



Australian Government

Australian Government response to the
Senate Economics References Committee Report:
Cooperative, mutual and member-owned firms

November 2017

Economics References Committee***Cooperative, mutual and member-owned firms*****Government Response****Recommendation 1**

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

- The Australian Government notes this recommendation.
- The Australian Prudential Regulation Authority (APRA) collects information on the institutions it regulates. APRA publishes statistics on the financial performance, financial position and key performance ratios for authorised deposit-taking institutions (ADIs), specifically identifying mutual ADIs in the Quarterly ADI Performance Statistics.
- The Australian Bureau of Statistics (ABS) has a work programme which responds to the current and emerging statistical priorities. The ABS considers new work and changes to surveys in the context of this broader work programme and competing priorities, within the limitations of the resources allocated to it. There are a number of areas where there is pressure to increase the statistical coverage provided by the ABS. The ABS has in place processes, such as statistical user group forums, that attempt to identify and prioritise these areas.
- Establishing a national collection of statistics and data specifically on the cooperative and mutual sector has several difficulties, including identifying the sector from other entities. Any amendments to require more data from entities needs to consider the additional reporting burden on the sector.

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.

- The Australian Government notes this recommendation.
- The Government is committed to genuine, best-practice consultation processes with all relevant stakeholders on all of its policy decisions, particularly with any stakeholders who are impacted by a policy. Consultation plays an important role in ensuring that every practical and viable policy alternative has been considered, and the Government recognises the importance of consulting with the cooperative and mutual sector on issues of interest to them.
- Australia's government procurement framework is based on the principles of value for money, non-discrimination and open competition. International trade agreements influence the Commonwealth procurement framework, as they contain provisions that include commitments to non-discriminatory procurement processes. The framework requires that all potential suppliers to government not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods or services. Reciprocally, our free trade partners also apply rules to ensure Australian suppliers are not disadvantaged when tendering for government procurement in their countries. Nothing in these arrangements discriminates against the cooperative and mutual sector.

Recommendation 3

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

- The Australian Government does not agree with this recommendation.
- Any decision on the appropriate business structure is up to the individual or entity in question, upon consideration of their circumstances. The Government should not advocate for or favour any business structures or entity type over another.

Recommendation 4

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

- The Australian Government accepts this recommendation.
- The Government will consult further with the cooperative and mutual sector on the detail and implementation of a definition of ‘mutual enterprise’ (or a similar term) and any consequential changes to the *Corporations Act 2001* (Corporations Act).
 - This is consistent with Recommendation 9 of Mr Hammond’s *Report on Reforms for Cooperatives, Mutuals and Member-owned Firms*.

Recommendation 5

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

- The Australian Government notes this recommendation.
- The existing director’s duties provisions in the Corporations Act are flexible, principle based provisions that are intended to cater for all business structures. The Australian Institute of Company Directors (AICD) has released guidance on the director’s duties provisions and how they should apply to directors of all entities.
- The Government supports ASIC giving consideration to whether regulatory guidance on the duties of directors of mutuals should be issued.
 - This is consistent with Recommendation 10 in Mr Hammond’s *Report on Reforms for Cooperatives, Mutuals and Member-owned Firms*.

Recommendation 6

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

- The Australian Government notes this recommendation.
- The Australian Government notes that any advice, guidance and information provided by the States and Territories is a matter of responsibility for their respective governments.
- It is an individual's or entity's own responsibility to consider the benefits or disadvantages of different business structures and to assess which structure best suits their requirements. However, the Government supports the intent of this recommendation to ensure that accurate, continuous, up-to-date information is made available to enable entities to facilitate this determination and their compliance with relevant legislative obligations. For example:
 - ASIC publishes various documents online such as regulatory guides, information sheets, reports and consultation papers that assist its regulated population in relation to specific topics. These topics are broad ranging and include registering a business name, starting a company, applying for an Australian financial services (AFS) licence and determining whether a credit licence is required. This information may assist mutuals generally as companies and AFS or credit licensees.
 - APRA publishes online its prudential standards and prudential practice guides covering the operations of APRA-regulated institutions, including mutually-owned organisations operating in the banking, insurance and superannuation industries. This material provides comprehensive coverage of prudential matters, including governance and risk management.
- The AICD also publish regular guidance and advice on the governance and regulation of different entities, with a particular focus on the not-for-profit sector.

