



MUTUAL CAPITAL LEADERSHIP PROJECT



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What the new law means for mutuals

There are four key components to the amendments in the Mutual Reforms Act 2019

1 To introduce a definition of a mutual entity into the Corporations Act

The new definition provides that a mutual entity is a company where each member has no more than one vote for each capacity in which the person is a member. The definition also determines which mutual entities are able to raise capital through the issuance of Mutual Capital Instruments (MCIs). Beyond this, the mutual entity definition does not create or alter any other rights for mutuals, including in relation to tax obligations or rights in relation to mutual receipts.

The definition also only applies in relation to mutuals registered under the Corporations Act and does not have any effect on other entities that may have similar governance arrangements.

2 To replace ASIC's RG 147 that applied to mutual ADIs and Friendly Societies.

The amendments remove uncertainty for transferring financial institutions in respect of the demutualisation provisions in Part 5 of Schedule 4 of the Corporations Act.

3 To provide for MCIs as a new bespoke capital instrument for mutual entities.

MCIs can be issued by eligible mutual entities that are companies limited by shares, companies limited by guarantee and companies limited by shares and guarantee.

4 To provide a standard process to allow eligible mutual entities to amend their constitutions.

ASIC can provide relief to constitutions for a period of 36 months (dated from April 2019) to enable them to take advantage of these reforms¹.

¹Please note, the relief period commenced on the date the Act received Assent for a period of 36 months.

Mutual Capital Instruments (MCIs): A bespoke capital instrument for the mutual sector

The amendments in the Bill provide for eligible mutual entities to issue MCIs, a bespoke share that has been created for the mutual sector.

The ability to issue MCIs provides mutual entities with access to a broader range of capital raising and investment options without risking their mutual structure or status.

Who can issue MCIs?

Mutual entities that are registered as companies limited by shares or companies limited by shares and guarantee already have the power to issue shares under the existing law. These mutual entities may issue MCIs under this existing power.

Under the existing law, companies limited by guarantee do not have power to issue shares. The new law ensures that a mutual entity that is a company limited by guarantee has power to issue an MCI.

Requirements to be able to issue MCIs

A mutual entity may issue an MCI provided it meets certain requirements. Some requirements relate to the mutual entity itself, while other requirements attach to the MCI.

- must be a public company;
- must not have voting shares (other than any MCIs) on a prescribed financial market;
- must not be a registered entity within the meaning of the of the Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act); and
- must have a constitution that states the entity is intended to be a MCI entity for the purposes of the Corporations Act.

An entity is an MCI mutual entity if it meets the above requirements and has issued one or more MCIs.

Features of an MCI

As a type of share, a MCI is a 'security' for the purposes of the Corporations Act. Accordingly, MCIs are subject to the Corporations Act regulatory regimes that would ordinarily apply to the issuance of a share including fundraising and disclosure requirements.

MCIs are a new type of bespoke share for the mutual sector. While on their face there may be similarities between MCIs and preference shares (such as having non-cumulative dividends and the participation in surplus assets and profits), MCIs are distinctly different to preference shares.

The constitution must also set out the rights attached to the share with respect to participation in surplus assets and profits (which includes any rights of an MCI holder to repayment of the face value ahead of other claims to surplus assets in a winding up).

Modernisation without corporatisation

The mutual sector is very diverse with mutual entities operating in almost every sector of the Australian economy. Mutual entities have historically included strict demutualisation provisions in their constitutions. These provisions were based on historic legislative settings and may prevent some mutual entities from making use of the reforms to be delivered through the amendments in this Bill.

As such, the amendments provide for a special standardised procedure to allow mutual entities to make the necessary amendments to their constitutions to allow them to issue MCIs.