

From: s 22
To: s 22 s 22
Cc: s 22 s 22
Subject: Consolidated response - Senate Committee report co-ops and mutuals [SEC=UNCLASSIFIED]
Date: Friday, 17 June 2016 2:07:37 PM
Attachments: [ATT00001.gif](#)

Hi s 22

I refer to the email that s 22 sent to you yesterday containing ASIC's comments on the draft Government response to recommendations 1, 4, 6 and 15 (see email below).

In relation to recommendation 8 and recommendation 9 we have some minor suggested amendments. I've set out below the text that we would suggest be included in the Government response in relation to these two recommendations..

Recommendation 8

s 47C

Recommendation 8

s 47C

Please feel free to call me to discuss any of the comments we have provided.

Kind regards,
s 22

s 22 | Senior Manager | Deposit Takers, Credit & Insurers | **ASIC** | **Hobart** | Level 2, 70 Collins Street, Hobart, TAS 7001 | s 22 | **E**
2

----- Forwarded by s 22 Hobart/TAS/ASIC on 17/06/2016 12:08 PM -----

From: s 22
To:
Cc:
s 22
Date: 16/06/2016 05:49 PM

Subject: Re: Consolidated response - Senate Committee report co-ops and mutuals [SEC=UNCLASSIFIED]

Dear s 22

ASIC's comments on the draft Government response are set out below.

We are awaiting some input from another area within ASIC in relation to Recommendations 7 and 8, and we will do our best to provide those comments to you tomorrow.

Please cc s 22 into any emails to us, as I will be away tomorrow (Friday), Monday and Tuesday.

s 47C

s 47C

Recommendation 7:

[ASIC to provide input on Friday 17 June]

Recommendation 8:

[ASIC to provide input on Friday 17 June]

s 47C

s 22

Senior Lawyer | Deposit Takers, Credit & Insurers | **ASIC** | **Melbourne** | s 22

From: s 22 <s 22@treasury.gov.au>
 To: "s 22@asic.gov.au" <s 22@asic.gov.au>,
 Cc: "s 22@asic.gov.au" <s 22@asic.gov.au>, "s 22@asic.gov.au" <s 22@asic.gov.au>,
 's 22@treasury.gov.au' <s 22@treasury.gov.au>
 Date: 01/06/2016 11:07 AM
 Subject: Consolidated response - Senate Committee report co-ops and mutuals [SEC=UNCLASSIFIED]

Good morning,

Please find attached the consolidated draft Government response to the Senate Committee report on Cooperatives, mutuals and member-owned firms.

Can you please have a look over the proposed responses and let us know if there are any changes/additional information you would like included.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

It would be appreciated if your next round of input could be provided by **COB Friday 17 June**.

Happy to discuss further.

Kind regards,

s 22

Analyst

Corporations and Schemes Unit

Financial System Division
The Treasury, Langton Crescent, Parkes ACT 2600
s 22
s 22 treasury.gov.au

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[attachment "160510_Govt Response.docx" deleted by s 22
Melbourne/VIC/ASIC]

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s 22

From: s 22
Sent: Tuesday, 10 May 2016 2:51 PM
To: s 22
Subject: FW: Finance input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

From: s 22 [<mailto:s 22@finance.gov.au>]
Sent: Tuesday, 10 May 2016 2:50 PM
To: s 22
Cc: s 22 s 22
Subject: RE: Finance input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s 22

Please find below Finance's initial input to the Government response as requested.

Recommendation 2: 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.


s 47C

If you have any questions, please feel free to give s 22 or I a call.

Kind regards

s 22

(please note that I currently don't work on Wednesdays)



s 22 | Director (a/g)

Procurement Policy Branch | Department of Finance

s 22

[@finance.gov.au](mailto:s 22@finance.gov.au)

A: One Canberra Avenue, Forrest ACT 2600

UNCLASSIFIED

From: s 22 [<mailto:s 22@treasury.gov.au>]
Sent: Wednesday, 20 April 2016 10:43 AM

To: s 22

Cc: s 22

Subject: Finance input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Good morning s 22

As discussed, Treasury are currently preparing a Government response to the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

Please find attached a draft document for Finance contribution. In particular we would like your thoughts on recommendation two which refers to possible options for service delivery.

It would be appreciated if initial input could be provided by **5 May 2016**. I will circulate a consolidated version once other responses have been received.

Happy to discuss further.

Kind regards,

s 22

Analyst

Corporations and Schemes Unit

Financial System Division

The Treasury, Langton Crescent, Parkes ACT 2600

s 22

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Treasurer

cc: Minister for Revenue and Financial
Services

CO-OPS AND MUTUALS - MEETING WITH TONY STUART (CEO UNICEF)

Timing: Before Meeting with Mr Stuart on 9 December

KEY POINTS

s 47C

- Mr Stuart is CEO of UNICEF and the former Group CEO of NRMA and Sydney Airports Corporation Limited, and is on the board of the Starlight Children's Foundation,^s_{47F}

s 47C

s 22

Chief Adviser
Financial System Division

Consultation: ASIC, APRA

Contact Officer^{s 22}

Ext:^{s 22}

ADDITIONAL INFORMATION

BACKGROUND

- Mutual companies are regulated under the Corporations Act 2001. Co-operatives are regulated under state and territory law.
- The state and territory uniform scheme for co-operatives is the Co-operatives National Law, currently being implemented,¹ improves the competitiveness of co-operatives by:
 - introducing Co-operative Capital Units (CCUs) – a hybrid security that can be issued to non-members and quoted on a stock exchange to improve co-operatives' ability to raise capital from members and non-members;
 - removing barriers to co-operatives operating across state borders and bringing co-operative law into line with the Corporations Act 2001, including by simplifying the financial reporting requirements for small co-operatives and making directors duties consistent with the Corporations Act.

IMPROVING ACCESS TO CAPITAL

s 47C

- In Australia CMEs can already raise capital by issuing CCUs or other financial instruments (such as Simple Corporate Bonds), including by listing financial instruments on the ASX.
 - ASX Guidance Note 3 provides guidance for co-operatives and mutuals listing on ASX.
 - Namoi Cotton Co-operative has been listed on ASX since 1998.
- In 2015 Devondale Murray-Goulburn broke new ground by raising \$500 million on the ASX by issuing units while remaining 100% controlled by its dairy farmer supplier/shareholders.
 - Submissions to the Inquiry suggested that access to external capital is predominantly a problem for agricultural producer co-operatives who wish to remain a CME but require significant capital to compete in the international export market.
- For mutual ADIs, APRA has been in ongoing dialogue with the industry to address the direct issuance of equity-like capital instruments. APRA will work with ASIC and industry to address outstanding issues.

s 47C

¹ This has commenced in NSW, Victoria and SA, but has yet to come into effect in Tasmania, the ACT or the NT. Western Australia has enacted a statute to similar effect. It is too early to assess the overall long-term impact of CCUs in promoting co-operative growth.

- The IASB's current project on *Financial Instruments with the characteristics of equity* is likely to change this. The Australian Accounting Standards Board's project on the same topic is under active consideration (AASB3.2).

s 47C

MIRRORING THE TREATMENT OF CO-OPS AND MUTUALS IN THE UK

- The UK has promoted CMEs by:
 - Introducing new financial products to promote capital raising
 - : Financial products offering similar benefits are already available here (see above).
 - promoting 'public sector mutuals' (PSMs)

s 47C

DEFINING MUTUAL ENTERPRISES IN THE CORPORATIONS ACT

s 47C

Treasurer

cc: Minister for Revenue and Financial
Services
Minister for Small Business

MEETING WITH THE BUSINESS COUNCIL OF CO-OPERATIVES AND MUTUALS

Timing: You are meeting with the Business Council of Co-operatives and Mutuals (BCCM) Prior to Meeting at 1pm, Thursday Wednesday 31-1 September August 2016.

KEY POINTS

- ~~The Business Council of Co-operatives and Mutuals (BCCM) has requested a meeting with you following their holding a roundtable of customer-owned banking members regarding their opposition to a Banking Royal Commission.~~
- In March 2016 the Senate Economics References Committee published its report *Cooperative, mutual and member-owned firms* (Report) which made 17 recommendations. Treasury is preparing a response for the Government's approval.

s 47C

- Further information is included in the Additional Information.

s 22

Contact Officer: s 22

Ext: s 22

Senior Adviser
Financial System Division

ADDITIONAL INFORMATION

The BCCM and Sector Snapshot

- The BCCM is the peak cross-sector body for co-operatives, mutuals and member-owned businesses (CMEs). Its purpose is to promote recognition of the important role of CMEs in the economy and community development of Australia.
- CMEs are member based businesses owned by or on behalf of their customers, employees, producers or some combination of these. A CME's main purpose is to benefit its members rather than to provide a return on capital investment.
- Co-operatives are regulated under state and territory law but mutuals are regulated under the *Corporations Act 2001*.
 - The uniform scheme for co-operatives is the Co-operatives National Law, which has commenced in NSW, Victoria and SA, but has yet to come into effect in Tasmania, the ACT or the NT. Western Australia has enacted a similar statute.
- The CME sector is significant to the Australian economy:
 - **2000** co-operative and mutuals businesses in Australia representing **14.8million** members.
 - Contributed **7% of GDP** in 2012/13 (including member owned super funds)
 - **8 in 10** Australians are members of at least one co-op or mutual organisation.
 - The customer owned banking sector controls about **10% of the home loan market** and includes entities such as CUA, Defence Bank and ME Bank.
- Generally, CMEs cannot raise capital by issuing extra shares, but must rely on retained earnings and debt.

