Treasury Laws Amendment (Mutual Reforms) Act 2019

No. 37, 2019

An Act to amend the law relating to mutual entities, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Treasury Laws Amendment (Mutual Reforms) Act 2019

No. 37, 2019

An Act to amend the law relating to mutual entities, and for related purposes

[*Assented to 5 April 2019*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Mutual Reforms) Act 2019*.

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2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this Act	The day after this Act receives the Royal Assent.	6 April 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Mutual entities

Corporations Act 2001

1 Section 9

Insert:

mutual entity has the meaning given by section 51M.

2 After Division 6A of Part 1.2

Insert:

Division 6B—Mutual entities

51M Mutual entities

(1) A company is a ***mutual entity*** if:

(a) the company is registered under this Act; and

(b) the company's constitution provides that a person has no more than one vote at a general meeting of the company for each capacity in which the person is a member of the company.

(2) To avoid doubt:

(a) the requirement in paragraph (1)(b) does not fail to be satisfied merely because the company's constitution provides that:

(i) 2 or more persons may together be joint members of the company; and

(ii) those persons each have one vote at a general meeting of the company; and

(b) that requirement does not fail to be satisfied merely because the company's constitution provides that:

(i) a person may vote as proxy or representative at a general meeting of the company; and

(ii) as a result of voting as a proxy or representative, the person may have more than one vote at a general meeting of the company.

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3 In the appropriate position in Chapter 10

Insert:

Part 10.38—Transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (Mutual Reforms) Act 2019

1662 Application of amendments made by Schedule 1 to the *Treasury Laws Amendment (Mutual Reforms) Act 2019*

The amendments made by Schedule 1 to the *Treasury Laws Amendment (Mutual Reforms) Act 2019* apply on and after the commencement of that Schedule.

4 Part 5 of Schedule 4 (heading)

Repeal the heading, substitute:

Part 5—Disclosure of the proposed demutualisation

5 Subclause 29(1) of Schedule 4

Omit:

(1) If a modification of the constitution of an unlisted company registered under clause 3 of the transition provisions is proposed and the modification would have the effect of:

(a) varying or cancelling the rights of members, or a class of members, to the reserves of the company; or

(b) varying or cancelling the rights of members, or a class of members, to the assets of the company on a winding up; or

(c) varying or cancelling the voting rights of members or a class of members; or

(d) otherwise varying or cancelling rights so that Part 2F.2 (Class rights) applies; or

(e) allowing 1 of those variations or cancellations of rights;

the following rules apply:

substitute:

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(1) If:

(a) a modification of the constitution of an unlisted company registered under clause 3 of the transfer provisions is proposed; and

(b) the unlisted company is a mutual entity; and

(c) the modification would have the effect that the unlisted company would cease to be a mutual entity;

the following rules apply:

6 Subclause 29(2) of Schedule 4

Repeal the subclause.

7 Paragraph 29(4)(b) of Schedule 4

Omit "in the case of a proposed modification of the constitution of a company—".

8 Subparagraph 29(4)(c)(i) of Schedule 4

Omit "or share issue".

9 Subclauses 29(5), (6) and (7) of Schedule 4

Omit "or (2)".

10 Subclause 30(1) of Schedule 4

Omit "does not have a mutual structure", substitute "is not a mutual entity".

11 Subclauses 30(2), (3), (4), (5) and (7) of Schedule 4

Repeal the subclauses.

12 Clause 31 of Schedule 4

Omit "or share issue".

13 Paragraph 32(1)(c) of Schedule 4

Repeal the paragraph.

14 Paragraphs 32(1)(g), (h) and (i) of Schedule 4

Omit "or share issue".

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15 Paragraph 32(1)(k) of Schedule 4

Repeal the paragraph.

16 Paragraph 32(1)(l) of Schedule 4

Omit “or share issue”.

17 Paragraph 32(3)(b) of Schedule 4

Omit “or share issue”.

