

Capital Partners' Project response to Treasury Laws Amendment (Mutual Entities) Bill 2018

Introduction

The Business Council for Co-operatives and Mutuals (BCCM) and Customer Owned Banking Association (COBA) welcome the publication of draft legislation that will begin the process of modernising the Federal law for mutual businesses.

New legislation is needed to make the Australian Corporations Act work better for mutually owned businesses, so that they can compete on a level playing field with other types of firms.

We are supportive of this legislation, as the first of two steps to implement the key Hammond Review recommendations to help mutuals to raise new capital.

For the first time, the Corporations Act will correct a longstanding omission, by defining a mutual company, which is the key to opening up a range of new opportunities for mutuals.

Following on from this, the draft legislation also reforms the demutualisation enhanced disclosure provisions that affect mutual banks and friendly societies – Part 5 of Schedule 4 of the Corporations Act.

Background to this response

We have made the case for an improved business environment for co-operatives and mutuals since 2013. Our calls first gained political support in the Australian Parliament, following publication of the of the Senate Economic References Committee report into Co-operative, mutual and member-owned firms.

Over the last nine months, BCCM & COBA have worked with their member businesses to try to positively influence how the Government implements the recommendations of the Hammond Review.

13 leading mutual businesses spanning different sectors – banking, health and community services and motoring - worked together to help shape the sector's positions on new legislation:

Australian Unity
Bank Australia
CUA
Defence Bank
HCF
Heritage Bank
NRMA

People's Choice Credit Union
P & N Bank
Qudos Bank
RAC (WA)
RACQ
Teachers Mutual Bank

In addition, the Friendly Societies of Australia (FSA) worked as a partner in this project.

Specific comments on the draft legislation

Section 51M: Comments on drafting style

- Should the first line of proposed section 51M(1) read "A company is a **mutual entity** if: ..." (rather than "A mutual entity is a **company** if:")?
- Query whether sub-section 51M(1)(a) is necessary? If a mutual entity is a "company", by definition it is a company registered under the Corporations Act.
- Therefore, proposed section 51M(1) could simply read:
 "(1) *A company is a **mutual entity** if the company's constitution provides that each member of the company has no more than one vote at a general meeting of the company; and*"

Section 51M: Potential divergence from existing governance

There is a risk that a number of mutual entities will not meet the proposed 'mutual entity' definition upon commencement of the amendments due to different formulations in mutual entity constitutions regarding membership entitlements and voting, including in respect of memberships in different capacities.

For example, some mutual organisations permit a person to be a member in more than one capacity (e.g. as a trustee, joint memberships, corporate memberships).

Is it possible to amend the proposed section 51M to clarify that a person who holds a membership in more than one capacity may have a vote for each membership in accordance with the constitution of the mutual entity?

We would propose the following alternative wording:

51M Mutual entities

- (1) A company is a **mutual entity** if:
 - (a) the company is registered under this Act; and
 - (b) the company's constitution provides that each member of the company has no more than one vote at a general meeting of the company; and

- (2) For the purposes of paragraph (1)(b): the requirement in that paragraph is satisfied notwithstanding that the company's constitution provides to the effect that a person who is a member in more than one capacity has one vote at a general meeting of the company in respect of each membership.

**Explanatory Memorandum, paragraph 1.11:
Explicit link between both stages of legislation**

Should the text in paragraph 1.11 of the Explanatory Memorandum be more explicit about the fact that the proposed changes are being made as 'Stage 1' in of a broader set of legislative changes to the Corporations Act?

The broader set of changes will expressly enable mutual entities to raise capital without demutualising. (Currently the explanation in paragraph 1.11 of the Explanatory Memorandum is a bit opaque. It refers to "giving mutual entities' certainty and confidence", but does not state that there are further amendments planned).

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