Recommendation 7

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

Recommendation 8

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

- The Australian Government notes these recommendations.
- The Australian Government notes that while there is a national curriculum in secondary schools, the design of this curriculum is set by the Australian Curriculum, Assessment and Reporting Authority (ACARA). The ACARA Board is made up of representatives of the Australian Government and all education streams (independent, government and Catholic) across states and territories.
- The curriculum is established through comprehensive consultation from a range of people and organisations, including education authorities, parent bodies, professional education associations, academics and business, industry and community groups.
- Whilst there is no specific mention of the role of cooperatives and mutuals in the national curriculum, there is scope for schools and teachers to explore these topics should they wish. Financial and consumer literacy is captured in a number of curriculum areas which could include consideration of cooperatives and mutuals. In secondary school, financial literacy is included in the curriculum in Mathematics (Years 7–12), Business and Economics (Years 7–10) and in Work Studies (Years 9 and 10).
- ASIC's MoneySmart Teaching program aims to build teachers' capacity to deliver the financial literacy curriculum and to provide support to educators and schools for the relevant elements of the curriculum.
- Tertiary education curricula are not set by the Australian Government. However, the Government encourages greater liaison between the cooperative and mutual sector and tertiary institutions to promote the value of improving recognition of the sector within tertiary institutions.

Recommendation 9

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

- The Australian Government notes that this recommendation is a matter for industry consideration.

Recommendation 10

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

- The Australian Government notes this recommendation.
- The Government's Indigenous Advancement Strategy contains no restrictions on the amount of grant funding different types of organisations can apply for if the grant funding is under \$500,000 per annum.
- Under the Government's Strengthening Organisational Governance policy all organisations receiving grant funding of \$500,000 (GST exclusive) or more in any single financial year from funding administered by the Indigenous Affairs Group within the Department of the Prime Minister and Cabinet are required to:
 - incorporate under Commonwealth legislation (Indigenous organisations will be required to incorporate under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* with other organisations incorporating under the *Corporations Act 2001*); and
 - maintain these arrangements while they continue to receive any level of such funding.
- Incorporation under Commonwealth legislation provides a more robust regulatory framework and can provide indigenous organisations with access to specialist assistance. This helps to improve public confidence in the security and delivery of services.
- However, there is flexibility in the application of this policy to ensure that organisations are not disadvantaged by their business structure. The Minister for Indigenous Affairs may exempt an organisation from the incorporation requirement under certain conditions. Applications for an exemption are considered on a case-by-case basis, and take into consideration information demonstrating that the organisation is well-governed, high-performing and low risk.

Recommendation 11

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

- The Australian Government notes this recommendation.
- The Commonwealth Grants Rules and Guidelines (CGRGs) establish the overarching Commonwealth grants policy framework, under which Commonwealth entities develop their own specific grants administration practices. The CGRGs are largely principles based, with a limited number of requirements. They do not restrict the types of organisations or individuals who can apply for or receive Commonwealth grants.
- Cooperatives, mutuals and member-owned firms are not precluded from applying for grants by the CGRGs. The framework enables entities to consider eligibility of cooperatives, mutuals and member-owned firms on a case-by-case basis, depending on the grant program or specific grant opportunity and its intended outcomes.
- Grants take a variety of forms and cover a broad range of activities, including unconditional gifts, grants to eligible institutions to facilitate research, or grants to support longer-term specialised service provision. Each involves different eligibility considerations, made on a case-by-case basis.
- Eligibility for a grant program or specific grant opportunity is determined on a case-by-case basis by the responsible Commonwealth entity or Minister. These criteria are based on policy decisions by the Government, or in some cases, legislative requirements. Eligibility criteria are designed to assist in achieving the policy intent of the grant program and may also reflect other policy or legislative requirements, such as the geographical location, need for particular industry registrations, regulatory requirements, accreditations, or tax status.