18 Paragraph 34(1)(d) of Schedule 4

Omit “modification; or”, substitute “modification.”.

19 Paragraph 34(1)(e) of Schedule 4

Repeal the paragraph.

20 Subparagraph 35(1)(c)(ii) of Schedule 4

Omit “or share issue”.

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Schedule 2—Mutual capital instruments (MCIs)

Part 1—Amendment of the Corporations Act 2001

Corporations Act 2001

1 Section 9

Insert:

MCI (short for mutual capital instrument) has the meaning given by section 167AD.

MCI amendment resolution has the meaning given by section 167AI.

MCI mutual entity has the meaning given by section 167AC.

non-shareholder mutual member of an MCI mutual entity means a person who is a member of the entity otherwise than as a holder of a share (whether or not the person also holds one or more shares in the entity).

2 At the end of section 48

Add:

(6) Any shares in the first body that are MCIs, and any powers exercisable by a person by virtue of such shares, are to be disregarded.

3 At the end of section 124

Add:

(4) Subsection (1) does not prevent a mutual entity that is a company limited by guarantee issuing MCIs.

4 At the end of Chapter 2B

Add:

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Part 2B.8—Mutual capital instruments (MCIs)

Division 1—Preliminary

167AB Simplified outline of this Part

This Part provides for mutual capital instruments (MCIs).

An MCI is a share in a mutual entity that meets requirements relating to voting rights and other matters. Certain kinds of mutual entities may issue MCIs and become MCI mutual entities.

Division 3 sets out a special procedure for amending the constitution of a mutual entity that proposes to issue MCIs.

Division 2—MCI mutual entities and MCIs

167AC Meaning of *MCI mutual entity*

A mutual entity is an ***MCI mutual entity*** if:

(a) the entity is a public company; and

(b) the entity does not have voting shares (other than MCIs) quoted on a prescribed financial market; and

(c) the entity is not a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*; and

(d) the entity's constitution states that the entity is intended to be an MCI mutual entity for the purposes of this Act; and

(e) the entity has issued one or more MCIs.

167AD Meaning of *MCI*

(1) A share in a mutual entity is an ***MCI*** (short for mutual capital instrument) if:

(a) paragraphs 167AC(a), (b), (c) and (d) apply to the entity; and

(b) the share meets the requirements in sections 167AE and 167AF.

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(2) To avoid doubt, if a share that is an MCI ceases to meet one or more of those requirements, the share ceases to be an MCI.

(3) Nothing in this Division requires an MCI mutual entity to treat the holders of MCIs in the same way as members of the entity who do not hold MCIs.

Note: For example, this Division does not require an MCI mutual entity that provides services to a class of members to provide those services to holders of MCIs.

167AE MCI requirements—class rights

A share in a mutual entity meets the requirement in this section if the rights attached to the share can be varied or cancelled only by special resolution of the company and either:

(a) by special resolution passed at a meeting of the class of members holding shares in the same class; or

(b) with the written consent of members with at least 75% of the votes in the class.

167AF MCI requirements—other requirements

A share in a mutual entity meets the requirements in this section if the entity's constitution:

(a) provides that the share can only be issued as a fully paid share; and

(b) provides that dividends in respect of the share are non-cumulative; and

(c) sets out the rights attached to the share with respect to participation in surplus assets and profits.

167AG MCIs must be cancelled before MCI mutual entity demutualises

A resolution of an MCI mutual entity that would result in the entity ceasing to be an MCI mutual entity can only take effect if:

(a) there are no MCIs in the entity; or

(b) the resolution provides for each MCI to be cancelled at or before the time the entity ceases to be an MCI mutual entity (whether or not the holders of the MCIs to be cancelled are to receive other securities in respect of those MCIs).

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Division 3—Special procedure for amending constitution of mutual entity that proposes to issue MCIs

167AH Purpose and application of this Division

(1) This Division sets out a special procedure for the constitution of a mutual entity to be amended to provide for the entity to issue MCIs.

