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

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This presentation was not only inspired by the work of Dr Gary Lewis, it draws on his published books and unpublished manuscripts and I would like to acknowledge his contribution to the study of the history of co-operative law in Australia.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:

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.
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.