

Ministry of **Economic
Development**



M a n a t ū Ō h a n g a

**Mutuals' Governance:
Summary of Submissions**

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RFPP: Mutuals' Governance Submission Summary

#	Issue Reference	Summary of Issue Raised by Submission
<i>General Comments on the Proposals</i>		
		Supports the proposals
		There is a need for some rationalisation in mutuals legislation. However, the governance requirements that are appropriate for companies may not be appropriate for mutuals. More generally, some of the requirements in the discussion document may fail to reflect the different nature of mutuals, and as a result potentially lead to significant compliance costs
		FMG is in the process of finalising its own private Bill that conforms closely to the proposals in the discussion document.
		The proposals will raise the governance requirements of mutuals to a level expected of registered banks.
		<i>Members who are mutual insurers are already fully compliant with the proposals in the document</i>
<i>Comments Arising from Questions in the Paper</i>		
1		Agrees with the problems identified
		Problems are overstated, however, there is a need to update governance requirements.
		Supports the alignment of directors duties with companies or whatever is deemed best practice
		Any changes to the trust deed that will have a significant impact on directors will require member approval
		Agrees that the legislative requirements differ. In addition they are incomplete and lack transparency.
2		Agrees that all weaknesses identified
		Weaknesses are the function of attitude or competence rather than the regulatory framework
		Lack of a formal incorporated structure is a weakness leading to ad hoc governance
		Inability of members to vote at meeting by proxy is a particular weakness
		Does not agree that 'in practice' credit union governance is less robust than for companies, but does agree in principle with the desirability of more statutory guidance on governance for credit unions. Considers that many of the proposed base level requirements are already being met. Also considers that credit unions should have no difficulty in

		meeting the proposals to the extent that they are not already being met.
		<p>Recommends the inclusion of an additional outcome statement as follows to ensure the risks of and costs associated with regulation are not underweighted:</p> <p>"minimising regulatory costs to the extent possible consistent with achieving the positive outcomes listed above and maximising the public interest."</p>
		Supports the general intent of the discussion document and the outcomes sought. Already meets many of the proposals voluntarily.
		As opposed to companies, knowledge of governance requirements for mutuals is not widespread, particularly among members
3		Agrees with the requirements
		Members should be given the right to vote by proxy or post
		It is important that mutuals not be able to opt out of the requirements so as to ensure a level playing field.
		Directors remuneration should have to be approved by members at general meetings.
		Considers that disclosure of directors remuneration appropriate for commercial financial institutions but not necessarily applicable in a credit union context.
		Submits that it is not clear from the discussion paper whether it is intended that an annual report must be distributed to all members. Submits that if an annual report is required to be sent to members regardless of whether they request it, the compliance costs would be high.
		<p>The proposal under the section of member participation in fundamental corporate changes in relation to requiring separate approval of persons negatively affected is contrary to the nature of the mutual organisation where the board is required to consider the interests of all members. The effect of the proposal could be that it may be blocked by a minority interest group at the expense of the majority.</p> <p>Southern Cross election processes already comply with the election and removal of directors proposals.</p> <p>Generally already complies with the equitable conduct of member meeting requirements.</p>
		The number of executives earning over \$100,000, and the total remuneration of this group should be disclosed rather than the remuneration directors in bands of \$10,000
		Requiring written notice of meetings may be unnecessarily expensive for some mutuals
		Paragraph 71b (participation and voting at general meetings) – Mutuals should not be able to opt out of the requirements

		for one member one vote in their rules or constitution.
		Paragraph 71a (election and removal of directors) Mutuals should not be able to opt out of the requirement to elect directors by ordinary resolution in their rules
		Paragraph 71aiii (equitable conduct or members meetings) mutuals should not be able to opt out of allowing members the ability of casting votes by post.
		The requirement should be to allow voting by post or proxies, but not a combination of both (postal voting is to be preferred)
		<i>Submits that the proposed requirements for fundamental corporate changes appear overly prescriptive and excessive and could prevent necessary changes. Recommends instead that rule changes be permitted at a properly constituted forum of members and that the voting threshold be a simple majority.</i>
		Considers that the provisions in respect of equitable conduct at member meetings need to be drafted carefully to ensure a small number of frivolous and vexatious complaints do not unnecessarily tie up the mutual. Recommends against members being able to question auditors at general meetings as not provided for in CA93 or under Sarbanes Oxley Act in US and would create excessive cost and blur responsibility between management and auditors.
		Submits that the wording of para (a) under disclosure of remuneration of directors and executives is too vague and should be reworded along the following lines "...on reasonable grounds, is in the mutuals best interests."
		Submits that requiring that each mutual must have a board is too prescriptive. Submits that for some mutuals trustees may be more appropriate.
		<i>Does not agree with the proposed content of the annual report but agrees with distribution proposals. Financial statements should only be in a summary form rather than full financial statements to comply with the FRA as full impact of IFRS not justified for mutual entities. Summarised accounts should include: Directors report; profit&loss; balance sheet; cashflow statement; auditor's report; statement of accounting policies. Accounts to be audited by approved auditor.</i>
		Has no concerns with the proposed base level requirements, but submits that requirements should be those of the Companies Act and should not be simplified for mutuals.
4		Agrees with the disclosure and accountability requirements
		Paragraph 72 states that the annual reports of mutuals must include financial statements complying with the FRA or summaries of them which present a true and fair view. Summary financial statements should be prepared in accordance with the relevant financial reporting standard, which does not make reference to "a true and fair view". The wording should be changed to be consistent with the wording