(2) This Division applies to a mutual entity that:
  (a) is a public company; and
  (b) does not have voting shares quoted on a prescribed financial market; and
  (c) is not a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*.

167AI MCI amendment resolution

(1) An ***MCI amendment resolution*** is a resolution of the mutual entity to amend the entity's constitution for one or more of the following purposes, and for no other purpose:
  (a) to include a statement that the entity is intended to be an MCI mutual entity for the purposes of this Act;
  (b) to provide for the entity to issue MCIs;
  (c) to provide for the rights and obligations attached to MCIs;
  (d) to make changes that are incidental or ancillary to the purpose in paragraph (a), (b) or (c).

(2) An MCI amendment resolution must not result in the mutual entity ceasing to be a mutual entity.

167AJ Procedure for MCI amendment resolution

(1) This section applies to a meeting of the mutual entity's members if:
  (a) notice of an MCI amendment resolution to be proposed at the meeting is given in accordance with paragraph 249L(1)(c); and
  (b) the meeting is held during the period of 36 months beginning on the day this section commences; and

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(c) no more than 2 MCI amendment resolutions have been considered at previous meetings of the mutual entity's members.

(2) The MCI amendment resolution:

(a) must be passed at the meeting by at least 75% of the votes cast by or on behalf of members who are present at the meeting (including members who have appointed proxies who are present at the meeting) and entitled to vote on the resolution; and

(b) if so passed—has effect as a special resolution despite subsections 136(3) and (4) and anything in the mutual entity's constitution.

(3) Despite section 135 and anything in the mutual entity's constitution, section 249T (quorum) applies to the meeting to the extent that the meeting is considering or voting on the MCI amendment resolution.

5 At the end of Part 2F.2

Add:

246H Application of this Part to MCI mutual entities that are companies limited by guarantee

For the purposes of applying this Part to an MCI mutual entity that is a company limited by guarantee, treat the entity:

(a) in relation to a person who holds MCIs in the entity—as a company with a share capital; and

(b) in relation to a non-shareholder mutual member—as a company without a share capital.

6 At the end of Part 2H.5

Add:

254WA Application of this Part to MCI mutual entities

(1) Section 254SA does not prevent an MCI mutual entity that is a company limited by guarantee paying a dividend in respect of an MCI.

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(2) Without limiting section 254T, an MCI mutual entity must not pay a dividend unless the payment of the dividend is fair and reasonable to the entity's members as a whole.

7 At the end of Part 2J.1

Add:

Division 4—Application of this Part to MCI mutual entities

258G Application of this Part to MCI mutual entities

(1) For the purposes of applying this Part to an MCI mutual entity, a reference (other than in section 258B) to a shareholder of the entity is taken to include a non-shareholder mutual member of the entity.

(2) For the purposes of applying Division 1 to an MCI mutual entity:
  (a) any reduction of the entity's share capital that relates to MCIs is taken to be a selective reduction; and
  (b) the reference to all ordinary shareholders in paragraph 256C(2)(b) is taken to be a reference to all members of the entity.

(3) For the purposes of applying Division 2 to an MCI mutual entity:
  (a) any scheme to buy back MCIs is taken not to be an equal access scheme; and
  (b) subsections 257B(4) and (5) (the 10/12 limit) have effect in relation to MCIs issued by a mutual entity as if each MCI were a voting share with one vote attached to it; and
  (c) the reference to all ordinary shareholders in paragraph 257D(1)(b) is taken to be a reference to all members of the entity.

(4) To avoid doubt, this section does not have the effect of treating a non-shareholder mutual member's membership of an MCI mutual entity as a share.

