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# Perspectives on co-operative law in Oceania



# Co-operative law in Oceania – A general overview

- This presentation will provide a brief overview of co-operative law in Australia, NZ, Vanuatu, Kiribati and Fiji.
- These countries were influenced mainly by the British common-law tradition, but apart from Australia, these countries also have a pluralist legal tradition that is not captured in their co-operative law.
- The presentation is based on the work done for the ICA-EU Legal Framework Analysis Project and the sub regional report submitted in 2020.
- It will pay some attention to how the legal framework in each country deals with the issues of governance, supervision, capital raising and taxation.



# Australia

- A federation of 6 states and 2 territories with a strong centralised national government
- A uniform or consistent model general law for co-operatives in each state and territory *Co-operatives National Law* (as adopted by the State or Territory) based on an interstate agreement (AUCLA)
- Uniform scheme took around 8 years to implement (2012 – 2020).
- Australia does not have a (federal level) multi-state option (as India does) although it does have a scheme for mutual recognition of co-ops registered in other states.
- Consumer and agricultural co-operative sectors have continued to shrink.
- New types of co-operatives emerging in new millennium - digital platforms, health and social services and worker co-operatives.



# New Zealand

- Very different from Australia – strong agricultural (especially dairy) co-op sector
- A long tradition of adaptive hybridism – using company legislation and modified co-op principles for agricultural co-ops.
- *Industrial and Provident Societies Act, 1908* and *Co-operative Companies Act 1996* .
- Co-operatives and mutuals in NZ currently generate around 18% of the country's GDP, employ over 50,000 New Zealanders. (NZ.coop)
- In New Zealand, co-operatives may incorporate as co-operative companies or co-operative societies, unless they are financial co-operatives (building societies or credit unions).
- NZ's largest co-op, Fonterra, is also regulated under the *Dairy Industry Restructuring Act 2001* (NZ).



# Vanuatu

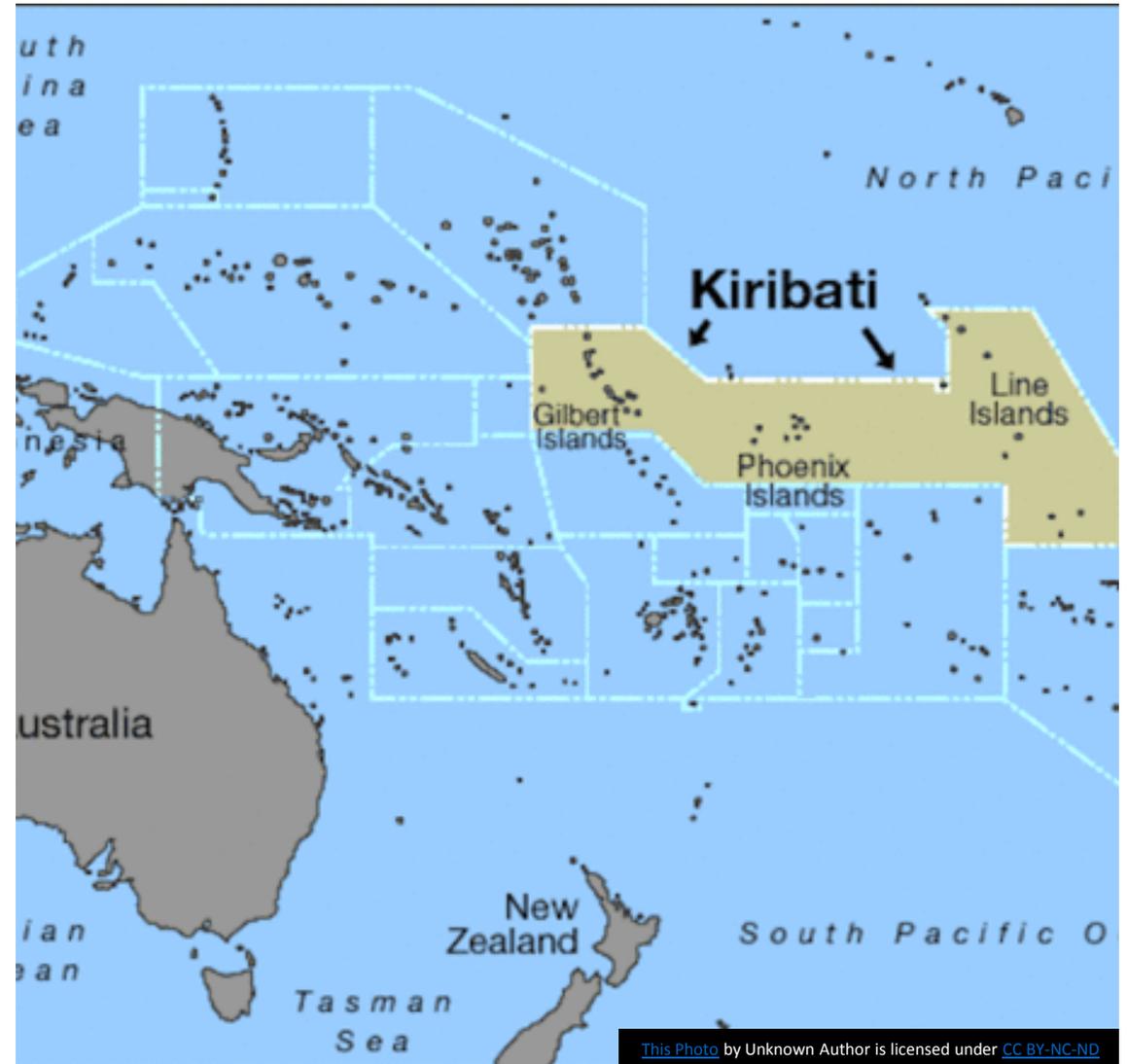
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- Vanuatu is a young nation state in the Melanesian region of the South Pacific
- It is an island archipelago comprising culturally and linguistically diverse communities scattered over 83 islands.
- Vanuatu is also among the Pacific Small Island Developing States (SIDS) recognised by the United Nations as being extremely vulnerable to the impacts of natural and environmental disasters.
- In 2019 Vanuatu's Parliament passed the *Co-operative Societies (Amendment) Act* No. 19 of 2019 updating the existing Act.



