
TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING) BILL
2018: MUTUAL ENTITIES

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Corporations Act	<i>Corporations Act 2001</i>
Hammond Report	<i>Report on Reforms for Cooperatives, Mutuals and Member-owned Firms</i>

Chapter 1

Reforms to the mutual sector

Outline of chapter

1.1 This Chapter provides an overview of amendments in Schedule 1 to the bill to introduce a definition of a mutual entity and remove the uncertainty for transferring financial institutions and friendly societies in respect of the demutualisation provisions in Part 5 of Schedule 4 of the *Corporations Act 2001* (the Act).

Context of amendments

1.2 Cooperative and mutual entities operate in almost every sector of the Australian economy, including agriculture, banking and finance, housing, insurance and retail.

1.3 On 2 March 2015, the Senate Economics References Committee (Committee) was asked to review and report on the role, importance and the operations of these firms in the Australian economy. The Committee tabled their report on 17 March 2016.

1.4 On 24 March 2017, the then Treasurer appointed Mr Greg Hammond to conduct further consultation on the recommendations of the Senate Report and assist in developing a Government Response. Mr Hammond provided his *Report on Reforms for Cooperatives, Mutuals and Member-owned Firms* (Hammond Report) on 31 July 2017.

1.5 On 8 November 2017, the Government tabled its response to the Senate Report and accepted all eleven recommendations in the Hammond Report. The recommendations in the Hammond Report are aimed at improving access to capital, removing uncertainties currently faced by the mutual sector, and reducing barriers to enable cooperatives and mutuals to invest, innovate, grow and compete.

1.6 The amendments in Schedule 1 of the Bill give effect to recommendations 5 and 9 of the Hammond Report to introduce a definition of a mutual entity and remove the uncertainty for transferring financial institutions and friendly societies in respect of the demutualisation provisions in Part 5 of Schedule 4 of the Act.

1.7 The new definition of a mutual entity will address the lack of recognition and understanding of the mutual sector and the mutual form. The definition of a mutual entity will also make it simpler to determine when an entity demutualises.

1.8 Part 5 of Schedule 4 of the Act provides an enhanced disclosure regime which applies to building societies, credit unions, friendly societies and other State and Territory regulated financial institutions that transferred to Commonwealth regulation in 1999 (transferring financial institutions). This disclosure regime is intended to provide members with information that they would reasonably require and expect to be given to make an informed decision about a proposed constitutional modification or share issue that would have specified effects on members' rights.

1.9 Entities affected by these demutualisation provisions submit that these provisions in their current form are too broad and give ASIC too broad a discretion which has resulted in uncertainty for the sector in being able to raise capital.

1.10 The amendments to Part 5 of Schedule 4 of the Act make it clear that these demutualisation provisions only apply if an entity no longer meets the new definition of a mutual entity.

1.11 Together, these amendments will provide the mutual sector with greater certainty and confidence to be able to raise capital without the risk of demutualisation.

Summary of new law

1.12 There are 2 key components to the amendments in Schedule 1.

1.13 The first is to introduce a definition for mutual entities into the Act. The new definition provides that a mutual entity is a company where each member has no more than one vote.

1.14 The second is to remove the uncertainty for transferring financial institutions in respect of the demutualisation provisions in Part 5 of Schedule 4 of the Act.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A mutual entity is defined as a company registered under the Act that provides its members with no more than one vote.	No equivalent.
The demutualisation provisions in Part 5 of Schedule 4 of the Act are triggered on constitutional changes that would result in a mutual entity no longer being a mutual entity.	The demutualisation provisions in Part 5 of Schedule 4 of the Act are triggered on constitutional changes or an issue of shares that vary or cancel the member's rights.

Detailed explanation of new law

Definition of a mutual

1.15 A new definition of a mutual entity is provided for in Division 6 of Part 1.2 of the Act. The definition provides that a mutual entity is a company registered under the Act that has a constitution which provides that each member of the company has no more than one vote at a general meeting of the company. *[Schedule 1, item 2, subsection 51M(1)]*

Example 1.1

Hunt Ltd has a constitution that provides for two classes of members. The first class provides full membership which includes a single vote at the company's general meeting. The second class is an associate membership which does not include a vote at the company's general meeting.

Hunt Ltd will be a mutual entity under the new definition as all of its members have no more than one vote.

1.16 To meet the new definition, a mutual entity's constitution will need to provide that a person who is a member of the entity in more than one capacity will still only have one vote at the general meeting of the company. *[Schedule 1, item 2, subsection 51M(2)]*

1.17 Similarly, a mutual entity's constitution will need to provide that two or more persons who are joint members of a company will only have one vote between them at a general meeting of the company. *[Schedule 1, item 2, subsection 51M(2)]*

Removing the uncertainty for transferring financial institutions and friendly societies in respect of the demutualisation provisions in Part 5 of Schedule 4 of the Act

1.18 The heading of Part 5 of Schedule 4 of the Act is clarified to make it clear that this part deals with disclosure requirements for a demutualisation. *[Schedule 1, item 4, Part 5 of Schedule 4 (heading)]*

1.19 The current trigger for the disclosure of a demutualisation in subclause 29(1) of Part 5 of Schedule 4 of the Act is repealed. Instead, the disclosure requirements for a demutualisation will be triggered when a transferring financial institution that meets the new mutual entity definition makes an amendment to its constitution that means it will no longer meet the mutual entity definition. *[Schedule 1, item 5, subclause 29(1) of Part 5 of Schedule 4]*

Example 1.2

Duck Credit Union is a transferring financial institution that meets the definition of a mutual entity because its constitution provides that all of its members are only entitled to one vote at a general meeting of the company.

Duck Credit Union proposes to amend its constitution so that it can issue shares with proportional voting at a general meeting of the company. This proposal to change Duck Credit Union's constitution would trigger Part 5 of Schedule 4 of the Act requiring appropriate disclosure to its members because the proposal if carried out would result in Duck Credit Union no longer meeting the mutual entity definition.

1.20 Given the simplified test, ASIC's exemption powers are repealed. *[Schedule 1, item 6 subclauses 29(2) and (3) of Part 5 of Schedule 4 and item 8 clause 30 of Part 5 of Schedule 4]*

Consequential amendments

1.1 The definition in section 9 of the Act is updated to cross reference the new definition of a mutual entity that has been provided for in section 51M of the Act. *[Schedule 1, item 1, section 9]*

1.2 The disclosure provisions under Part 5 of Schedule 4 of the Act require the disclosure statement to include an estimate of the financial benefits members will be offered if the demutualisation occurs as a result of a constitutional amendment. The provision is amended to always require the estimate to be provided because the new simplified test is based on a mutual entity amending its constitution. *[Schedule 1, item 7, paragraph 29(4)(b) of Part 5 of Schedule 4]*

1.3 Similarly, redundant references to demutualisation though the issuance of shares are removed. *[Schedule 1, item 9, paragraph 31(1)(d) of Part 5 of Schedule 4, item 10, paragraph 34(1)(e) of Part 5 of Schedule 4 and item 11, subparagraph 35(1)(c)(ii) of Part 5 of Schedule 4]*

Application and transitional provisions

1.4 The amendments take effect from the day after Royal Assent.

1.5 The amendments to Part 5 of Schedule 4 only apply after commencement of the bill. *[Schedule 1, item 3, section 1638]*