

A BRIEF HISTORY OF CO-OPERATIVE LAW IN NSW - ACKNOWLEDGING THE CONTRIBUTION OF DR GARY LEWIS

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Vale Dr Gary Lewis

- **This presentation was not only inspired by the work of Dr Gary Lewis, it draws on his published books and unpublished manuscripts and I would like to acknowledge his contribution to the study of the history of co-operative law in Australia.**
- The following works are reference texts:
 - Gary Lewis, *A Middle Way – Rochdale Co-operatives in New South Wales 1859 – 1986* (1992)
 - Gary Lewis, *The Democracy Principle – Farmer Co-operatives in Twentieth Century Australia* (2006)
 - Gary Lewis, *Cooperation, Carruthers and Community Settlement, The Cooperation Act, NSW, 1924* (Sub-thesis for Bachelor of Letters, ANU, 1980)
 - Gary Lewis, *People before Profit: The Credit Union Movement in Australia*, ` (1996)

Some background and context

- New South Wales started its British colonial life as a penal colony - many of the transported prisoners were political activists with a zeal for collective action – including Chartists, Trade unionists and the Irish
- UK allowed the colonies to begin their path to self-government, when it passed the *Australian Constitution Act* 1850 (Imp).
- After this time, the colonial parliaments were free to pass their own laws, so long as they were not repugnant to English law.
- However, colonial parliamentarians were watching very carefully the development of English law at this time particularly around trade associations and banking i.e. commerce

Friendly societies in the UK

- Friendly societies had their origins in the burial societies of ancient Greek and Roman artisans.
- In the Middle Ages the guilds of Europe and England extended the idea of mutual assistance to other circumstances of distress, such as illness.
- They were often linked to trade unions, fraternities and secret societies.
- They arose in the UK in the 17th and 18th Centuries and reached their peak in the 19th C when around 27,000 societies provided most insurance, pensions and benefits across the UK.

Friendly societies in the UK

- Among the earliest examples of legal recognition of mutuals, was legislation passed in 1793 "for the encouragement and Relief of Friendly Societies."
- Early co-operative societies, if they sought registration, tended to come under the regulatory regimes developed for friendly societies (in UK and Australia).
- However Friendly Society legislation had two limitations as far as far as the developing 'Rochdale' co-op movement was concerned:
 - They were not incorporated bodies and property was held by trustees
 - The frugal investment provisions mean they could not trade with non-members – preventing the registration of producer organisations.

The development of company law in the UK

- While unincorporated joint ventures, partnerships and associations were common in England prior to the 1850's, incorporation required a special Royal Charter or Act of Parliament
- Because personal liability was always a deterrent to investment, the trust was used as a device to shield investors from liability in these unincorporated associations.
- It was not until 1844 that legislation was passed that enabled incorporation by registration of deed of settlement companies in England.
- These early companies did not have the privilege of limited liability. It as separately introduced by the **Limited Liability Act 1855** (UK),

The development of company law in the UK

- Various reforms to this new form of registered and regulated investment vehicles culminated in the passing of the **Companies Act, 1862** UK, which put into place the key features of modern company law.

The development of co-operative law in the UK

- The first legislation for co-operatives in Britain was introduced in 1852, the ***Industrial and Provident Societies Act, 1852***.
- The ***Industrial and Provident Societies Act 1862*** (UK) removed some of these limitations. It conferred both corporate status and limited liability on registered societies. It also added 'wholesale' to the list of activities, paving the way for federations of societies.
- A major consolidating Industrial and Provident Societies Act was passed in 1876 which provided societies with an 'independent and almost self-contained code of law' with their own chief and other registrars separate from the jurisdiction of Friendly Societies. A further consolidating Act was passed in 1895.

Key UK legislation

Impacting Australian co-operative law

1846

Friendly Societies Acts

Provision was made to include 'trade societies' but limited to 'frugal investment.'

1844

Joint Stock Companies Registration and Regulation Act

Allowed incorporation by registration

1852

Industrial and Provident Societies Act

No mention of the word 'co-operative' . No limited liability

1855

Limited Liability Act

Bestowing the privilege of limited liability on some registered companies

1876

Industrial and Provident Societies Act

Corporate status, limited liability under 1862 Act and independent administrative machinery.

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History of Co-operative Law



1848

Friendly Societies Act

*Amendment to 1843 Act to allow **trade societies** for industrial and provident purposes.*

1865

Industrial and Provident Societies Act

Mirrored the UK Industrial and Provident Societies Act, but lacked administrative machinery

1873

Friendly Societies Act

Subsumed Industrial and Provident Societies and Building Societies legislation.

1899

Friendly Societies Act

Removed new registrations of building societies and co-operatives from the scheme. Set up admin under public service.

1901

Building and Co-operative Societies Act 1901

Took the missing legislation into a new Act – still administered by Friendly Society Registry

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History of Co-operative Law



1924

Co-operation, Community Settlement, and Credit Act

A scheme to develop rural Australia – created 8 distinct types of co-ops.

1969

Credit Union Act

Set up a separate regulatory regime for credit unions, see also Permanent Building Societies Act 1967.

1992

Co-operatives Act

A dramatic shift away from co-ops as a development tool towards co-ops as a 'corporate' business model

1998

Co-operative Housing and Starr-Bowkett Societies Act

Separated the regulation of these societies into a separate regime. From 1 July 2019, no new CHS or SBS can be formed.

2012

Co-operatives (Adoption of National Law) Act

The current regime – a uniform template law, supported by both uniform regulations and regulations tailored for NSW

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History of Co-operative Law

1855

Friendly Societies Act

Legislative scheme accommodating the registration of some co-operatives.

1873

Industrial and Provident Societies Act

Does not exclude co-operative banking

1890

Provident Societies Act

An updated version, importing various amendments in UK Industrial and Provident Societies legislation

1915

Provident Societies Act

.A consolidating Act, repealing the 1890 Act.

1924

Industrial and Provident Societies Act

Repeals the 1915 Act, Introduces a prohibition on co-operative banking and extends the supervisory powers of the registrar.

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History of Co-operative Law

1953

Co-operation Act

Seems to be modelled on the NSW Co-operation Act with the same categories of co-operative types

1958

Industrial and Provident Societies Act

Legislation for societies registered under 1915 and 1924 Industrial and Provident Societies Act had continued recognition under this Act – a consolidating Act

1981

Co-operation Act

An update of the 1953 Act

1996

Co-operatives Act

This was the basis of the 1996 Co-operatives Laws Agreement between the commonwealth, state and territory governments. It included the CCP's.

2013

Co-operatives (National Law Application) Act

Victoria adopted the CNL shortly after NSW.