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Dear Manager

### **Submission to the Treasury consultation paper into the Banking Executive Accountability Regime**

The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to make a submission to the Treasury consultation paper into the Banking Executive Accountability Regime.

We have included information about the BCCM and about co-operatives and mutuals as appendices, as well as a list of the member-owned Authorised Deposit-taking Institutions that are members of the BCCM.

Our members include some of Australia's largest member-owned ADIs<sup>1</sup>. Combined, these financial institutions have an annual turnover of more than \$3 billion and assets of almost \$60 billion. They include Australia's largest member-owned bank – Heritage Bank – and Australia's largest member-owned ADI – CUA. Two of the members, People's Choice Credit Union and Beyond Bank, are based in Adelaide, South Australia and have a combined membership of around one-third of all residents in that state. The BCCM membership also includes the Customer Owned Banking Association (COBA).

Mutual ADIs are member owned, and profits – or surpluses as they are known – are retained or reinvested to run the business and to provide services that benefit the member. Mutual ADIs have majority member elected boards, one member one vote democracy and they are accountable and transparent in the way they distribute the members' surplus.

The BCCM has surveyed our members on the implications of the BEAR, and we would like to represent their views on several matters:

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<sup>1</sup> The terms "member-owned", "customer-owned", "mutual" and are used interchangeably in this submission.

- Given the objective of the Regime, we believe that customer-owned and mutual ADIs should be provided an exemption from the Regime
- By way of their business structure, member-owned ADIs do not have access to the type of share-based remuneration available to listed entities (Consultation Paper Question 8)
- Particular care should be taken with the definition of “variable remuneration” (Question 7)
- A 4-year deferment of variable remuneration would have a negative impact on customer-owned ADIs (Question 9)
- The additional regulatory and compliance burdens on customer-owned and mutual ADIs and their boards in balancing an appropriate remuneration (Question 17)
- ADIs should have powers of appeal to APRA decisions covered by this regime

It is essential that Treasury remains cognisant of the different business models to ensure that there are not unintended consequences of a “catch all” regime. The Senate Economics References Committee inquiry into co-operatives, mutuals and members owned business noted that awareness of the mutual business model was a systemic barrier for the sector.<sup>2</sup>

The BCCM welcomes the opportunity to provide further information or comment on any aspect of this submission at any hearings the Treasury may hold.

Yours faithfully



**Melina Morrison**  
**CEO**  
Business Council of Co-operatives and Mutuals

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<sup>2</sup> See especially paragraphs 3.25 and 3.28 *Recommendation 2* and 3.47 “The committee concurs with the principles that support competitive neutrality.”  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Cooperatives/Report/c03](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report/c03)

## **Exempting customer-owned and mutual ADIs from the Banking Executive Accountability Regime (including discussion around Consultation Paper Question 8)**

Mutual ADIs are not, by their very nature, seeking to maximise a dividend to external shareholders. Their structure of customer ownership creates an inherent requirement for executives within a mutual ADI to have maximum focus on their customers. By virtue of this business model, executives working for mutual ADIs do not have the same incentive to make short term business decisions in order to maximise the share price which in turn increases the value of their variable remuneration (where that remuneration is paid in shares).

In contrast, executives in Australia's investor-owned ADIs, especially given the level of institutional investor ownership, must focus on shareholder return in the form of dividend delivery and subsequent increases in share price. This is only exacerbated by any part payment of remuneration in shares; executives are incentivised to make decisions that have the potential to directly increase the value of that portion of their remuneration.

Executives working for customer-owned ADIs do not have access to the same share capital remuneration as their colleagues in publicly listed ADIs. As a result, customer-owned ADI executives do not have the same incentive to make short term decisions in order to maximise the value of their remuneration. The BCCM believes the aim of the BEAR has limited application in the mutual ADI sector, irrespective of size (as discussed in the section "Civil Penalties", page 14 of the discussion paper) and the sector should be exempt from the regime.

### **Question 7: What are the complexities in defining variable remuneration, including in relation to non-cash remuneration?**

If mutual ADIs are not excluded from the BEAR, the BCCM would urge caution in the definition of variable remuneration.

It is presumed, especially given the second part of Question 7 – the term "non-cash remuneration" – that the focus is on share and other equity options. This should be made explicit in any definition of "variable remuneration".