# Kiribati

- The Republic of Kiribati is a country in the central Pacific Ocean.
- The people of the Republic of Kiribati depend on the ocean for survival with a few crops to consume due to a very dry and hot climate.
- Kiribati is the only country in the world to be situated in all four hemispheres.
- Before gaining independence in 1977, it was a British protectorate and colony from 1912.
- The *Cooperative Societies Ordinance Cap 14 1977* is the law on co-operatives adopted and used by the Republic of Kiribati
- Credit unions and savings and loan societies are separately regulated.
- UNDP recently appointed a consultant to review Kiribati's co-op legislation.



# Fiji

- Fiji is the largest of the South Pacific Island nations.
- It has one of the most developed economies in the South Pacific and its main industry areas are agriculture; tourism; forestry and fisheries;
- Fiji became a British Colony in 1874 and gained independence in 1970.
- Fijian Co-operative law was introduced by the British Ordinance in 1947
- Since independence the focus of the movement has changed from predominantly agricultural cooperatives to an increasing number of consumer co-operatives that are located mostly in rural and maritime areas.
- The current *Co-operatives Act 1996 (Fiji) (CA)* is under review.



# General observations

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- All of the countries reviewed in Oceania were former British colonies or protectorates.
- Australia and NZ were 'settler' colonies meaning that they had significant migrations from UK and Europe.
- All countries received transplanted British law for co-ops. One consequence is that they all have a *general law for co-operatives* rather than sectoral laws e.g. for agricultural and consumer co-ops.
- Most of these countries have separate legislation for financial co-operatives – credit unions and building societies.
- Vanuatu (2019) and Australia (2012) have had the most recent overhauls of their general co-operative law.



# Historical legal issues

- In Pacific island nations – the law is still mainly based on British Indian Pattern of Co-operation – which assumes a well-funded and resourced registry that has a paternalistic role in encouraging co-operative development
- The registries have continued to do their best to support co-op development by providing auditing services as well as education and training.
- Law reform in these countries is a challenge as it requires political will and resourcing.
- Australia's state-based co-op sector has been steadily shrinking since 1970s and co-op registries are subsumed into other government departments – usually fair trading or consumer affairs.
- NZ has strong ag co-op sector (mainly Fonterra) but no longer has a separate co-op registry. Registrations carried out by NZ Companies Office.



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# Contemporary legal issues

- For Australia and NZ – it is maintaining and promoting the co-ops distinct legal identity in the face of increasingly complex business regulation that assumes a ‘one size fits all’ approach based on the ‘for profit’ company model– evident with the impacts of competition law, accounting standards and prudential regulation of financial institutions.
- Australian income tax law still has some advantages for co-ops but these advantages are not well known or utilised.
- Australia has a state based co-op law system. Most business regulation takes place in federal sphere – and co-ops do not have a seat at the ‘policy table’.

