



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

Australian Business Growth Fund Bill 2019

Submission to The Treasury

Executive summary

The Business Council of Co-operatives and Mutuals (BCCM) welcomes and supports the proposal to establish a business growth fund for Australian small and medium enterprises with financial support from the Commonwealth.

Our submission provides a summary description of the co-operative and mutual sector and the importance of this sector to the Australian economy.

In supporting the proposal for an Australian Business Growth Fund it is strongly recommended that the should enable better access to capital for all Australian enterprises regardless of their legal form. Evidence of the type of finance that would best promote the growth of SME's indicates that patient capital should comprise not just equity capital invested in companies, but should include other forms of debt capital and flexible securities offered by co-operatives.

Accordingly, the BCCM makes two arguments in relation to the draft Bill:

- **The Australian Business Growth Fund should benefit all corporate models of enterprise**
- **The design of Australian Business Growth Fund should be flexible in relation to the type of investment**

Suggested amendments to the draft Bill are provided in respect of each recommendation.

Response to draft legislation and explanatory memorandum

1. Australian co-operative and mutual sector

The BCCM is the peak national body for the Australian co-operative and mutual sector. The sector includes 71 mutual Authorised Deposit-taking Institutions, 41 member owned industry superannuation funds and more than 1,700 co-operatives registered under State and Territory legislation.

Together the mutual banks and member owned superannuation funds hold assets in the order of \$853 billion and whilst some agricultural co-operatives are leading producers and exporters, more than 95% of registered co-operatives are small or medium enterprises (SMEs).

Despite the relatively small number of registered entities, co-operatives operate in all industries to provide services to their members. They are used extensively by small business as a way of addressing market power in relation to very large enterprises. Co-operatives, such as Yenda Producers Co-operative, Plumbers' Supplies Co-operative and Independent Liquor Group, provide purchasing services and other business support to more than 160,000 SMEs.

The combined co-operative and mutual sector contributed 7% of Australia's GDP in 2017.

As social enterprises guided by international co-operative principles of participatory democracy and ethical values, co-operatives are a vibrant and resilient part of the economy; they provide strong competitive pressure in markets and they have potential to create jobs through shared enterprises for both skilled and unskilled workers.

2. The Australian Business Growth Fund should benefit all corporate models of enterprise

Co-operatives, like any other SME, face the same difficulties of accessing capital at either start-up or growth.

There is a tendency for federal legislation and agencies to either prefer *Corporations Act* companies or exclude co-operatives from both their ambit and their administration.

For example, the federal *Entrepreneurs Program* providing a range of business development grants to assist business in developing management skills or accelerating commercialisation either specifically excludes co-operatives or is administered so as to exclude co-operatives from accessing these benefits.

Whilst the Bill on its face does not appear to exclude co-operatives, there is risk that in interpreting the investment ambit of the Australian Business Growth Fund, that it will be confined to *Corporations Act* companies.

Paragraph 3 of the Bill provides that the object is to

“...increase investment in small and medium Australian enterprises by the Commonwealth participating in, and investing in (together with other persons), the Australian Business Growth Fund in accordance with this Act.”

There is no definition of ‘Australian enterprises’ in the Bill.

It is noted that the constitutional basis for the Bill is sections 51(i) and 122 of the Constitution and this is confirmed in Paragraph 13 of the Bill. An inclusive definition of Australian enterprises comprising both federal and State or Territory corporations would be supported by the federal Parliament’s constitutional powers and would also provide parity of treatment for all corporate models engaging in trade and commerce in Australia.

It is recommended that there be a definition for ‘Australian enterprises’ that includes all corporate enterprises formed under federal, State or Territory laws.

3. The design of the Australian Business Growth Fund should be flexible in relation to the type of investment permitted

The Explanatory Materials note the delay between investment and profit return doesn’t suit traditional debt finance terms and that there is a need to provide ‘patient capital’ for SMEs.

“Patient capital can provide entrepreneurs the finance needed to expand without relinquishing control of their business.”

Contrary to the stated position on the need for patient funding for SMEs, the Explanatory Materials tend to refer to *equity capital* investment via the proposed Australian Business Growth Fund.

Co-operative shares are different from company shares. They are not ‘equity’ according to Australian Accounting Standards. In order to improve the access to capital by SMEs, including co-operatives, it is important that Fund is not constrained to only invest in equity capital.

Whilst the Bill does not of itself define the forms of investment that would be permitted or encouraged by the Fund the Minister’s powers set out in paragraphs 10 and 16 of the Bill provide opportunity to design the ambit of investment types so that investment is not limited to equity capital in a company.

Under changes introduced by the Co-operatives National Law, co-operatives can now offer hybrid securities called Co-operative Capital Units. These securities are not shares, but may have the features of patient capital, without compromising the democratic member control principles inherent in the co-operative legal model.

It is recommended that the Bill be amended by

- ***including a pre-requisite in Paragraph 10 that the Minister will not participate in the formation of or acquire shares in the Corporations Act company unless the company’s objects in administering the Fund include investment in all corporate entities formed under federal, State or Territory laws, and***
- ***that the Minister, or his delegate will not act so as to exclude investment by the Fund in corporations that are not Corporations Act companies.***

The BCCM and our members can provide further information on each of the matters raised in this submission should this be required.



Melina Morrison
Chief Executive Officer

Contact

Anthony Taylor
Policy Officer
info@bccm.coop; (02) 8279 6052