BCCM Representatives attending

- You are likely to meet with
 - Melina Morrison, CEO BCCM
 - : You met Melina at a recent event in Cook with Minister O'Dwyer about the opportunity for super funds to invest in mutuals and co-operatives
 - Peter Hunt
 - : Mr Hunt authored the 2013 report *Raising New Capital in Mutuals – Taking action in the UK* (UK Report) recommending changes to the UK treatment of mutuals.
- BCCM have provided copies of biographies of Ms Morrison and Mr Hunt to your office.

Parliamentary parties position on cooperatives and mutuals

- The Nick Xenophon Team stated that the senate inquiry into co-operatives was a useful starting point for the reforms needed to allow co-operatives to flourish, government policies must be supportive of co-operatives and mutual enterprises and that educators should include these business model in their curriculum.
- The ALP committed to reviewing existing federal legislation affecting cooperatives and mutuals, and seeking a review of state and territory legislation through COAG.

OTHER ISSUES LIKELY TO BE RAISES - THE REPORT AND RESPONSES

- The BCCM is likely to raise other issues canvassed in the Report.
- The Committee made 17 recommendations to Government, largely surrounding legislative and education reforms.
- Five of the recommendations broadly recommend legislative amendments to the Corporations Act to explicitly recognise mutual enterprises, the role of directors in these entities and the opportunities for capital raising and investment opportunities. (Recs 4, 5, 14, 16, 17)
- Six recommendations in the report are suggestions for Commonwealth and state and territory governments to encourage education, greater establishment and innovative capital raising for co-ops and mutual enterprises. (Recs 2, 3, 7, 8, 9, 15)
- One recommendation in the report is to ensure a national collection of statistics and data to provide a more accurate picture of the scale and extent of the co-operative and mutual sector.
- Further information on the main recommendations are set out below:

Recommendation 4

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

Recommendation 13

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.

s 47C

Recommendation 14

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.

s 47C

Recommendation 15

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.

s 47C

Recommendation 16

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.

s 47C

Recommendation 17

- 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.

s 47C

PDR No. MB16-000300

30 August 2016

Treasurer

cc: Minister for Revenue and Financial Services
Minister for Small Business**MEETING WITH THE BUSINESS COUNCIL OF CO-OPERATIVES AND MUTUALS****Timing:** You are meeting with the Business Council of Co-operatives and Mutuals (BCCM) at 12:30pm, Thursday 1 September 2016.**KEY POINTS**

- In March 2016 the Senate Economics References Committee published its report *Cooperative, mutual and member-owned firms* (Report) which made 17 recommendations.
s 47C

- BCCM strongly support two key recommendations from the Report: the inclusion of a definition of an incorporated mutual in the *Corporations Act 2001* and the creation of a new financial instrument for use by mutual businesses that currently have no permanent investment capital.

s 47C

s 2

Senior Adviser
Financial System Division

Contact Officer: s 22

s 22
Ext

ADDITIONAL INFORMATION

BACKGROUND

BCCM Representatives attending

- You will be meeting with Ms Melina Morrison (CEO of BCCM) and Mr Peter Hunt. Biographies of Ms Morrison and Mr Hunt have been provided to your Office (Attachment A).
 - You have previously met Ms Morrison at a recent event in Cook with Minister O'Dwyer about the opportunity for super funds to invest in mutuals and co-operatives.
 - Mr Hunt authored the 2013 report *Raising New Capital in Mutuals – Taking action in the UK* (UK Report) recommending changes to the UK treatment of mutuals.

The BCCM and Sector Snapshot

- The BCCM is the peak cross-sector body for CMEs. Its purpose is to promote recognition of the important role of CMEs in the economy and community development of Australia.
- CMEs are member based businesses owned by or on behalf of their customers, employees, producers or some combination of these. A CME's main purpose is to benefit its members rather than to provide a return on capital investment.
- Co-operatives are regulated under state and territory law but mutuals are regulated under the *Corporations Act 2001*.
 - The uniform scheme for co-operatives is the Co-operatives National Law, which has commenced in NSW, Victoria and SA, but has yet to come into effect in Tasmania, the ACT or the NT. Western Australia has enacted a similar statute.
- The CME sector is significant to the Australian economy:
 - **2000** co-operative and mutuals businesses in Australia representing **14.8 million** members.
 - Contributed **7% of GDP** in 2012/13 (including member owned super funds)
 - **8 in 10** Australians are members of at least one co-op or mutual organisation.
 - The customer owned banking sector controls about **10% of the home loan market** and includes entities such as CUA, Defence Bank and ME Bank.
- Generally, CMEs cannot raise capital by issuing extra shares, but must rely on retained earnings and debt.

Parliamentary parties position on CMEs

- The ALP committed to reviewing existing federal legislation affecting cooperatives and mutuals, and seeking a review of state and territory legislation through COAG.
- The Nick Xenophon Team stated that the senate inquiry into co-operatives was a useful starting point for the reforms needed to allow co-operatives to flourish, government policies must be supportive of co-operatives and mutual enterprises and that educators should include these business model in their curriculum.

BCCM'S PROPOSED REFORMS

Inserting a definition of "Incorporated Mutual Companies" into the Corporations Act 2001 (Act) (Recommendation 4).

- BCCM argue that the lack of a clear definition and absence of any mutual-specific options to issue securities is a major barrier to the growth and development of the sector, constraining competition. They mutuals have to rely on retained earnings and debt, or consider losing their mutual status by issuing investor shares designed for proprietary companies.
 - BCCM argue that a legislative definition would enable them to attract additional working capital to fuel the development of the mutual sector.

s 47C

s 47C

OTHER ISSUES LIKELY TO BE RAISED - THE REPORT AND PROPOSED RESPONSES

- The BCCM is likely to raise other issues canvassed in the Report. The Government has not finalised its response.
 - Five of the Report's recommendations broadly recommend legislative amendments to the Corporations Act to explicitly recognise mutual enterprises, the role of directors in these entities and the opportunities for capital raising and investment opportunities. (Recs 4, 5, 14, 16, 17)
 - Six recommendations in the report are suggestions for Commonwealth and state and territory governments to encourage education, greater establishment and innovative capital raising for co-ops and mutual enterprises. (Recs 2, 3, 7, 8, 9, 15)
 - One recommendation in the report is to ensure a national collection of statistics and data to provide a more accurate picture of the scale and extent of the co-operative and mutual sector (Recc 1).

Treasurer

cc: Minister for Revenue and Financial Services
Minister for Small Business

MEETING WITH THE BUSINESS COUNCIL OF CO-OPERATIVES AND MUTUALS

Timing: You are meeting with the Business Council of Co-operatives and Mutuals (BCCM) at 12:30pm, Thursday 1 September 2016.

KEY POINTS

- In March 2016 the Senate Economics References Committee published its report *Cooperative, mutual and member-owned firms* (Report) which made 17 recommendations.

s 47C

- BCCM strongly support two key recommendations from the Report: the inclusion of a definition of an incorporated mutual in the *Corporations Act 2001* and the creation of a new financial instrument for use by mutual businesses that currently have no permanent investment capital.

s 47C

s 22

Senior Adviser
Financial System Division

Contact Officer: s 22

Ext: s 22

ADDITIONAL INFORMATION

BACKGROUND

BCCM Representatives attending

- You will be meeting with Ms Melina Morrison (CEO of BCCM) and Mr Peter Hunt. Biographies of Ms Morrison and Mr Hunt have been provided to your Office ([Attachment A](#)).
 - You have previously met Ms Morrison at a recent event in Cook with Minister O'Dwyer about the opportunity for super funds to invest in mutuals and co-operatives.
 - Mr Hunt authored the 2013 report *Raising New Capital in Mutuals – Taking action in the UK* (UK Report) recommending changes to the UK treatment of mutuals.

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- CMEs are member based businesses owned by or on behalf of their customers, employees, producers or some combination of these. A CME's main purpose is to benefit its members rather than to provide a return on capital investment.
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- Generally, CMEs cannot raise capital by issuing extra shares, but must rely on retained earnings and debt.

Parliamentary parties position on CMEs

- The ALP committed to reviewing existing federal legislation affecting cooperatives and mutuals, and seeking a review of state and territory legislation through COAG.
- The Nick Xenophon Team stated that the senate inquiry into co-operatives was a useful starting point for the reforms needed to allow co-operatives to flourish, government policies must be supportive of co-operatives and mutual enterprises and that educators should include these business model in their curriculum.

BCCM'S PROPOSED REFORMS

Inserting a definition of “Incorporated Mutual Companies” into the Corporations Act 2001 (Act) (Recommendation 4).