		in the forthcoming new standard on summary financial information.
		Friendly societies with less than \$20,000 assets and \$20,000 total receipts and payments should be exempt from having to appoint an auditor as is currently the case under the FSCU Act
		The obligation should be to provide a summary version of the annual report rather than a full version. Members are unlikely to fully understand full financial statements prepared under the FRA.
		10 working days notice is proposed for general meetings but annual reports must be sent out 20 working days before the annual general meeting. These notice periods should be the same.
		<i>Generally agrees with the base level requirements for disclosure and transparency.</i>
		Has no concerns with the proposed base level requirements. But submits that requirements should be those of the Companies Act and should not be simplified for mutuals. Should not be any gaps between the base level requirements and CA93.
		Sending a copy of the annual report to all members may be an excessive cost to some mutuals
5		Agrees with requirements around the roles and responsibilities of the board
		Paragraph 73 (Role of the Board) Mutuals should not be able to opt of the requirement for the board to manage the business affairs of the mutual.
		The 'fit and proper' requirement should immediately apply
		<i>Any remedies for breach must be able to clearly distinguish between consumer issues and governance issues.</i>
		Should be a mechanism for allowing members to be represented in the same way as shareholders in a company. Should be a mandatory member representation on the board and a requirement for the board to engage and discuss with other independent substantial member groups if they exist. Alternative requirement is to require the mutual have a clear purpose statement that is regularly disclosed and reported against.
		Has no concerns with the proposed base level requirements. But submits that requirements should be those of the Companies Act and should not be simplified for mutuals. Should not be any gaps between the base level requirements and CA93.
		Applying Companies Act indemnity provisions to mutuals may be unnecessary as there is no evidence that there is a problem in relation to this at present.
		The more stringent requirements on directors as a result of these proposals may mean that directors will need greater

		remuneration
6		Considers that base level governance requirements should be legal requirements
		Governance requirements should just be principles that are reported against as this is proportionate to the size of the problem, and making the requirements legally binding would impose unnecessary cost
		Considers that the base level governance requirements should be set rather than optional.
		Existing governance provisions of the mutuals acts should be repealed and replaced with companies act provisions.
		While workable, option 2 (set base level requirements in legislation) would be excessively prescriptive, goes beyond the requirements of the companies act and suffers from the risks of a 'one size fits all approach'. <i>Instead prefers option 3, compulsory reporting against corporate governance principles. Submits that this will provide greater benefits as allows for different ways of achieving outcomes between entities over time, can be tailored to specific entities so only the options providing the greatest benefit are adopted and is less likely to lead to moral hazard on the part of members, customers and the mutual itself.</i>
7		Agree with the costs and benefits identified
		There is not likely to be a significant cost to most mutuals as they are already largely complying with these requirements. There may be a more significant impact on smaller friendly societies, possibly leading to their eventual amalgamation or deregistration.
		For those who have not made at least a partial transition to corporate governance standards the cost will be significant
8		Agree with the costs and benefits that have been identified
		A single piece of legislation would be better than amending all of the relevant Acts.
		If the governance requirements are enacted in a single Act then, this Act should state that where a mutual is also governed by another Act then the Act which includes the most stringent governance requirements applies.
		<i>Submits that the governance requirements should be brought together in a new mutual financial institutions act which should also cover mutual insurers.</i>
		<i>Supports Option 2 for the consolidation of the requirements in legislation.</i>
		Acknowledge the costs of option 2, but many building societies already follow Companies Act governance requirements.
9		Transition of credit unions to a prudential supervisory regime in 1999/2000 can be used as a guide
		A substantial education programme to upskill directors and

		others
		A transition period of at least 18 months would be appropriate.
		The requirements could be deemed to apply shortly after the legislation was passed, and mutuals could be given a set period of time to amend their rules.
		During the transition period, mutuals should provide a 'exception report' as part of the annual report that details areas of compliance and non-compliance, and the implementation timeframe
		<i>Sufficient time needs to be provided but not so long as to undermine member confidence in mutuals in the meantime.</i>
		There would need to be a notice period and adequate time to plan for change.
10		Agrees that the principles should also be applied to mutuals
		<i>There is no need for additional governance principles</i>
11		Supports adopting the Securities Commissions guidelines for corporate governance as a guide.
		A revised version of the Securities Commission principles would be preferable because of the diversity of mutuals that would be covered by the principles.