8 At the end of Part 2J.3

Add:

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260DA Application of this Part to MCI mutual entities

(1) For the purposes of applying this Part to an MCI mutual entity:
  (a) a reference to a shareholder of the entity is taken to include a non-shareholder mutual member of the entity; and
  (b) the reference to all ordinary shareholders in paragraph 260B(1)(b) is taken to be a reference to all members of the entity.

(2) To avoid doubt, this section does not have the effect of treating a non-shareholder mutual member's membership of an MCI mutual entity as a share.

9 After section 605

Insert:

605A Chapter does not apply to MCIs

This Chapter does not apply to MCIs.

10 After section 660B

Insert:

660C Chapter does not apply to MCIs

This Chapter does not apply to MCIs.

11 Section 910A (paragraph (b) of the definition of *control*)

After "either profits or capital", insert ", and not including MCIs".

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Part 2—Consequential amendments of other Acts

Financial Sector (Shareholdings) Act 1998

12 After paragraph 9(4)(b) of Schedule 1

Insert:

or (c) is an MCI mutual entity (within the meaning of the *Corporations Act 2001*);

Income Tax Assessment Act 1936

13 At the end of subsection 121AB(1)

Add:

; or (d) if the insurance company is a mutual entity (within the meaning of the *Corporations Act 2001*)—that would be covered by paragraph (a), (b) or (c) if the following were disregarded:

(i) any MCIs (within the meaning of that Act) issued by the entity;

(ii) any dividends or profits paid or payable in respect of such MCIs;

(iii) any members of the entity who are members by virtue of holding such MCIs.

14 Section 121AC

Before “A”, insert “(1)”.

15 At the end of section 121AC

Add:

(2) If the company is a mutual entity (within the meaning of the *Corporations Act 2001*) then, for the purposes of subsection (1), disregard the following:

(a) any MCIs (within the meaning of that Act) issued by the company;

(b) any dividends or profits paid or payable in respect of such MCIs;

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(c) any members of the company who are members by virtue of holding such MCIs.

16 After subsection 326-10(1) of Schedule 2H

Insert:

(1A) If the entity is a mutual entity (within the meaning of the *Corporations Act 2001*), then, for the purposes of subsection (1), disregard the following:

(a) any MCIs (within the meaning of that Act) issued by the entity;

(b) any dividends or profits paid or payable in respect of such MCIs;

(c) any members of the entity who are members by virtue of holding such MCIs.

Income Tax Assessment Act 1997

17 Section 11-55 (table item headed "mutual receipts")

After "to members", insert "or issue of MCIs".

18 Paragraph 25-75(1)(e)

After "to members", insert "or issue of MCIs".

19 Section 59-35 (at the end of the heading)

Add "**or issue of MCIs**".

20 Paragraph 59-35(a)

Repeal the paragraph, substitute:

(a) the amount would be a mutual receipt, but for:

(i) the entity's constituent document preventing the entity from making any *distribution, whether in money, property or otherwise, to its members; or

(ii) the entity's constituent document providing for the entity to issue MCIs (within the meaning of the *Corporations Act 2001*) or to pay *dividends in respect of MCIs; or

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(iii) the entity having issued one or more MCIs (within the meaning of the *Corporations Act 2001*) or having paid dividends in respect of one or more MCIs; and

21 Subparagraph 118-12(2)(a)(ia)

After "to members", insert "or issue of MCIs".

22 Subsection 995-1(1)

Insert:

demutualise: a mutual entity (within the meaning of the *Corporations Act 2001*) that issues one or more MCIs (within the meaning of that Act) is taken not to ***demutualise*** by doing so.

Note: MCI is short for mutual capital instrument (see section 167AD of the *Corporations Act 2001*).

Insurance Acquisitions and Takeovers Act 1991

23 After paragraph 13(4)(b)

Insert:

or (c) is an MCI mutual entity (within the meaning of the *Corporations Act 2001*);

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[*Minister's second reading speech made in—*
Senate on 13 February 2019
House of Representatives on 4 April 2019]

(21/19)

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