- BCCM argue that the lack of a clear definition and absence of any mutual-specific options to issue securities is a major barrier to the growth and development of the sector, constraining competition. They mutuals have to rely on retained earnings and debt, or consider losing their mutual status by issuing investor shares designed for proprietary companies.
 - BCCM argue that a legislative definition would enable them to attract additional working capital to fuel the development of the mutual sector.

s 47C

Treasurer cc: Minister for Revenue and Financial Services

**CO-OPS AND MUTUALS - MEETING WITH TONY STUART RELATES TO
MINISTERIAL NO. MS16-002655**

Timing: Before meeting with Mr Stuart on 9 December 2016.

s 47C

s 47C

s 22

Chief Adviser
Financial System Division

Contact Officer: s 22

Ext: s 22

Consultation: ASIC, APRA

ADDITIONAL INFORMATION

BACKGROUND

- Tony Stuart is the CEO of UNICEF and former Group CEO of NRMA, former CEO of Sydney Airports Corporation Limited, and is on the board of the Starlight Children's Foundation,^{s 47F}
- Mutual companies are regulated under the Corporations Act.
 - The Corporations Act is designed to provide for the flexible application of law across a variety of corporate structures, including mutual companies. The precise structure of a mutual varies on a case-by-case basis, and the current structure of the Corporations Act accommodates this.
- Co-operatives are regulated under state and territory law.
 - The state and territory uniform scheme for co-operatives is the Co-operatives National Law, currently being implemented,¹ improves the competitiveness of co-operatives by:
 - : introducing Co-operative Capital Units (CCUs) – a hybrid security that can be issued to non-members and (if sought) quoted on a stock exchange to improve co-operatives' ability to raise capital from members and non-members;
 - : removing barriers to co-operatives operating across state borders and bringing co-operative law into line with the Corporations Act, including by simplifying the financial reporting requirements for small co-operatives and making directors' duties consistent with the Corporations Act.
- In Australia CMEs can already raise capital by issuing CCUs (in the case of cooperatives) or other financial instruments such as non-voting units or Simple Corporate Bonds (in the case of mutuals), including by issuing financial instruments that can be listed on the ASX.
 - ASX Guidance Note 3 provides guidance for co-operatives and mutuals listing on ASX.
 - Namoi Cotton Co-operative has been listed on ASX since 1998.
- In 2015, under the existing provisions of the Corporations Act, Devondale Murray-Goulburn broke new ground by raising \$500 million on the ASX by issuing non-voting units while remaining 100% controlled by its dairy farmer supplier/shareholders.
 - Submissions to the Inquiry suggested that access to external capital is predominantly a problem for agricultural producer co-operatives who wish to remain a CME but require significant capital to compete in the international export market.

¹ This has commenced in NSW, Victoria and SA, but has yet to come into effect in Tasmania, the ACT or the NT. Western Australia has enacted a statute to similar effect. It is too early to assess the overall long-term impact of CCUs in promoting co-operative growth.

- For mutual ADIs, APRA has been in ongoing dialogue with the industry to address the direct issuance of equity-like capital instruments. APRA has indicated that they will continue to work with ASIC and industry to address outstanding issues.

s 47C

- The IASB's current project on *Financial Instruments with characteristics of equity* may recommend that mutual shares be treated as equity. The Australian Accounting Standards Board has a similar high-priority project running in parallel (AASB3.2) to be well placed to mirror international standards once the IASB has made a decision.

DEFINING MUTUAL ENTERPRISES IN THE CORPORATIONS ACT

s 47C

MIRRORING THE TREATMENT OF CO-OPS AND MUTUALS IN THE UK

- The UK has promoted CMEs by introducing new financial products to promote capital raising.
 - This included passing new legislation in 2015 creating new financial products that can be offered by mutuals without diluting the mutual purpose of the firms offering them.
 - : The existing Corporations Act settings are considerably more flexible than the UK equivalent and already allow the issue of financial products which provide the same benefits (e.g. offering non-voting units or CCUs).
- Since 2010 there has been a push in the UK promoting 'public sector mutuals' (PSMs).
 - PSMs are organisations that have left the public sector but continue delivering public services, and where employee control usually plays a significant role in their operation.

s 47C

Treasurer

Cc: Minister for Revenue and Financial Services
Minister for Small Business

**GOVERNMENT RESPONSE TO SENATE ECONOMICS REFERENCES COMMITTEE
REPORT ON COOPERATIVE, MUTUAL AND MEMBER-OWNED FIRMS**

Timing: The response was due for tabling on 16 June 2016.

s 47C

- On 17 March 2016, the Senate Economic References Committee tabled its report on the role, importance and overall performance of cooperative, mutual and member-owned firms (CMEs) in the Australian economy (Report).
- The Committee makes 17 recommendations across a broad range of policy areas with the intent of the majority of the recommendations to either raise public awareness of CMEs as a business structure or to facilitate CMEs ability to raise capital (see Additional Information).

s 47C

s 22

Principal Adviser
Financial System Division

Contact Officer: s 22

Ext: s 22

Consultation: ABS, ASIC, APRA, Department of Finance, Prime Minister and Cabinet, Department of Education, Department of Employment

ADDITIONAL INFORMATION

Content of the proposed Government response

- The 17 recommendations contained in the Report can be largely categorised as follows:
 - Five of the Report's recommendations broadly recommend legislative amendments to the *Corporations Act* to explicitly recognise mutual enterprises, the role of directors in these entities and the opportunities for capital raising and investment. (Recs 4, 5, 14, 16, 17)
 - Six recommendations in the Report are suggestions for Commonwealth and state and territory governments to encourage education, greater establishment and innovative capital raising for co-ops and mutual enterprises. (Recs 2, 3, 7, 8, 9, 15)
 - One recommendation in the report is to ensure a national collection of statistics and data to provide a more accurate picture of the scale and extent of the co-operative and mutual sector (Rec 1).

s 47C

CME Sector Snapshot

- The CME sector is significant to the Australian economy:
 - **2000** co-operative and mutuals businesses in Australia representing **14.8 million** members.
 - Contributed **7% of GDP** in 2012/13 (including member owned super funds)
 - **8 in 10** Australians are members of at least one co-op or mutual organisation.
 - The customer owned banking sector controls about **10% of the home loan market** and includes entities such as CUA, Defence Bank and ME Bank.

s 47C

- CMEs are member based businesses owned by or on behalf of their customers, employees, producers or some combination of these. A CME's main purpose is to benefit its members rather than to provide a return on capital investment.
- Co-operatives are regulated under state and territory law but mutuals are regulated under the *Corporations Act 2001*.
 - The Co-operatives National Law, which is a uniform scheme for co-operatives, has commenced in NSW, Victoria and SA, but has yet to come into effect in Tasmania, the ACT or the NT. Western Australia has enacted a similar statute to align to the national law.

Tabling of the Government response

- The Government is required to respond to Senate committee reports within three months of their presentation to Parliament.

s 47C

BCCM key stakeholder issues – in order of stakeholder priority

Proposed stakeholder reforms	Treasury position
<p><i>Inserting a definition of “Incorporated Mutual Companies” into the Corporations Act 2001 (Recommendation 4).</i></p>	<p>s 47C</p>
<p><i>Removing legislative barriers to capital raising and a greater involvement in policy discussions (Recommendation 2 and 16)</i></p>	<p>s 47C</p>
<p><i>Creating a new financial instrument for use by mutual businesses that currently have no permanent investment capital (Recommendation 17).</i></p>	

s 47C

s 47C

Proposed stakeholder reforms	Treasury position
	s 47C
<i>The Government develop a program of supports to encourage the establishment of new co-operatives and mutual enterprises (Recommendation 3)</i> s 47C	
<i>Reforms to mirror the treatment of co-operatives and mutuals in the UK (raised in bilaterals – not contained in the Report).</i>	

TREASURY MINISTERIAL SUBMISSION

PDR No. MS16-003222

6 December 2016

Treasurer cc: Minister for Revenue and Financial Services

**CO-OPS AND MUTUALS - MEETING WITH TONY STUART RELATES TO
MINISTERIAL NO. MS16-002655**

Timing: Before meeting with Mr Stuart on 9 December 2016.

s 47C

s 47C

s 22

Chief Adviser
Financial System Division

Contact Officer: s 22

Ext: s 22

Consultation: ASIC, APRA

ADDITIONAL INFORMATION

BACKGROUND

- Tony Stuart is the CEO of UNICEF and former Group CEO of NRMA, former CEO of Sydney Airports Corporation Limited, and is on the board of the Starlight Children's Foundation,^{s 47F}
- Mutual companies are regulated under the Corporations Act.
 - The Corporations Act is designed to provide for the flexible application of law across a variety of corporate structures, including mutual companies. The precise structure of a mutual varies on a case-by-case basis, and the current structure of the Corporations Act accommodates this.
- Co-operatives are regulated under state and territory law.
 - The state and territory uniform scheme for co-operatives is the Co-operatives National Law, currently being implemented,¹ improves the competitiveness of co-operatives by:
 - : introducing Co-operative Capital Units (CCUs) – a hybrid security that can be issued to non-members and (if sought) quoted on a stock exchange to improve co-operatives' ability to raise capital from members and non-members;
 - : removing barriers to co-operatives operating across state borders and bringing co-operative law into line with the Corporations Act, including by simplifying the financial reporting requirements for small co-operatives and making directors' duties consistent with the Corporations Act.