Recommendation 12

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

- The Australian Government notes this 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 by the Australian Government and the Council of Australian Governments.
- The RIS process requires that all stakeholders affected by a change in policy must be consulted on the impact of the policy to the organisation. All changes of significance require a RIS that is independently assessed by the OBPR, including matters relating to the cooperative and mutual sector.

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.

- The Australian Government notes this recommendation.
- The Commonwealth is committed to working with the States and Territories, including through bilateral arrangements, to further reduce overlaps and inconsistency.
- The Commonwealth continues to explore with the States and Territories the regulatory barriers imposed on organisations, particularly those classified as small and medium sized enterprises.
- An example of recent reform to reduce burden on small business is the administrative changes to the entry thresholds for the PAYG instalments system, reducing the number of taxpayers required to pay PAYG instalments towards their expected tax liability. An estimated 447,000 small businesses will benefit from changes to entry thresholds for PAYG instalments, reducing their compliance costs by \$67.3 million per year.

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.

- The Australian Accounting Standards Board (AASB) is the Australian Government agency responsible for developing, issuing and maintaining accounting standards that apply under Australian company law. The AASB cooperates with the International Accounting Standards Board (IASB) to assist in the development of global accounting standards.
- The AASB is closely monitoring and contributing to the IASB's work on accounting issues that affect cooperatives. The AASB is also continuing to engage with the cooperative and mutual sector to consider disclosure initiatives which may assist.

Recommendation 15

The committee recommends that Commonwealth and State Governments support the formalisation of some 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.

- The Australian Government notes this recommendation.
- The Commonwealth Government recognises innovative market-based approaches to financing can complement the traditional fundraising mechanisms currently available. Innovative approaches noted by the Committee, such as crowdfunding, can assist small and medium businesses to access the additional funding they need to grow.
- On 20 October 2015, the Government released its response to the Financial System Inquiry which will support small businesses by creating a more resilient, fairer and innovative financial system.
- The Government's response accepted the majority of the Inquiry's recommendations, including those relating to crowdfunding and impact investment.
 - The Government has legislated a framework to facilitate equity crowdfunding in Australia which commenced on 29 September 2017 for public companies. Legislation to expand eligibility to proprietary companies was introduced on 14 September 2017.
 - The Government is partnering with the States and Territories and other stakeholders to trial social impact investing (SII) and determine the effectiveness of outcomes-focussed investing in improving housing and welfare for young people. Specifically:
 - : The Government announced in the 2017-18 Budget that it will invest \$10.2 million over 10 years to trial the use of SII aimed at improving housing and welfare outcomes for young people at risk of homelessness; and an additional \$20.2 million to encourage the continued development of the SII market in areas other than homelessness.
 - : The Government further announced in the 2017-18 Budget that it will continue to look at ways to reduce regulatory barriers inhibiting the growth of the SII market.
 - : In addition, on 8 August 2017 the Government released a set of principles which will guide its involvement in the SII market.

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.

- The Australian Government notes this recommendation.
- On 26 July 2017, APRA released for consultation a discussion paper and draft revised prudential standard proposing direct issuance by mutually-owned ADIs of equity-like capital instruments for prudential capital purposes.
- Submissions on APRA's discussion paper were due by 8 September 2017.
- Following consideration of submissions received through this consultation, APRA anticipates it will release the final revised prudential standard in late 2017 for commencement as soon as practicable thereafter.
 - This is consistent with Recommendation 1 of Mr Hammond's *Report on Reforms for Cooperatives, Mutuals and Member-owned Firms*.

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.

- The Australian Government accepts this recommendation.
- The Government will amend the Corporations Act to expressly permit mutuals registered under the Act to issue capital instruments without risking their mutual structure or status.
 - This is consistent with Recommendation 8 of Mr Hammond's *Report on Reforms for Cooperatives, Mutuals and Member-owned Firms*.
- The Government will consult further with the cooperative and mutual sector on the detail and implementation of amendments to the Corporations Act.