# Contemporary legal issues

- Capital raising is a contemporary issue – Fonterra (NZ) is trying to wind back a share trading system that allowed farmers to trade co-op shares or convert economic rights into units that could be traded on stock exchange) a potential problem now that domestic dairy sector is no longer in growth phase. Co-op shares have ‘fair value’ system that creates a redemption risk for the co-op.
- Australia’s CNL allows capital raising from non-members using Co-operative Capital Units, a hybrid security instrument. So far – not well known or utilised.
- The mutual sector (under the Australian Corporations Act) has recently introduced a similar hybrid security Mutual Capital Instruments, to allow member-owned financial organisations to raise external capital.

# Contemporary legal issues

- The Pacific Island countries are all keen to update their co-operative laws, but are lacking the resources and support needed to undertake this task.
- This situation supports the case for a regional instrument that can provide consistent guidance and support without interfering with the need for each country to tailor their laws to meet their own cultural, social and legal context.
- A review of the functions of the Registrar in each country is required to relieve them of some of the obligations that fall on their shoulders under existing laws especially in relation to auditing and monitoring.
- The law should include appropriate (and achievable) reporting mechanisms for co-operatives based on their size and type to encourage self-regulation of co-operatives with support (rather than direct intervention in co-op decision making processes as required by existing legislation).

# Some law reform issues

- Reduced reporting and auditing obligations for 'small' or 'micro' co-operatives.
- Encouraging co-operation among co-operatives (secondary and tertiary co-operatives).
- Encouraging diverse and engaged participation on co-op boards.
- How to utilise technology to increase democracy through information sharing, polling members, remote participation in meetings, online voting etc.
- Innovative reporting mechanisms including social audit tools



# Law reform examples

- Australia's *Co-operative National Law* (2012) – a uniform template law adopted by the states and territories.
- Innovations include:
  - CCU's,
  - Civil penalties for breach of director's duties (including some recognition of co-op principles in framing of those duties);
  - Distinction between large and small co-ops and reduced reporting and audit obligations for small co-ops;
  - Distinction between distributing and non-distributing co-ops and requirement for former to produce 'disclosure statement' for new members.

# Law reform examples

- Vanuatu's Co-operative Societies (Amendment) Act 2019 (Vanuatu)
  - Includes definitions of types of 'sectoral' co-operatives
  - Incorporates a requirement that co-operatives act in accordance with the co-operative principles
  - Attempts to improve co-operation among co-operatives by setting out the role and function of multi sectoral tertiary society and sectoral tertiary societies (who may combine to form a national apex body).
  - Empowers the registrar to give directions (to co-ops) and make banning orders (to individuals).
  - Creates the offence of 'interference in the management of a co-operative.'
  - Query whether registries have adequate resources to undertake a 'policing' role.
  - Youth inclusion promoted by school co-operatives.

# Conclusions

- A significant issue for legal frameworks for co-operatives in Oceania is a lack of regular review and revision by the legislature in each country.
- The lack of activity in the area of law reform may indicate a lack of political support for laws which promote co-operatives or may be a resourcing issue or a combination of both.
- Australia's (comparatively) recent revision creating a uniform model law in state and territory jurisdictions has generated some renewed interest in co-operative law, but it struggles to compete in a policy environment that favours companies.
- Vanuatu's recent revisions seek to shift the Registry's role away from business development to a prudential role.
- Co-operative framework laws are only part of the puzzle – modern competition, taxation, finance and labour laws tend to adopt a 'one size fits all' approach and may negatively impact on co-operative growth and development, if they do not acknowledge and accommodate the co-operative 'difference'.

# Recommendations

- Co-op law needs to include social audit in annual reporting requirements.
- There is room for a regional model law for the Pacific Island countries.
  - The model law would be a resource – a template that could be adapted to suit the specificities in different countries.
  - It would need to be supported with a suite of resources that can be used and adapted – including best practice ideas e.g. co-op governance code, online co-op builder to assist with drafting by-laws, regional ministerial conferences for shared ideas and support etc.
- Regular law reform programmes help to keep government ministers informed and updated.
- Role of co-ops in promoting sustainable development, mitigating climate change, and providing disaster relief - need to be factored into law reform agendas in Oceania.

The end