IMPROVING ACCESS TO CAPITAL

s 47C

- In Australia CMEs can already raise capital by issuing CCUs (in the case of cooperatives) or other financial instruments such as non-voting units or Simple Corporate Bonds (in the case of mutuals), including by issuing financial instruments that can be listed on the ASX.
 - ASX Guidance Note 3 provides guidance for co-operatives and mutuals listing on ASX.
 - Namoi Cotton Co-operative has been listed on ASX since 1998.
- In 2015, under the existing provisions of the Corporations Act, Devondale Murray-Goulburn broke new ground by raising \$500 million on the ASX by issuing non-voting units while remaining 100% controlled by its dairy farmer supplier/shareholders.
 - Submissions to the Inquiry suggested that access to external capital is predominantly a problem for agricultural producer co-operatives who wish to remain a CME but require significant capital to compete in the international export market.

¹ This has commenced in NSW, Victoria and SA, but has yet to come into effect in Tasmania, the ACT or the NT. Western Australia has enacted a statute to similar effect. It is too early to assess the overall long-term impact of CCUs in promoting co-operative growth.

- For mutual ADIs, APRA has been in ongoing dialogue with the industry to address the direct issuance of equity-like capital instruments. APRA has indicated that they will continue to work with ASIC and industry to address outstanding issues.

s 47C

- The IASB's current project on *Financial Instruments with characteristics of equity* may recommend that mutual shares be treated as equity. The Australian Accounting Standards Board has a similar high-priority project running in parallel (AASB3.2) to be well placed to mirror international standards once the IASB has made a decision.

DEFINING MUTUAL ENTERPRISES IN THE CORPORATIONS ACT

s 47C

MIRRORING THE TREATMENT OF CO-OPS AND MUTUALS IN THE UK

- The UK has promoted CMEs by introducing new financial products to promote capital raising.
 - This included passing new legislation in 2015 creating new financial products that can be offered by mutuals without diluting the mutual purpose of the firms offering them.
 - : The existing Corporations Act settings are considerably more flexible than the UK equivalent and already allow the issue of financial products which provide the same benefits (e.g. offering non-voting units or CCUs).
- Since 2010 there has been a push in the UK promoting 'public sector mutuals' (PSMs).
 - PSMs are organisations that have left the public sector but continue delivering public services, and where employee control usually plays a significant role in their operation.

s 47C

s 22

From: s 22 @aasb.gov.au>
Sent: Monday, 6 June 2016 7:49 PM
To: s 22
Cc: s 22 (AASB)
Subject: RE: AASB input - Govt response Senate Report on co-operatives [SEC=UNCLASSIFIED]

s 47C

You might be aware that s 22 will be visiting Treasury tomorrow, Tuesday, and presenting to Treasury staff on the AASB and its role and activities. This would give some context to the draft response above.

Happy to address this further with you, as required.

Regards,

s 22

s 22 Senior Project Manager
Australian Accounting Standards Board
 Level 14, Podium, 530 Collins Street, Melbourne VIC 3000
 s 22
canstis@aasb.gov.au | www.aasb.gov.au

From: s 22 [mailto:s 22@treasury.gov.au]
Sent: Wednesday, 25 May 2016 4:37 PM
To: s 22
Cc: s 22
Subject: AASB input - Govt response Senate Report on co-operatives [SEC=UNCLASSIFIED]

Good afternoon Clark,

As discussed, Treasury are currently preparing a Government response to the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

Recommendation 14 relates to the definition of capital under AASB 132.

Please find attached response for AASB's contribution.

It would be appreciated if initial input could be provided by **3 June**.

Happy to discuss further,

Kind regards,

s 22

Analyst

Corporations and Schemes Unit

Financial System Division

The Treasury, Langton Crescent, Parkes ACT 2600

s 22

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s 22

From: s 22 @abs.gov.au>
Sent: Friday, 6 May 2016 1:17 PM
To: s 22
Cc: s 22 s 22 @abs.gov.au'; s 22
Subject: Re: ABS input - Govt response Senate Report on co-ops
Attachments: 160415_Draft Govt Response_Senate report co-ops.docx

Hi s 22

Apologies for the late response.

I have consulted with my staff in relevant areas and can advise that the ABS is currently unable to derive statistics for the co-operative and mutual sector, as available identifying data does not comprehensively distinguish these from other entities. Statistics on co-operatives may be able to be extracted from administrative data. As there has not been a business need to do so to date, the complexity of acquiring and utilising this administrative data, and quality of any subsequent outputs has not been assessed. There is no reliable indicator available for mutuals. Anecdotal evidence suggests many of these entities would be below the cut-off for inclusion in the Australian Business Register, resulting in no available data even if identified.

I would be grateful if you could keep me in the loop and forward the consolidated version of the responses in due course.

Thanks

s 22

*General Manager, Industry Division***Australian Bureau of Statistics**

s 22

(W) www.abs.gov.au

▼ s 22 ---19/04/2016 02:11:32 PM---Hi s 22 Treasury are currently preparing a Government response to the Senate Economics References C

From: 's 22 <s 22 treasury.gov.au>
 To: s 22
 Cc: s 22 <s 22 treasury.gov.au>
 Date: 19/04/2016 02:11 PM
 Subject: ABS input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Hi s 22

Treasury are currently preparing a Government response to the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

Recommendation One in the Report refers to the collection of national statistics and data. I've asked APRA and ASIC to provide

comments on this, but thought the ABS would have an interest also.
Attached is a draft document for ABS contribution.

It would be appreciated if initial input could be provided by **5 May 2016**. I will circulate a consolidated version once other responses have been received.

I understand you are working from home today, so please let me know tomorrow if you are not the right contact/if you would like to discuss further.

Thanks,

s 22

Corporations and Schemes Unit
Financial Systems Division
The Treasury | Langton Crescent, Parkes ACT 2600

treasury.gov.au

s 22

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(See attached file: 160415_Draft Govt Response_Senate report co-ops.docx)

s 22

From: s 22
Sent: Friday, 6 May 2016 11:58 AM
To: s 22
Cc: s 22
Subject: RE: FIPU input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Hi s 22

Please see our input to recommendation 15 and 17. As a general point, we see these two recommendations as being overlapping in some ways and so our draft response seeks to link the two.

<http://tweb/sites/mg/fsd/fs/Small%20business/Access%20to%20finance/160504%20-%20Draft%20Government%20Response%20to%20Senate%20report%20on%20co-ops.docx>

Happy to discuss.

Regards,

s 22

From: s 22
Sent: Thursday, 5 May 2016 4:42 PM
To: s 22
Subject: RE: FIPU input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Hi s 22

My apologies but there is a small chance that we may have to send something over to you tomorrow morning. I hope that's OK.

I'm unsure whether s 22 is in a position to clear our input this evening but I will remind her that this is in her inbox, if I see her before I leave.

Cheers,

s 22

From: s 22
Sent: Tuesday, 19 April 2016 7:29 PM
To: s 22
Cc: s 22 2 s 22
Subject: FW: FIPU input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Hi Team –

CSU are coordinating input for a response to a senate inquiry.

A number of the recs may have relevance to our work:

s 22 can you pls provide some input in response to rec 15 which calls for innovative finance mechanisms; and

s 22 – can you pls consider if there is anything in relation to bonds/capital raising (s 22) or small business access to finance (s 22) for us to contribute in relation to rec 17 which looks to expand the ability of co-ops to raise capital and invest (rec 17).

Details of deadlines are below.

Thanks

s 22

From: s 22
Sent: Friday, 15 April 2016 12:15 PM
To: s 22
Cc: s 22
Subject: FIPU input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Hi s 22

Treasury are currently preparing a Government response to the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

Two of the recommendations (15 and 17) relate to innovative approaches to raising capital. Is this something you may have an interest in?

If so, it would be appreciated if initial input could be provided **by 5 May 2016**.

Happy to discuss further.

Thanks,

s 22

Corporations and Schemes Unit

Financial Systems Division

The Treasury | Langton Crescent, Parkes ACT 2600

s 22

| e: s 22

treasury.gov.au

s 22

From: s 22 @pmc.gov.au>
Sent: Thursday, 5 May 2016 10:18 AM
To: s 22
Cc: s 22
Subject: RE: PMC input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]
Attachments: Input for Govt Response - Rec 10.docx

UNCLASSIFIED

Hi s 22

Please find attached PM&C's input for recommendation ten of the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

Regards,

s 22 | Adviser
 Indigenous Organisation Capacity Development and Regulation | IAG Risk, Compliance and Integrity Branch
 Programme, Integrity and Engagement Division
 Department of the Prime Minister and Cabinet
 s 22

w.www.dpmc.gov.au | www.indigenous.gov.au
 GPO Box 6650 CANBERRA ACT 2601

From: s 22
Sent: Wednesday, 20 April 2016 4:57 PM
To: s 22
Cc: s 22
Subject: RE: PMC input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

UNCLASSIFIED

s 22

Treasury are currently preparing a Government response to the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

Recommendation ten in the Report refers to the Indigenous Advancement Strategy grant funding policy. Looking at the report, the concerns are primarily relating to the impact of the Incorporation requirements (for those orgs receiving \$500,000 or more per year) on cooperative organisations.

I understand you may have provided some words on this for an earlier task.

If you can provide me with appropriate words (cleared by s 22 we can incorporate into the appropriate template and provide to s 22 for clearance. Treasury have asked for input to be provided by 5 May 2016.

