

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

#### *Corporations Act 2001*

#### *Corporations (Transfers of Estate Assets and Liabilities—Ministerial Consent) Determination 2022*

Paragraph 601WBD(1)(b) of the *Corporations Act 2001* (the Act) provides that the Minister's consent to the transfer of estate assets and liabilities is not required if the Minister has determined in writing that their consent is not required in relation to a class of transfers. If the Ministerial determination is expressed to apply to a class of transfers, it is a legislative instrument under subsection 601WBD(3) of the Act.

The purpose of the *Corporations (Transfers of Estate Assets and Liabilities—Ministerial Consent) Determination 2022* (this determination) is to remove the requirement for the Minister's consent to the transfer of estate assets and liabilities for a particular class of transfers under paragraph 601WBD(1)(b) of the Act.

Chapter 5D of the Act implements the transfer of certain regulatory responsibilities from the States and Territories to the Commonwealth in relation to trustee companies that provide “traditional trustee company services”, including performing estate management functions, preparing wills, applying for probate of wills and establishing and operating common funds.

The Act created a national licensing system for trustee companies. These trustee companies are required to hold an Australian financial services licence covering the provision of traditional trustee company services. The trustee companies to which Chapter 5D of the Act applies are those companies listed in Schedule 8AA to the *Corporations Regulations 2001*.

Under the former State and Territory regulatory regimes for trustee companies, many corporate groups operated subsidiaries in the States and Territories. The function of the subsidiaries was to hold the relevant trustee company authorisation in that jurisdiction. Following the introduction of the national regulatory framework for trustee companies, many corporate groups started consolidating their traditional service businesses and transferring those businesses to a single Australian financial service licensee.

Part 5D.6 of the Act governs Australian Securities and Investments Commission (ASIC) approved transfers of estate assets and liabilities from one licensed trustee company to another. Under subsection 601WBA(1) of the Act, ASIC may, in writing, make a determination (a transfer determination) that there is to be a transfer of estate assets and liabilities from a specified trustee company to another specified trustee company. ASIC may make the transfer determination only if the Minister has consented to the transfer or if the Minister's consent to the transfer is not required under section 601WBD.

This determination operates so that consent from the Minister under paragraph 601WBA(2)(a) of the Act is not required for all voluntary transfers of estate assets and liabilities between companies under subsection 601WBD(1) of the Act.

This determination remakes the *Ministerial Determination Trustee Company Transfer of Estate Assets and Liabilities Ch 5D Corporations Act 2001* (the previous instrument) which ceased operation on 1 October 2022 under the sunseting process. The previous instrument provided that Ministerial consent was not required for any voluntary transfers of estate assets and liabilities occurring between companies within the same corporate group (intra group transfers) and between unrelated companies (arm's length transfers). This determination instead provides that Ministerial consent is not required for any voluntary transfers of assets and liabilities between companies. This achieves the same outcome as the previous instrument, because the only voluntary transfers that would occur are intra group transfers and arm's length transfers. There are no voluntary transfers outside these two categories and thus the determination achieves the same policy outcome.

Public consultation was not undertaken as this determination is of a minor or machinery nature and the determination continues the operation of the previous instrument. Treasury consulted with ASIC in relation to this determination.

The Office of Best Practice Regulation (OBPR) has advised that this determination does not require a Regulatory Impact Statement because it has been assessed to have no more than a minor regulatory impact. The OBPR Reference Number is OBPR22-03374.

Details of the determination are set out in [Attachment A](#).

A Statement of Compatibility with Human Rights is at [Attachment B](#). This determination is compatible with human rights as it does not raise any human rights issues.

This determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

This determination commenced on the day after the legislative instrument was registered on the Federal Register of Legislation.

## **ATTACHMENT A**

### **Details of the Corporations (Transfers of Estate Assets and Liabilities—Ministerial Consent) Determination 2022**

#### **Section 1 – Name of Determination**

This section provides that the name of the Determination is the *Corporations (Transfers of Estate Assets and Liabilities—Ministerial Consent) Determination 2022* (this Determination).

#### **Section 2 – Commencement**

This section provides that this Determination commenced on the day after the legislative instrument was registered on the Federal Register of Legislation.

#### **Section 3 – Authority**

This section provides that this Determination is made under the *Corporations Act 2001* (the Act).

#### **Section 4 – Definitions**

This section provides that all references to ‘the Act’ mean the *Corporations Act 2001*.

#### **Section 5 –When Ministerial Consent to a Transfer is Not Required**

This section provides that Ministerial consent is not required for any voluntary transfers of estate assets and liabilities between companies under subsection 601WBD(1) of the Act.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Corporations (Transfers of Estate Assets and Liabilities—Ministerial Consent) Determination 2022**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the *Corporations (Transfers of Estate Assets and Liabilities—Ministerial Consent) Determination 2022* (this determination) is to remove the requirement for the Minister’s consent to the transfer of estate assets and liabilities for a particular class of transfers under paragraph 601WBD(1)(b) of the *Corporations Act 2001* (the Act).

This determination operates so that consent from the Minister under paragraph 601WBA(2)(a) of the Act is not required for all voluntary transfers of estate assets and liabilities between companies under subsection 601WBD(1) of the Act.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.