BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

BCCM welcomes Treasury Laws (Mutual Reforms) Act 2019

BCCM worked with Government and businesses across the mutual sector to help develop this new legislation that improves the business environment for federally registered mutuals.

This new law was conceived by BCCM aimed at improving the business environment for co-operatives and mutuals in Australia.

The legislation is a major step forward for Australia, delivering landmark laws and the first positive change to the Corporations Act for mutuals in 18 years. It has created new and unique 'mutual capital instruments' to help existing mutuals grow and innovate in sectors as varied as agriculture, finance and motoring.

The law also defines a mutual in the Corporations Act for the first time, demonstrating the importance of our sector as part of a diverse economy. At the same time, this has been achieved whilst adding new safeguards to mutual ownership by ensuring member control remains paramount.

BCCM worked hard to build a true cross-Party consensus in favour of the reforms. The changes were championed both by members of the Liberal-National Coalition and the opposition Australian Labor Party.

In just a few years, the way mutuals are seen and understood by the government and opposition has been transformed. The Australian sector has shown how a well-executed strategy can deliver real improvements to the business environment for co-operatives and mutuals.

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BCCM began work in 2013 to help to prepare the ground for reforms in favour of co-operatives and mutuals in Australia, and the strategy began with the publication of a 'policy blueprint,' then helping to establish a formal Senate Inquiry into Co-operatives and Mutuals. These helped to educate our target politicians and identify who would be our champions.

At all points we were keen to stress the centrality of co-operatives and mutuals to the Australian economy and demonstrate how they are a force for fairness and shared prosperity. We worked with global mutual policy experts, Mutuo, to find the most appropriate way to make changes in Australia.

What the legislation does

There are three elements to this new legislation:

1. Definition of a mutual entity

The Act improves the Corporations Act, correcting a longstanding omission by introducing a legal definition for mutual entities into the Act.

This is important because it opens up the opportunity for mutual-specific legislation to be introduced within the Corporations Act, which supports the different business purpose of mutuals.

The new definition enshrines in law the mutual principle that provides that a mutual entity is a company where each member has no more than one vote.

2. Improved drafting of existing legislation

Secondly, the Act amends the Corporations Act by clarifying that financial services mutuals should provide enhanced disclosure to their members when they are considering demutualising.

Previously, there was uncertainty for these 'transferring financial institutions' (credit unions, mutual banks and friendly societies) because other business decisions have inadvertently triggered the enhanced disclosure provisions when there has been no demutualisation.

The clarification provided in the amendment protects members' rights whilst removing artificial restrictions on mutual businesses to fully serve their members.

3. Creation of a mutual capital instrument and associated changes

The Act creates a new type of share – the Mutual Capital Instrument, which may only be issued by mutual entities. This new type of equity share will enable them to attract investment capital, whilst protecting their co-operative ownership structures.

Mutuals will use the new capital to fund their growth and innovation plans, developing new products and making tactical investments.

The Act also makes the necessary legal changes to permit all types of federally registered mutuals to benefit from this legislation, and for mutuals to make the necessary constitutional changes under a defined regime; there is a 36 month 'window' under the Act that provides relief to firms to make the alterations without inadvertently triggering any demutualisation provisions in their constitutions.

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The BCCM view:

This 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.

BCCM worked with its member businesses to identify sensible amendments to the Corporations Act to help improve the business environment for mutually owned firms. This work received the support of the bipartisan Senate Economics References Committee in 2016.

Government subsequently ordered a review of the recommendations from the Senate Committee, conducted by Greg Hammond OAM. The Federal Treasurer accepted all of the recommendations of the Hammond Review.

The Hammond Review recommended new legislation in four areas:

1. A legal definition of a mutual company
2. Major reform of Part 5 Schedule 4 of the Corporations Act (Demutualisation – Enhanced disclosures)
3. A new mutual capital instrument that may only be issued by mutual entities
4. Amendments to existing Company Limited by Guarantee legislation to permit issuance by mutual entities without requiring them to alter their corporate status

BCCM led the project to work with Treasury to develop the draft legislation that implemented these changes and resulted in the Treasury Laws Amendment (Mutual Reforms) Act 2019, which received Royal Assent on 5 April 2019.

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If you require further information on this briefing, please email peter@mutuo.coop

[1] *Independent Facilitator Review Report on Reforms for Cooperatives, Mutuals and Member-owned Firms https://treasury.gov.au/publication/p2017-t235882/*

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