Thanks

s 22

From: s 22
Sent: Tuesday, 19 April 2016 3:39 PM
To: s 22
Cc:
Subject: RE: PMC input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s 22

As discussed, please see below, I'm sure you have answered this previously. Probably from a different source but answer should be the same anyway.

Thanks

s 22

From: s 22
Sent: Tuesday, 19 April 2016 3:22 PM
To: s 22
Cc: s 22
Subject: FW: PMC input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

UNCLASSIFIED

s 22

Would you be able to take a look at this report with a view to providing Treasury with our view on this recommendation please? Note input is due 5 May 2016 and s 22 will need to clear.

s 47C

Recommendation 10

- **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.**

s 22 | A/g Assistant Secretary
 Programme Office Strategy/Policy Branch
 Programme Integrity and Engagement Division | Department of the Prime Minister and Cabinet

s 22

s 22

www.dpmc.gov.au | www.indigenous.gov.au
 PO Box 6500 CANBERRA ACT 2600
 (*please note my temporary phone number)

The Department acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

From: s 22 [mailto:s 22@treasury.gov.au]
Sent: Tuesday, 19 April 2016 3:15 PM
To: s 22
Cc: s 22
Subject: PMC input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Hi s 22

As discussed, Treasury are currently preparing a Government response to the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

Recommendation ten in the Report refers the Indigenous Advancement Strategy grant funding policy. Please find attached a draft document for your contribution.

We have also asked the grants area in Finance to provide some input to this recommendation as well.

It would be appreciated if initial input could be provided by **5 May 2016**. I will circulate a consolidated version once other responses have been received.

Happy to discuss further.

Thanks,

s 22

Corporations and Schemes Unit
Financial Systems Division
The Treasury | Langton Crescent, Parkes ACT 2600
s 22 e: s 22@treasury.gov.au

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Senate Economics Reference Committee Inquiry into Cooperative, mutual and member-owned firms

Rec 10: 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.

s 47C

Additional background (Not for inclusion in response). The report refers to “Registered Cooperatives” which it defines as cooperatives registered under the Co-operatives National Law (CNL), as opposed to a state-specific Cooperatives Act (for example, *Cooperatives Act 1997* (Qld)) . The CNL is still a state-based legislative regime (not Commonwealth), however it endeavours to establish a nationally consistent model by having all states/territories enact the same law. A cooperative ‘registered’ under the ‘national’ scheme will be recognised and can operate in all states/territories that have implemented the CNL. The CNL was first enacted in NSW in 2012, but not all jurisdictions are participating (Qld has withdrawn, ACT is yet to enact, WA has enacted similar, but not the same legislation)

From: s 22
To: ["Jones, William"](#)
Cc: s 22
Subject: RE: Consolidated response - Senate Committee report co-ops and mutuals [DLM=For-Official-Use-Only]
Date: Friday, 17 June 2016 2:51:48 PM

Good afternoon,

Thank you for your input, it is much appreciated.

Kind regards,

s 22

Analyst

Corporations and Schemes Unit
Financial System Division
The Treasury, Langton Crescent, Parkes ACT 2600

s 22

From: s 22 @apra.gov.au
Sent: Friday, 17 June 2016 2:47 PM
To: s 22
Subject: FW: Consolidated response - Senate Committee report co-ops and mutuals [DLM=For-Official-Use-Only]

For Official Use Only

s 22

Other than a couple of typos marked on the attached document, APRA has no comments to offer on the document. We are hopeful we can commence a round of consultations with ASIC and mutual ADIs on capital issues in the latter part of July.

Kind regards

s 22

s 22

Senior Advisor Policy Dev — Policy Development

s 22

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

1 Martin Place (Level 12), Sydney, NSW 2000
GPO Box 9836, Sydney, NSW 2001
T 02 9210 3000 | W www.apra.gov.au



From: s 22 [mailto:s 22@treasury.gov.au]
Sent: Wednesday, 1 June 2016 11:07 AM
To: s 22
Cc: <s 22@treasury.gov.au>
Subject: Consolidated response - Senate Committee report co-ops and mutuals [SEC=UNCLASSIFIED]

Good morning,

Please find attached the consolidated draft Government response to the Senate Committee report on Cooperatives, mutuals and member-owned firms.

Can you please have a look over the proposed responses and let us know if there are any changes/additional information you would like included.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

It would be appreciated if your next round of input could be provided by **COB Friday 17 June**.

Happy to discuss further.

Kind regards,

s 22

Analyst

Corporations and Schemes Unit

Financial System Division

The Treasury, Langton Crescent, Parkes ACT 2600

s 22

s 22

treasury.gov.au

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s 22

From: s 22 @pmc.gov.au>
Sent: Wednesday, 20 April 2016 1:01 PM
To: s 22
Cc: s 22
Subject: RE: OBP/RRD input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

s 47C

s 22

From: s 22 [mailto:s 22@treasury.gov.au]
Sent: Monday, 18 April 2016 3:32 PM
To: s 22
Cc: s 22
Subject: OBP/RRD input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Hi s 22

As discussed, Treasury are currently preparing a Government response to the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

Attached is a draft document for OBPR/RRD's contribution. In particular we would like your thoughts on recommendations 12 and 13.

It would be appreciated if initial input could be provided by 5 May 2016.

Happy to discuss further.

Thanks,

s 22

Corporations and Schemes Unit
 Financial Systems Division
 The Treasury | Langton Crescent, Parkes ACT 2600

s 22 [:reasury.gov.au](http://treasury.gov.au)

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From: s22
Sent: Thursday, 5 May 2016 3:17 PM
To: s22
Cc: s22
Subject: RE: OBP/RRD input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi, s22

Thanks very much for consulting with us and for the chat earlier.

Please see our response below to Recommendation 13.

s47C

We note that the OBPR has provided a response to Recommendation 12, to which we have nothing to add.

We also note that Treasury would be best placed to respond with respect to the [recent Budget announcement on the Regulatory Reform Agenda](#) for systematically reviewing regulatory regimes.

Should you have any questions about the response to Recommendation 13 above, please feel free to give^{s 22}
s 22 a call. Overall, also grateful if we could be kept in the loop on how this progresses.

Best,

s22

From: s22
Sent: Wednesday, 20 April 2016 1:01 PM
To: s22
Cc: s22
Subject: RE: OBP/RRD input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s22

In response to recommendation 12, 'The Government notes the recommendation. The Office of Best Practice Regulation (OBPR) administers the Australian Government's Regulation Impact Statement (RIS) requirements and assesses the adequacy of RISs prepared for policy proposals. The OBPR does not endorse or support particular

regulatory outcomes rather its role is to assess whether good regulatory policy development has been followed. In this context, the OBPR also provides RIS advice on matters relating to the co-operative and mutual sector. All changes of significance require a RIS that is independently assessed by the OBPR. “

In relation to recommendation 13, the OBPR has no comment.

s22

From: s22
Sent: Monday, 18 April 2016 3:32 PM
To: s22
Cc: s22
Subject: OBP/RRD input - Govt response Senate Report on co-ops [SEC=UNCLASSIFIED]

Hi s22

As discussed, Treasury are currently preparing a Government response to the Senate Economics References Committee Inquiry into Cooperatives, mutuals and member-owned firms.

The full report can be obtained from the following link:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Cooperatives/Report.

Attached is a draft document for OBP/RRD's contribution. In particular we would like your thoughts on recommendations 12 and 13.

It would be appreciated if initial input could be provided by **5 May 2016**.

Happy to discuss further.

Thanks,

s22

Corporations and Schemes Unit
Financial Systems Division
The Treasury | Langton Crescent, Parkes ACT 2600
P: +61 2 6263 3521 | e: Jennifer.kirk@treasury.gov.au

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COOPERATIVES, MUTUALS AND MEMBER-OWNED FIRMS

TOP LINES:

- Cooperatives, mutuals and member-owned firms make a significant contribution to the Australian economy.
- The Government recognises the important role that these firms play in the financial sector in particular, to provide much needed competitive pressure.
- The *Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014* has made it easier for mutual firms, such as Australian Unity, to raise funds through corporate bonds.
- The Government is carefully considering the recommendations of the Senate Economics References Committee on cooperatives, mutuals and member-owned firms. We will have more to say on this issue shortly.

COALITION ACTION:

- The Government has endorsed Financial System Inquiry (FSI) Recommendations 1, 2 and 3 which will require the Australian major banks to hold more regulatory capital, with positive implications for competition in the sector and with non-bank lenders.
- The *Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014* received Royal Assent on 11 September 2014.

KEY FACTS AND FIGURES:

Cooperative, mutual and member-owned firms (CMEs) sector

- The CME sector is significant to the Australian economy.
 - 2000 co-operative and mutual businesses in Australia representing 29 million active memberships [Business Council of Co-operatives and Mutuals, 2016].
 - Contributed 7% of GDP in 2012/13 (including member owned super funds) [Business Council of Co-operatives and Mutuals, 2014].
 - It is estimated that 8 in 10 Australians are members of at least one co-op or mutual organisation [Australia Institute, 2012]
 - The customer owned banking sector controls about 10% of the home loan market and includes entities such as CUA, Defence Bank and ME Bank [Customer Owned Banking Association, September 2016].