Variable bonuses are common in businesses throughout many parts of the Australian economy, including the member-owned banking sector. As stated in our response to question 8 above: the structure of mutual ADIs precludes them from issuing shares or other equity as "non-cash" variable remuneration. Variable bonuses are not, however, inherently objectionable. Many customer-owned ADIs include KPIs such as membership retention, and return of investment to customers and the community in their calculation of variable bonuses.

Such payments could be caught by the definition of "variable remuneration" if no clarification or refinement is undertaken. This would likely be an unintended consequence of the regime.

**Question 9: Is the proposal for deferring 60 percent of the variable remuneration of certain executive accountable persons appropriate?**

The BCCM believes that a 4 year deferment of part payment of variable remuneration will significantly disadvantage customer-owned ADIs.

Several of our members already have a deferment of part of the payment of variable remuneration (see discussion above, under Question 7), however, to the best of our knowledge, none have a quarantine rate of 60% and 4 year deferment.

We believe that this parameter will be a fundamental shift and will require a major realignment in the executive recruitment process, adding additional complexity to the current regime.

**Question 17: How significant are the costs associated with implementing the BEAR? How can these costs be mitigated consistent with the policy intent of the BEAR?**

A number of our members raised concerns regarding board implications and cost of compliance of the proposed regime. Any new compliance regime has inherent costs associated with it.

Customer-owned ADIs do not have the option of withholding additional costs – for example, the compliance costs associated with the BEAR – from shareholder dividends. Profits are returned to the business and are re-invested in new products, services and technology such as new mobile banking apps that will benefit customers. Any compliance cost will result in a lower return of benefits to customers – a consequence which would appear to be contrary to any policy initiative which aims to improve customer outcomes.

**Powers of appeal to APRA decisions**

The BCCM believes that there must be a clear avenue of appeal (for example, to the Administrative Appeals Tribunal) in relation to all APRA decisions on remuneration.

It would be unacceptable for a regulator to have powers of subjective assessment with minimal levels of accountability.

## Appendix A: 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, aged care, disability employment, education, indigenous services, social housing and retail.

The BCCM advocates for recognition of the sector and for measures that create a level playing field between co-operatives and other businesses, including implementation of the recommendations of the Senate Economics References Committee report into Cooperative, mutual and member-owned firms.<sup>3</sup>

## Appendix B: About Co-operatives and Mutual Enterprises

Co-operative and mutual enterprises (CMEs) are a significant contributor to the Australian economy: 8 in 10 Australians are members of at least one CME and annual turnover of the top 100 CMEs (excluding member-owned superannuation funds) reached \$30.5 billion in FY2014/2015.<sup>4</sup> Together with mutual superfunds, it is estimated that the CME sector contributes 7 per cent of Australia's GDP. There are 15 million individual members of CMEs in Australia.

The distinguishing feature of all CMEs, regardless of what legal form they use, 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. 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.

The vast majority of CMEs are incorporated and regulated under one of two legislative regimes: the State/Territory-based Co-operatives National Law (the CNL)<sup>5</sup> or the Commonwealth Corporations Act. Whether a company under the Corporations Act is a co-operative or mutual will depend on its constitution.

## Appendix C: BCCM Mutual ADIs Membership<sup>6</sup>

- Bank Australia
- BankVic
- Beyond Bank
- Community First Credit Union
- CUA
- Defence Bank
- Greater Bank
- Heritage Bank
- People's Choice Credit Union
- P&N Bank
- Police Bank

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<sup>3</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>4</sup> Business Council of Co-operatives and Mutuals, National Mutual Economy Report 2016, 17.

<http://bccm.coop/wp/wp-content/uploads/2016/11/BCCM-NME-Report-2016.pdf>

<sup>5</sup> The CNL has been adopted in all States and Territories except Queensland. Western Australia has adopted consistent legislation.

<sup>6</sup> <http://bccm.coop/our-members/>

- Qudos Bank
- Regional Australia Bank
- Select Encompass
- Teachers Mutual Bank
- Queensland Country Credit Union
- Customer Owned Banking Association (associate member)
- Service One Alliance Bank (associate member)
- Woolworths Employees Credit Union (associate member)