable purpose. Policy and regulation should be shaped to allow each of these corporate forms to operate effectively, thereby allowing the community to choose from a range of models for operating businesses, not-for-profits and charities.

However, in this case it is unclear to us from a policy perspective why only directors of charitable companies are largely free of personal duties, unlike registered charities that are incorporated under other legislation. Indeed, the Draft Report notes the low number of 'governance misconduct concerns' reported by state and territory regulators of incorporated associations and co-operatives.<sup>4</sup>

The BCCM has received feedback from a charitable co-operative that they perceive this as a disadvantage of operating as a co-operative and a reason why they are considering conversion to a company limited by guarantee. We view this as a case where a regulatory setting with little policy rationale is disincentivising use of the co-operative form when it is otherwise fit-for-purpose.

We respectfully ask the Productivity Commission to reconsider its conclusions in the Draft Report on this point.

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<sup>4</sup> See also [Modelling the contributions to community in indigenous community owned and co-operative enterprises in Australia – Charles Sturt University Research Output \(csu.edu.au\)](#)

## About the BCCM

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The BCCM is the national industry peak body for co-operatives and mutuals, working with governments, regulators and policymakers to ensure the Australian economic landscape is fully able to benefit from a competitive co-op and mutual movement.

Through its member co-ops and mutuals, the BCCM represents 11 million individuals and 160,000 businesses.

The BCCM has supported new co-operatives and mutuals to form in a range of sectors and is a member of the International Co-operative Alliance (ICA) with access to world-wide networks.

### **Contact details:**

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