QTB Number:	QB16-000209	QTB Category:	Financial Services
Contact Officer:	s 22	Date and time:	10/04/2017 12:47 PM
Contact Number:		Next update:	

Senate Inquiry

- On 2 March 2015 Senator McKenzie and Senator Xenophon moved that the Senate Economics References Committee undertake an inquiry into the role, importance and overall performance of CMEs in the Australian economy
- The Committee tabled its report on 17 March 2016. The Committee made 17 recommendations across a broad range of policy areas with the intent of the majority of the recommendations to either raise public awareness of CMEs as a business structure or to facilitate CMEs ability to raise capital.
 - Five of the Report’s recommendations broadly recommend legislative amendments to the *Corporations Act* to explicitly recognise mutual enterprises, the role of directors in these entities and the opportunities for capital raising and investment.
 - Six recommendations in the Report are suggestions for Commonwealth and state and territory governments to encourage education, greater establishment and innovative capital raising for co-ops and mutual enterprises.
 - One recommendation in the report is to ensure a national collection of statistics and data to provide a more accurate picture of the scale and extent of the co-operative and mutual sector.

Government action

- The Government agreed to the following recommendations of the Financial System Inquiry.
 - Set capital standards such that Australian authorised deposit-taking institution (ADI) capital ratios are unquestionably strong (Recommendation 1).
 - Raise the average internal ratings-based (IRB) mortgage risk weight to narrow the difference between average mortgage risk weights for ADIs using IRB risk-weight models and those using standardised risk weights (Recommendation 2).
 - Implement a framework for minimum loss absorbing and recapitalisation capacity in line with emerging international practice, sufficient to facilitate the orderly resolution of Australian ADIs and minimise taxpayer support (Recommendation 3)
 - Review the state of competition in the financial sector every three years (Recommendation 30).
- These changes will aid competition by levelling the playing field between major and other banks, by reducing the funding cost advantage of major banks and improve resilience in the banking sector.
- As part of its response to the FSI, the Government has committed to task the Productivity Commission to review the state of competition in the financial sector by the end of 2017.
- The *Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014* reduced the disclosure burden for companies issuing simple corporate bonds.
 - The mutual Australian Unity used these new rules to raise \$250 million through a bond issue in December 2015.

QTB Number:	QB16-000209	QTB Category:	Financial Services
Contact Officer:	s 22	Date and time:	10/04/2017 12:47 PM
Contact Number:		Next update:	

APRA actions

- APRA has been in ongoing dialogue with the mutually-owned financial institutions to address the direct issuance of equity-like capital instruments for prudential capital purposes. In order to bring this to a timely conclusion APRA will work with ASIC and industry to address outstanding issues.
 - Following the next round of engagement with ASIC and industry, APRA will be better placed to set a time frame for determining whether, and on what basis, the direct issuance of equity-like capital instruments could occur.
- APRA addressed the concerns of mutually-owned ADIs regarding conversion of Additional Tier 1 (AT1) and Tier 2 (T2) capital instruments, through recognition of Mutual Equity Interests (MEI) capital instruments in Prudential Standard *APS 111 Capital Adequacy: Measurement of Capital (April 2014)*. The recognition of MEI capital instruments has provided greater flexibility for mutually-owned ADIs to issue AT1 and T2 capital instruments.

KEY QUOTE:

“We’ve seen today through the APRA data that more and more Australian families are taking out a loan with us and achieving their dream of buying a home”.

“Reaching \$100 billion in assets further underlines that the customer owned model, with its 4 million customers, is the proven alternative to the listed model in retail banking.

...

“Our top priority is prompt implementation of the Financial System Inquiry (FSI) recommendations 1, 2 and 3 on regulatory capital. Urgent action is needed to reduce the unfair funding cost advantage that major banks enjoy due to current regulatory capital settings.”

Customer owned banking reaches historic \$100 billion milestone, Customer Owned Banking Association, media release, 30 August 2016

BACKGROUND:

- CMEs are member based businesses owned by or on behalf of their customers, employees, producers or some combination of these. A CME’s main purpose is to benefit its members rather than to provide a return on capital investment.
- Co-operatives are regulated under state and territory law but mutuals are regulated under the *Corporations Act 2001*.
 - The Co-operatives National Law, which is a uniform scheme for co-operatives, has commenced in NSW, Victoria and SA, but has yet to come into effect in Tasmania, the ACT or the NT. Western Australia has enacted a similar statute to align to the national law.

QTB Number:	QB16-000209	QTB Category:	Financial Services
Contact Officer:	s 22	Date and time:	10/04/2017 12:47 PM
Contact Number:		Next update:	

s 22

From: s 22 @asic.gov.au>
Sent: Tuesday, 5 April 2016 1:46 PM
To: s 22
Cc:
Subject: Re: Mutual ADIs - advice required by Office COB Tuesday [SEC=UNCLASSIFIED]

Dear s 22,

We have included some responses (in red text) to your questions below.

Please let us know if you require clarification on any points.

s 22

Senior Lawyer | Deposit Takers, Credit & Insurers | ASIC | Melbourne | s 22



From: s 22
To:
Cc:
Date: 04/04/2016 04:03 PM
Subject: Mutual ADIs - advice required by Office COB Tuesday [SEC=UNCLASSIFIED]

Hi s 22

s 47C

Largely for the briefing we are looking for the following points from ASIC:

1. Is there an agreed definition of a mutual ADI and what entities are captured in this definition?
 In APRA's Dec 2015 Quarterly Authorised Deposit-taking Institution Performance mutual ADIs were defined as ADIs operating under a mutual corporate structure in accordance with ASIC Regulatory Guide 147. The report lists these entities as comprised of mutual banks, credit unions, mutual building societies and other mutual ADIs.

In 1999, regulatory responsibility for credit unions, building societies and friendly societies was transferred from the States and Territories to the Commonwealth. Following the transfer, these institutions are required to be structured as companies.

Historical information - Explanatory Memorandum to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (no 1) 1999* (Act 44 of 1999) - transfer of financial institutions to corporate structure and regulation:

1.5 This second stage of reforms aims to:

- transfer regulatory responsibility for building societies, credit unions and friendly societies from the States and Territories to the Commonwealth; and
- bring the regulation of building societies and credit unions into line with the regulation of other authorised deposit-taking institutions (including banks) and establish a single regulatory framework for life insurance companies and friendly societies while recognising the special features of friendly societies.

1.6 The second stage is designed to:

- provide a new regulatory system that is less cumbersome and duplicative than the State and Territory financial institutions system;
- enable the non-bank deposit-taking sector to provide a more effective source of competition for the banks in the retail market by operating under the same regulatory structure as banks; and
- maintain commercial flexibility by retaining different corporate structures, including mutuality, and the terms 'building

society', 'credit union' and 'friendly society'.

Schedule 4 to the Corporations Act contains provisions relating to the transfer of these institutions from regulation under laws of the States and Territories to regulation as companies. The companies affected by these provisions are building societies, credit unions, friendly societies of a State or Territory, and certain bodies that were registered under specified State and Territory Codes, that existed at the time of the transfer. Schedule 4 provides for registration of these institutions as companies that operate under corporate constitutions, with share capital or limited by guarantee (as appropriate). The Schedule and related regulations modify some of the provisions in the Corporations Act that apply to companies - it was expected that "most of the envisaged modifications would arise out of the special interaction of the company/member relationship with the financial service provider/customer relationship" (EM para 81). For example, regulations affect the treatment of member shares, access to registers of members, giving notice of meeting of the company members and reporting to members.

Part 5 of Schedule 4 applies where one of these transferring financial institutions propose a change to their constitution that would have a specified effect - including varying or cancelling rights of members to reserves of the company or assets of the company on winding up, or varying or cancelling voting rights of members. If a modification of this kind is considered, the company needs to prepare an additional disclosure document and obtain an independent expert's report on whether the modification is in the best interests of the members of the company as a whole. These documents must be registered with ASIC and given to members with the notice of meeting. The company can ask ASIC for an exemption from some of these additional requirements. ASIC may give an exemption if it is satisfied that the proposed modification, or proposed share issue, will not result in or allow a modification of the mutual structure of the company (cl 30 in Sch 4). Cl. 30 in Schedule 4 sets out certain matters that ASIC may have regard to in determining whether the company has a mutual structure - including the structure, circumstances and history of the company, whether each customer of the company (e.g. an account holder, mortgagor or policy holder) is required to be a member of the company or has only 1 vote. It also states that in determining whether the modification or share issue will result in or allow a modification of the mutual structure, ASIC must take into account whether it would have the effect of converting the company into a company run for the purpose of yielding a return to shareholders.

