



# Submission to the inquiry into consumer protection in the banking, insurance and financial sector





Committee Secretariat  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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Dear Committee

### **Submission to the inquiry into consumer protection in the banking, insurance and financial sector**

The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to make a submission to the Senate Economics References Committee into Consumer Protection in the Banking, Insurance and Financial Services Sector.

The BCCM is pleased to see the Senate undertaking this inquiry. Consumer trust and confidence in the financial services sector, engendered by robust competition, is vital to the long-term stability and development of the Australian economy. While the banks' treatment of their customers has been called into question on numerous occasions, the lack of trust from the community and the lack of competition in the sector remains to be addressed.

In this submission we make some recommendations for ensuring consumers receive appropriate and reasonably priced financial services. While we accept that regulatory solutions are needed to protect consumers of financial services, consumer protection can be abetted in the long-term through legislative and cultural shifts. The position of the BCCM is that legislation that engenders competition and a diversity of players in the financial services sector is the best way to protect consumers in the long term.

In reaching this conclusion, our submission responds to **points a and g** of the Terms of Reference: failures evident in current laws and regulation and their enforcement; options to prioritise consumer protection.

We endorse the submission to this inquiry of our member, the Customer Owned Banking Association, which provides information on how financial co-operatives and mutuals focus on customers, and the regulatory, legislative and tax policy barriers preventing these enterprises from competing on a level playing field.

This submission is structured as follows:

1. About the BCCM
2. About Co-operatives and Mutuals and the financial services sector
3. Consumer protection is hampered by an oligopolistic financial services market
4. The BCCM supports the submission of COBA
5. Implementing the Recommendations of the Senate Economics References Committee report on Cooperative, mutual and member-owned firms can serve to protect consumers of financial services
6. Appendix: Recommendations of the Senate Economics References Committee report into Cooperative, mutual and member-owned firms

The BCCM can provide further information or comment on any aspect of this submission.

Yours faithfully

Melina Morrison  
CEO

## 1. About the BCCM

The BCCM is the peak body for Australian co-operatives, mutuals and member-owned businesses. The BCCM represents a diverse range of businesses operating in sectors including agriculture, finance and banking, insurance, motoring services, health services, community housing and retail.

The BCCM advocates for recognition of the sector and for measures that create a level playing field between co-operatives and mutuals and other businesses, including implementation of the recommendations of the Senate Economics References Committee report into Cooperative, mutual and member-owned firms.<sup>1</sup>

## 2. About Co-operatives and Mutuals and the financial services sector

The distinguishing feature of all co-operative and mutual enterprises (CMEs), compared with other corporate entities, is that they are owned by their members and operate for member benefit. Member benefit can mean a wider range of social or non-financial benefits compared with the financial returns enjoyed by a shareholder.<sup>2</sup> Membership is tied to contributing to or making use of the CME; this ensures the CME is made up of people who share its common purpose. CME's do not provide services to make money, rather they exist and make money to provide services to members and no other stakeholder.

Co-operative and mutual enterprises are a significant contributor to the Australian economy and the financial services sector.<sup>3</sup> There are currently 4.8 million members of financial services CMEs, 3.4 million members of health insurance mutuals and 11 million members of member-owned superannuation funds. Australia's top 10 credit unions and mutual banks hold almost \$70 billion in assets.

Co-operatives must subscribe to the seven co-operative principles as set out by the International Co-operative Alliance, including open and voluntary membership and democratic control.<sup>4</sup> In Australia, CMEs may operate under a state/territory based co-operative law (the Co-operatives National Law, except in Queensland) or under the Commonwealth Corporations Act. When operating under the Corporations Act, whether or not a CME is a co-operative will depend on whether its constitution includes the co-operative principles.

## 3. Consumer protection is hampered by an oligopolistic financial services market

The oligopolistic nature of the Australian financial services market is the underlying cause of many, though not all, of the poor outcomes for consumers of financial services.<sup>5</sup> Therefore, alongside laws or regulations to protect consumers of particular services or in particular transactions, this inquiry should also consider the broader legislative and regulatory environment that is needed to protect consumers. This pertains to points a and g of the Terms of Reference, which asks whether there are any failures in the current laws and regulatory framework.

While the BCCM accepts that some regulatory changes are needed to protect consumers, the longer term approach this inquiry should consider is the legislative framework necessary to develop a competitive, diverse and sustainable financial services sector that delivers reasonably priced and appropriate services to consumers. The BCCM believes that such an approach will avoid the need for layer upon layer of red tape.

<sup>1</sup>[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Cooperatives/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report)

<sup>2</sup>For a more detailed explanation of the nature and advantages of membership in a financial co-operative see [http://bccm.coop/wp/wp-content/uploads/2015/03/ILO\\_Resilience\\_downturn.pdf](http://bccm.coop/wp/wp-content/uploads/2015/03/ILO_Resilience_downturn.pdf), 33-41.