ASIC's Regulatory Guide 147 *Mutuality - Financial institutions* (RG 147) sets out how ASIC will decide whether a company has a mutual structure, and whether the proposed change or share issue will change the mutual structure, for the purpose of those provisions. The statutory provisions on determining whether there is a mutual structure, and the effect of a proposal, are not meant to be exhaustive. ASIC has developed the approach to mutuality in RG 147 to help us make this decision. We focus on the fundamentals of mutuality, knowing that some companies and sectors have a view about what constitutes mutuality that is more restrictive than the policy in RG 147. What might be desirable components of mutual structures beyond the minimum criteria is a matter about which individual companies or industry associations may form their own views. RG 147 and the provisions in Part 5 of Schedule 4 to the Act apply only to 'transferring financial institutions' as defined in Schedule 4 to the Act. The minimum criteria for deciding whether a company is a mutual that are outlined in RG 147 are only for the purpose of the laws we administer.

s 47C

ASIC's regulatory guidance in RG 147 was issued on 12 September 2000.

s 47C

s 47C

- s139 - A company must send a copy of its constitution to a member within 7 days if the member asks for a copy in writing and pays any fee applicable. (We also note that a public company must lodge with ASIC a copy of a special resolution adopting, modifying or repealing its constitution within 14 days after the resolution is passed – and the company must lodge with ASIC a copy of the constitution (if the resolution was to adopt a constitution) or a copy of the modification (if the resolution was for a modification - s136).)
- Generally, all companies are subject to Chapter 2C of the Corporations Act ('Registers').

Ch 2C covers, among other things, obligations about keeping a register of members, rights to inspect registers and get copies. Regulation 12.8.06 of the Corporations Regulations modifies s173 of the Corporations Act in relation to rights to inspect the part of a company's register of members that relates to holders of 'member shares'. In effect, a company mentioned in reg 12.8.02 (i.e. a transferring financial institution, a company permitted to call itself a building society / credit society / credit union under the Banking Act, or a friendly society) can refuse to allow access to that part of the

register in certain circumstances and require the person wanting access to agree to the use that can be made of the information. The Explanatory Statement to the Corporations Amendment Regulations 1999 (No. 3) explains that reg 12.8.06 is designed to continue arrangements that applied under the Financial Institutions Codes, which governed the regulation of such mutual entities before their regulation was transferred to the Corporations Act. It further explains that access to the register of members of a mutual entity is restricted because the list of members of a mutual entity represents the mutual entity's list of customers. The disclosure of the mutual entity's customer base may cause substantial detriment, particularly if the person seeking access and the mutual entity are competitors.

- Generally, all companies are subject to Chapter 2D of the Corporations Act ('Officers and employees').

Chapter 2D covers, among other things, general duties, termination payments, appointment of directors (including limits on numbers of directors of public companies), remuneration of directors and removal of directors.

- Generally, all companies are subject to Chapter 2G of the Corporations Act ('Meetings').

Chapter 2G covers, among other things, who may call meetings, how meetings may be called, members' rights to put resolutions etc. at general meetings, the holding of members' meetings and voting at members' meetings.

Chapter 2G contains, for example, provisions detailing the circumstances in which a group of members may request directors to call a meeting, content requirements for notices of member meetings and members' rights to put resolutions etc. at general meetings.

We note that Part 12.4 of the Corporations Regulations sets out different rules applying to notice of meetings of transferring financial institutions or bodies permitted under the Banking Act to call themselves building society / credit society / credit union. Part 12.4 sets out a regime for the company to notify members that they can opt in to receiving future notices of certain types of member meeting. The provisions also set out how the company must continue to provide notifications of upcoming member meetings in a newspaper and at the company's registered office and each place that it conducts business that is open to the public.

The submission specifically refers to the provision in s249D for directors of a company to call and arrange a general meeting on the request of members with 5% of votes that may be cast at the general meeting (see para 15). We note that this provision applies to companies generally, and its operation has not been removed or modified in relation to mutual financial institutions.

We note that some provisions in the Chapters mentioned above are 'replaceable rules' – the Corporations Act will state if this is the case, at the provision in question (a full list is set out in the table at s141 of the Corporations Act). In general replaceable rules can be replaced by the terms of a company's constitution. The replaceable rules do not apply to transferring financial institutions unless those companies have, since the transfer, repealed its constitution (cl 4 of Schedule 4 to the Corporations Act).

s 47C

Other than the provisions set out in Schedule 4 for 'transferring financial institutions' and related regulations, the Corporations Act does not contain specific provisions for mutual companies. Accordingly, ASIC is not generally required to distinguish between these kinds of entities. Whether other mutual entities, such as co-operatives, are regulated under the Corporations Act depends on the scope of their business activities (i.e. whether they operate outside their home State or Territory) and the kind of business conducted (e.g. whether they carry on a financial services business, in which case they may require a licence unless they are entitled to rely on an exclusion under s5F of the Corporations Act - where the State or Territory law declares a matter to be excluded matter for the purpose of the relevant Corporations legislation requirements).

I think these are the main areas that we would need to cover in the briefing the Office requested. In addition, we would appreciate any contacts to come back to on the Government response to the senate inquiry (which has much longer timeframes!).

You are welcome to send material in future instances, in relation to this inquiry, to me (with s 22 @asic.gov.au. s 22 @asic.gov.au, s 22 @asic.gov.au and s 22 @asic.gov.au cc'd).

We would appreciate any advice by tomorrow morning, noting the Office would like briefing by COB tomorrow.

Many thanks
s 22

Corporations and Schemes Unit
 Financial Systems Division
 The Treasury | Langton Crescent, Parkes ACT 2600
 s 22

From: s 22
Sent: Monday, 4 April 2016 12:29 PM
To: s 22
Cc: s 22
Subject: Mutual ADIs [SEC=UNCLASSIFIED]

Good afternoon s 22

s 47C

s 47C

s 47C might be able to direct me to someone who could help?
 s 47C

I have just talked to s 22

who has informed me you

Kind regards,

s 22

Analyst

Corporations and Schemes Unit
 Financial System Division
 The Treasury, Langton Crescent, Parkes ACT 2600
 s 22

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[attachment "CAG - CU Governance,v6.docx" deleted by Jennifer Lyons/Melbourne/VIC/ASIC]

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s 22

From: s 22 @apra.gov.au>
Sent: Tuesday, 5 April 2016 1:46 PM
To: s 22
Cc:
Subject: Mutual ADIs - advice required by Office COB Tuesday [SEC=UNCLASSIFIED]

s 22

As per our discussion on Monday afternoon, please see our responses below in red. If you require further information or clarification please let me know.

Regards,

s 22

s 22

Advisor Policy Development — Policy Development
 Australian Prudential Regulation Authority

s 22

| [W www.apra.gov.au](http://www.apra.gov.au)
 400 George St (Level 26), Sydney, NSW 2000



From: s 22

Sent: Monday, 4 April 2016 2:59 PM

To: s 22

s 22

Subject: Mutual ADIs - advice required by Office COB Tuesday [SEC=UNCLASSIFIED]

Importance: High

Hi s 22

Thanks for the chat. As discussed, s 47C
 s 47C

Largely for the briefing we are looking for the following points from APRA:

1. Is there an agreed definition of a mutual ADI and what entities are captured in this definition?
 In APRA's Dec 2015 Quarterly Authorised Deposit-taking Institution Performance mutual ADIs were defined as ADIs operating under a mutual corporate structure in accordance with ASIC Regulatory Guide 147. The report lists these entities as comprised of mutual banks, credit unions, mutual building societies and other mutual ADIs. APRA relies on ASIC guidance in this respect, hence as you note, for APRA's purposes an ADI could be considered to be operating under a mutual structure if its structure is consistent with ASIC Regulatory Guide 147. APRA does not make additional rules or impose any other requirements for the purposes of determining mutuality.

s 47C

s 22 you mentioned the ADI advice issued yearly (?) would cover mutual ADIs – can you expand on this? As discussed I was trying to ascertain what the document issued in 2000 was and whether it was an APRA document.

3. s 47C

s 47C APRA imposes governance requirements on ADIs, including mutual ADIs, via *Prudential Standard CPS 510 Governance*. This standard imposes requirements regarding Board composition, including the need to have independent representation and an independent chair, and that Board representation be consistent with an institution's shareholding, amongst other matters. However, APRA's remit does not include making rules over voting processes or controls for the purposes of appointment of directors to a mutual ADI board – these are matters that fall within ASIC's area of responsibility.

4. What is the difference between co-operatives, mutual and member-owned firms (for the purposes of explaining the link between the submission and the Senate Inquiry)? This question would be better directed to ASIC, APRA is responsible for licensing and prudential oversight of the entities we regulate, however we don't actually define what different corporate structures are.

I think these are the main areas that we would need to cover in the briefing the Office requested. In addition, we would appreciate any contacts to come back to on the Government response to the senate Inquiry (which has much longer timeframes!).

We would appreciate a contact asap, noting the Office would like briefing **by COB tomorrow**.

Many thanks

s 22

s 22

Corporations and Schemes Unit
Financial Systems Division
The Treasury | Langton Crescent, Parkes ACT 2600

s 22

From: s 22
Sent: Monday, 4 April 2016 12:29 PM
To: s 22
Cc:
Subject: Mutual ADIs [SEC=UNCLASSIFIED]

Good afternoon s 22

s 47C, s 47G

s 47C, s 47G

This has been summarised in the **attachment**. I have just talked to s 22 who has informed me you might be able to direct me to someone who could help?

We would like to clarify what regulation of Mutual ADIs, and when the regulatory guides were last updated? s 47C

s 47C Additionally, is there any interest in getting more involved in this space? I was also wondering what the differences are between mutual institutions and co-operatives? A Senate Committee Report on cooperatives, mutual and member-owned firms was tabled on 17 March 2016. This report made recommendations to make legislative amendments to the Corporations Act to explicitly recognise mutual enterprises, the role of directors in these entities and opportunities for capital raising and investment opportunities. s 47C, s 47G

s 47C, s 47G

Kind regards,

s 22

Analyst

Corporations and Schemes Unit
Financial System Division
The Treasury, Langton Crescent, Parkes ACT 2600

s 22

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s 22

From: s 22
Sent: Wednesday, 6 April 2016 9:40 AM
To: MSBAT Executive Minute Distribution; s 22
Cc: s 22
Subject: Notification that MB16-000150 - Mutual ADIs has been sent [SEC=UNCLASSIFIED]
Attachments: MB16-000150_Governance of Mutual ADIs.pdf; Additional Info - SAKS Consulting Submission.docx

Dear Minister,

Treasury has provided you with a Ministerial Brief on governance and voting right issues for Mutual Authorised Deposit Taking Institutions.

s 22 Manager, Financial System Division, has signed the Ministerial Briefing (MB16-000150) and it has been entered into PDMS.

s 47G, s 47C

Kind regards,

s 22

Corporations and Schemes Unit
Financial Systems Division
The Treasury | Langton Crescent, Parkes ACT 2600

s 22

From: s 22
Sent: Tuesday, 29 March 2016 5:40 PM
To: s 22
Cc:
Subject: FW: Mutual ADI's - Disenfranchised members, & entrenched control [SEC=PROTECTED]
Attachments: CAG - CU Governance,v6.docx

As requested..

From: s 22
Sent: Thursday, 24 March 2016 5:13 PM
To: s 22
Subject: FW: Mutual ADI's - Disenfranchised members, & entrenched control [SEC=PROTECTED]

Hi s 22

I haven't had a chance to review this issue, but am keen to get it off my desk and onto yours, so as to get the ball rolling. Can you please prepare a brief on this at your earliest convenience? I am hoping you won't need any guidance from me for this brief, but if so, just let mw know. Hopefully by then I will have had a chance to review the materials myself.

Kind regards

s 22

s 22

Financial Services Adviser, Office of the Hon Kelly O'Dwyer MP
Minister for Small Business | Assistant Treasurer

s 22

From: s 22
Sent: Wednesday, 23 March 2016 5:22 PM
To: s 22
Subject: FW: Mutual ADI's - Disenfranchised members, & entrenched control

s 22

As discussed, would you please review and request a brief from Treasury on the issue.

s 22

s 47G

PDR No. MB16-000150

5 April 2016

Minister for Small Business and Assistant Treasurer

MUTUAL ADI'S - DIS-ENFRANCHISED MEMBERS AND ENTRENCHED CONTROL

s 47C, s 47G

s 22

Manager
Corporations and Schemes Unit

act Officer: s 22

Ext: s 22

Consultation: APRA, ASIC

ADDITIONAL INFORMATION

s 47G

- Mutual ADIs are ADIs operating under a mutual or corporate structure in accordance with ASIC Regulatory Guide 147. ASIC's Regulatory Guide 147 Mutuality - Financial institutions (RG 147) sets out how ASIC will decide whether a company has a mutual structure, and whether the proposed change or share issue will change the mutual structure, for the purpose of those provisions.
- Mutual ADIs include mutual banks, credit unions, mutual building societies and other mutual ADIs.
- In December 2015, APRA estimated that there were 90 entities operating as mutual ADIs in Australia. In the year ending December 2015 those 90 entities achieved a net profit of \$478 million after tax with total assets of \$97,001 million.

Current regulatory environment for mutual ADIs

- In 1999, regulatory responsibility for credit unions, building societies and friendly societies was transferred from the States and Territories to the Commonwealth. Following the transfer, these institutions are required to be structured as companies.
- Schedule 4 to the *Corporations Act 2001* contains provisions relating to the transfer of these institutions to companies. The Schedule modifies some of the provisions in the *Corporations Act 2001* that apply to these companies. The explanatory memorandum cites that these modifications arise from the special interaction of the company/member relationship with the financial service provider/customer relationship.

• s 47G

s 47G

The ASIC Regulatory Guide on Mutual ADIs was last

updated in September 2000.

s 47C, s 47G

- Generally companies legislated under the *Corporations Act 2001* are required, under subsection 249J(3), to give notice of upcoming meetings to shareholders personally or by sending by post, unless an individual shareholder elects to receive the notice via electronic means, or the company has amended its constitution to stipulate an alternative method of notice.

s 47C

- ASIC has advised that generally, all companies are subject to Chapter 2G of the *Corporations Act 2001* ('Meetings'). Chapter 2G covers who may call meetings, how meetings may be called, members' rights to propose resolutions at general meetings, the holding of members' meetings and voting at members' meetings.
 - In particular, ASIC has advised that mutual ADIs are still required to comply with s249D of the *Corporations Act 2001* for directors of a company to call and arrange a general meeting on the request of members with 5% of votes that may be cast at the general meeting. s 47C, s 47G

Issues identified around director appointments, board composition and independence issues

s 47C, s 47G

- ASIC has advised that generally all companies would be subject to Chapter 2D of the Corporations Act. Chapter 2D covers, among other things, general director duties, termination payments, appointment of directors (including limits on numbers of directors of public companies), remuneration of directors and removal of directors.
- However, ASIC noted that some of the provisions in the Chapters mentioned above are 'replaceable rules' – which can be replaced by the terms of a company's constitution.

s 47C, s 47G

Senate Standing Committee Report

- The Committee made 17 recommendations to Government, largely surrounding legislative and education reforms.
 - The Government response is due to be tabled on 17 June 2016, three months after the Report was tabled.
- Five of the recommendations broadly recommend legislative amendments to the Corporations Act to explicitly recognise mutual enterprises, the role of directors in these entities and the opportunities for capital raising and investment opportunities. (Recs 4, 5, 14, 16, 17)
- Six recommendations in the report are suggestions for Commonwealth and state and territory governments to encourage education, greater establishment and innovative capital raising for co-ops and mutual enterprises. (Recs 2, 3, 7, 8, 9, 15)

- One recommendation in the report is to ensure a national collection of statistics and data to provide a more accurate picture of the scale and extent of the co-operative and mutual sector.

PDR No. MB16-000150

10 April 2017

Minister for Small Business and Assistant Treasurer

MUTUAL ADI'S - DIS-ENFRANCHISED MEMBERS AND ENTRENCHED CONTROL

s 47C, s 47G

s 22

Manager
Corporations and Schemes Unit

Consultation: APRA, ASIC

Contact Officer: s 22

s 22
Ext: 1

ADDITIONAL INFORMATION

s 47C, s 47G

- Mutual ADIs are ADIs operating under a mutual or corporate structure in accordance with ASIC Regulatory Guide 147. ASIC's Regulatory Guide 147 Mutuality - Financial institutions (RG 147) sets out how ASIC will decide whether a company has a mutual structure, and whether the proposed change or share issue will change the mutual structure, for the purpose of those provisions.
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s 47C, s 47G

Issues identified around mutual ADI voting mechanisms

s 47C, s 47G

- ASIC has advised that Part 12.4 of the Corporations Regulations sets out different rules applying to notice of meetings for Mutual ADIs. The provisions set out that a company must provide notifications of upcoming member meetings in a newspaper and at the company's registered office and each place that it conducts business that is open to the public.

- Generally companies legislated under the *Corporations Act 2001* are required, under subsection 249J(3), to give notice of upcoming meetings to shareholders personally or by sending by post, unless an individual shareholder elects to receive the notice via electronic means, or the company has amended its constitution to stipulate an alternative method of notice.

s 47C

- ASIC has advised that generally, all companies are subject to Chapter 2G of the *Corporations Act 2001* ('Meetings'). Chapter 2G covers who may call meetings, how meetings may be called, members' rights to propose resolutions at general meetings, the holding of members' meetings and voting at members' meetings.
 - In particular, ASIC has advised that mutual ADIs are still required to comply with s249D of the *Corporations Act 2001* for directors of a company to call and arrange a general meeting on the request of members with 5% of votes that may be cast at the general meeting. s 47C, s 47G

s 47C, s 47G

Issues identified around director appointments, board composition and independence issues

s 47C, s 47G

- ASIC has advised that generally all companies would be subject to Chapter 2D of the Corporations Act. Chapter 2D covers, among other things, general director duties, termination payments, appointment of directors (including limits on numbers of directors of public companies), remuneration of directors and removal of directors.
- However, ASIC noted that some of the provisions in the Chapters mentioned above are 'replaceable rules' – which can be replaced by the terms of a company's constitution. This could explain some of the anomalies that SAKS present in the Submission compared to the advice Treasury have received from ASIC.

Senate Standing Committee Report

- The Committee made 17 recommendations to Government, largely surrounding legislative and education reforms.
 - The Government response is due to be tabled on 17 June 2016, three months after the Report was tabled.
- Five of the recommendations broadly recommend legislative amendments to the Corporations Act to explicitly recognise mutual enterprises, the role of directors in these entities and the opportunities for capital raising and investment opportunities. (Recs 4, 5, 14, 16, 17)
- Six recommendations in the report are suggestions for Commonwealth and state and territory governments to encourage education, greater establishment and innovative capital raising for co-ops and mutual enterprises. (Recs 2, 3, 7, 8, 9, 15)

- One recommendation in the report is to ensure a national collection of statistics and data to provide a more accurate picture of the scale and extent of the co-operative and mutual sector.