<sup>3</sup><https://home.kpmg.com/au/en/home/insights/2016/11/mutuals-industry-review-2016.html>

<sup>4</sup><https://home.kpmg.com/content/dam/kpmg/au/pdf/2016/mutuals-industry-review-2016-report.pdf>, 7.

<sup>5</sup><http://ica.coop/en/whats-co-op/co-operative-identity-values-principles>

<sup>6</sup><http://www.smh.com.au/business/banking-and-finance/accc-warns-cosy-banks-it-is-concerned-about-competition-20160322-gnojod.html>

## 4. The BCCM supports the submission of the Customer Owned Banking Association

The BCCM supports the submission to this inquiry made by our member, the Customer Owned Banking Association (COBA).

COBA's submission outlines the characteristics of customer-owned financial service providers: they are customer-focused, prudent and engaged with the community.<sup>7</sup> It is their business model and organisational structure that ingrains this approach.<sup>8</sup>

COBA's submission also outlines why a lack of competition in the financial services sector is at the heart of explaining why consumers lack protection, affordable services and choice. We agree with COBA that the key areas for reform to ensure consumer protection in the long term in the financial services sector are: competition policy, tax policy and the lack of appropriate capital instruments for financial co-operatives and mutuals.

In the following section we elaborate on how implementation of certain recommendations of the Senate Economics References Committee report on Cooperative, mutual and member-owned firms can unlock the potential of financial co-operatives and mutuals to add competition and diversity to the financial services sector.

## 5. Implementing the recommendations of the Senate Economics References Committee report on Cooperative, mutual and member-owned firms can serve to protect consumers of financial services

The Senate Economics References Committee report on Cooperative, mutual and member-owned firms found that there are a number of areas where co-operatives and mutuals do not compete on a level legislative or regulatory playing field with businesses using other structures.

Co-operatives and mutuals operating in the financial services sector face a number of sector-specific barriers that were acknowledged in the Senate Report. The following are the most relevant barriers and the recommendations made in relation to them:

- While many financial mutuals operate under the Corporations Act, there is no definition of a mutual in the Corporations Act (Recommendation 4);<sup>9</sup>
- Similarly, there is no definition of the duties of directors of mutuals distinct from shareholder-owned companies, making it more difficult for directors of mutual to make decisions for member benefit (Recommendation 5);<sup>10</sup>
- The impact on co-operatives and mutuals is not considered when new regulations are implemented (Recommendation 12);
- Accounting standards disadvantage co-operatives and mutuals (Recommendation 14);
- APRA's approach to regulation of capital raising has disadvantaged mutuals (Recommendation 16);
- A lack of appropriate instruments for capital raising has hampered growth (Recommendation 17);<sup>11</sup>

<sup>7</sup> For further elaboration of a customer-owned bank's approach to banking see Bankmecu's (now Bank Australia) submission (submission 18) to the Senate Economics References Committee inquiry into Cooperative, mutual and member-owned firms, <http://www.aph.gov.au/DocumentStore.ashx?hearingid=26697&submissions=false>

<sup>8</sup> For elaboration of this point see [http://bccm.coop/wp/wp-content/uploads/2015/03/ILO\\_Resilience\\_downturn.pdf](http://bccm.coop/wp/wp-content/uploads/2015/03/ILO_Resilience_downturn.pdf), 33-36.

<sup>9</sup> See Australian Unity's submission to the inquiry into Cooperative, mutual and member-owned firms for further elaboration: <http://www.aph.gov.au/DocumentStore.ashx?id=0fac959-112b-49fc-9903-1fa8018dba6e&subId=353795>, 6-7.

Addressing these issues, as recommended by the Senate Report, is one way the Australian Government can increase competition and diversity in the financial services sector leading to better consumer outcomes.<sup>12</sup>

The *Mutuals Industry Review 2016*, published by KPMG, stated:

'[i]f mutuals were able to hold capital levels consistent with their larger competitors at around 13.5 percent, loans could increase by some \$25 billion to generate additional profits of \$375 million...This would equate to a 25 percent increase in size and 60 percent increase in profitability.'<sup>13</sup>

The most urgent change needed for financial co-operatives and mutuals to grow and become serious competitors with the Big 4 banks is the development of appropriate capital instruments under the Corporations Act (Recommendation 17).

There are international precedents (United Kingdom, The Netherlands, Canada) for mutual capital instruments that can be adapted for Australian purposes. The submission made by Mutuo to the Senate Economics References Committee inquiry into Cooperative, mutual and member-owned firms outlines the approach taken in the United Kingdom.

The BCCM recommends that the Australian Government implement recommendations 4, 5, 12, 14, 16 and 17 of the Senate Economics References Committee report on Cooperative, mutual and member-owned firms in order to facilitate a more competitive and diverse financial services sector.

<sup>10</sup> Ibid., 7-8.

<sup>11</sup> Ibid., 11-12.

<sup>12</sup> Historically and in the present financial co-operatives and mutuals have played an important role in addressing market failures: [http://bccm.coop/wp/wp-content/uploads/2015/03/ILO\\_Resilience\\_downturn.pdf](http://bccm.coop/wp/wp-content/uploads/2015/03/ILO_Resilience_downturn.pdf), 34.

<sup>13</sup> <https://home.kpmg.com/content/dam/kpmg/au/pdf/2016/mutuals-industry-review-2016-report.pdf>, 18.

<sup>14</sup> See <http://www.aph.gov.au/DocumentStore.ashx?id=80509316-c6ea-445f-b3cc-03ad933fa178&subId=353404>

## Appendix: Recommendations of the Senate Economics References Committee report into Cooperative, mutual and member-owned firms, March 2016

(Each recommendation listed includes the relevant section number from the Inquiry report<sup>15</sup>)

### **Recommendation 1**

2.32 The committee recommends that the Commonwealth Government ensures that a national collection of statistics and data is undertaken to provide an accurate picture of the scale and extent of the co-operative and mutual sector.

### **Recommendation 2**

3.28 The committee recommends that co-operative and mutuals sector be better represented in government policy discussions, and is actively promoted as a possible option for service delivery particularly where community based initiatives are being considered.

### **Recommendation 3**

3.29 The committee recommends the Commonwealth Government work with states and territories to develop a program of supports to encourage the establishment of new co-operatives and mutual enterprises.

### **Recommendation 4**

3.49 The committee recommends that a mutual enterprise is explicitly defined in the Corporations Act 2001, and its associated regulations.

### **Recommendation 5**

3.51 The committee recommends that the role of directors in mutual enterprises is defined in the Corporations Regulations to align with the proposed definition of a mutual enterprise in the Corporations Act.

### **Recommendation 6**

3.75 The committee recommends the Commonwealth Government work with states and territories to ensure the continual improvement to advice, guidance and information provided at all stages in the establishment, governance and regulation of co-operatives.

### **Recommendation 7**

3.80 The committee recommends that the Commonwealth Government to work with all relevant stakeholders to undertake a program of education and training to inform them about the role of co-operatives and mutuals.

### **Recommendation 8**

3.81 The committee recommends that the Commonwealth Government examine ways in which it can improve the recognition and understanding of the co-operative and mutual sector in the national secondary school curriculum and that tertiary institutions consider the inclusion of co-operative and mutuals in accounting, business, commerce, economics and law degrees.

<sup>15</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Cooperatives/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report)

## Recommendation 9

3.82 The Committee recommends that professional accreditation bodies, such as the Law Society and Institute of Chartered Accountants, require a demonstrated knowledge of the co-operatives and mutual structure before it will licence its members to practice accounting or law.

## Recommendation 10

3.92 The committee recommends that the Commonwealth Government amend the Indigenous Advancement Strategy to allow registered co-operatives the same access to allow levels of grant funding as other entities.

## Recommendation 11

3.93 The committee recommends that the Commonwealth Government review, and where necessary amend the eligibility criteria for grants and funds across all of government grants and program guidelines to ensure that co-operatives and mutual enterprises are not excluded on the basis of their business structure.

## Recommendation 12

4.17 The committee recommends that the co-operative and mutual sector be considered when the government is preparing a Regulatory Impact Statement that accompanies new regulatory policies.

## Recommendation 13

4.18 The committee recommends that the Commonwealth Government liaise with its state and territory counterparts to ensure that the regulatory burden for small and medium sized co-operative and mutual enterprise aligns with the needs of these organisations and ensures they are not disadvantaged relative to companies of a similar size.

## Recommendation 14

4.26 The committee recommends that the Commonwealth Government closely monitor the progress of the International Accounting Standards Board in developing solutions to bring co-operative shares under the definition of capital under AASB 132, and, where possible, facilitate equivalent amendments as expeditiously as possible.

## Recommendation 15

4.42 The committee recommends that Commonwealth and State Governments support the formalisation of some of innovative market-based approaches to raising capital for small and medium sized co-operative and mutual enterprises, in the form of advice and information, as they become available.

## Recommendation 16

4.45 The committee recommends that APRA set a target date for the outcome of discussions with the co-operative and mutuals sector on issues of capital raising and bring those discussions to a timely conclusion.

## Recommendation 17

4.49 The committee recommends that the Commonwealth Government examine proposals to amend the Corporations Act 2001 to provide co-operative and mutual enterprises with a mechanism to enable them access to a broader range of capital raising and investment opportunities.



BUSINESS COUNCIL  
OF CO-OPERATIVES AND MUTUALS