2019‑2020‑2021

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

Treasury Laws Amendment (Modernising Business Communications) Bill 2021

No. , 2021

(Treasury)

A Bill for an Act to amend the law relating to corporations, consumer credit and other matters in the Treasury portfolio, and for related purposes

Contents

1 Short title 1

2 Commencement 1

3 Schedules 2

Schedule 1—Documents and meetings under the Corporations Act 2001 2

Corporations Act 2001 2

Schedule 2—Documents under the National Credit Code and payments 2

Part 1—Documents under the National Credit Code 2

National Consumer Credit Protection Act 2009 2

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 2

Part 2—Payments 2

Corporations Act 2001 2

Excise Act 1901 2

Small Superannuation Accounts Act 1995 2

Schedule 3—Publication requirements and other amendments 2

Part 1—Main amendments 2

Competition and Consumer Act 2010 2

Corporations Act 2001 2

Income Tax Assessment Act 1936 2

Income Tax Assessment Act 1997 2

Insurance Act 1973 2

Life Insurance Act 1995 2

National Consumer Credit Protection Act 2009 2

Private Health Insurance (Prudential Supervision) Act 2015 2

Productivity Commission Act 1998 2

Superannuation Industry (Supervision) Act 1993 2

Taxation Administration Act 1953 2

Part 2—Contingent amendments 2

Corporations Act 2001 2

A Bill for an Act to amend the law relating to corporations, consumer credit and other matters in the Treasury portfolio, and for related purposes

The Parliament of Australia enacts:

1 Short title

 This Act is the *Treasury Laws Amendment (Modernising Business Communications) Act 2021*.

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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. |  |
| 2. Schedule 1 | The later of:(a) the start of the day after this Act receives the Royal Assent; and(b) immediately after the commencement of Schedule 2 to the *Corporations (Meetings and Documents) Act 2021*.However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. |  |
| 3. Schedule 2, Part 1 | The day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent. |  |
| 4. Schedule 2, Part 2 | The day after this Act receives the Royal Assent. |  |
| 5. Schedule 3, Part 1 | A single day to be fixed by Proclamation.However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. |  |
| 6. Schedule 3, Part 2 | The later of:(a) immediately after the commencement of the provisions covered by table item 5; and(b) immediately after the commencement of item 563 of Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*. |  |

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.

Schedule 1—Documents and meetings under the Corporations Act 2001

Corporations Act 2001

1 Subsections 110(1), (2) and (3)

Repeal the subsections, substitute:

Signing of documents under this Act

 (1) This Division applies to a document (including a deed) required or permitted to be signed by a person under this Act.

Note 1: A document is any record of information: see the definition of ***document*** in section 9.

Note 2: This Division provides that a person may sign a document in physical form or electronic form: see subsection 110A(1).

Signing of documents by or on behalf of company

 (2) Without limiting subsection (1), this Division applies to a document (including a deed) to be signed by a person:

 (a) exercising the powers of a company under section 126 (making of contracts and execution of documents by an agent); or

 (b) under section 127 (execution of documents by a company).

2 At the end of section 110B

Add:

Note: This section does not prevent ASIC or the Registrar from refusing to receive or register the document on any other basis. In particular, there are lodgement requirements (see, for example, Chapter 2P) and ASIC or the Registrar may refuse to receive or register a document if those requirements are not met.

3 Division 2 of Part 1.2AA (heading)

Omit “**to be sent to, among others, directors, members and auditors**”.

4 Section 110C

Repeal the section, substitute:

110C Documents to which this Division applies

Sending documents

(1) This Division applies to any document covered by subsection (3) or (4) that is required or permitted under this Act to be sent by a person or entity (the ***sender***) to another person or entity (the ***recipient***).

 (2) A reference in subsection (1) to an entity includes a reference to a disclosing entity.

Covered documents

(3) This subsection covers a document that is required or permitted be sent by the sender to the recipient under:

 (a) this Chapter; or

 (b) Chapters 2A to 2M; or

 (c) Chapters 5 to 5D; or

 (d) Chapter 6, 6A, 6B, 6C or 6D; or

 (e) Chapter 8 or 8A; or

 (f) Chapter 9; or

 (g) Schedule 2; or

 (h) any other provision of this Act, to the extent that it relates to the provisions mentioned in paragraphs (a) to (g).

 (4) This subsection covers a document that is in a class of documents specified in regulations made for the purposes of this subsection.

Note: For when and where a document is ***sent*** and ***received*** by electronic communication, see sections 105A and 105B.

 (5) However, this Division does not apply to a document that is required or permitted under this Act to be sent by or to ASIC, the Registrar or the Takeovers Panel.

References to sending documents

 (6) This Division applies to a requirement or permission to send a document, whether the expression ***send***, ***give***, ***serve*** or ***dispatch***, or any other expression, is used.

5 Paragraph 110D(3)(a)

Repeal the paragraph, substitute:

 (a) is a report mentioned in section 314 or 314A (which deal with annual financial reporting to members); or

6 Section 110E (heading)

Omit “**Member’s election**”, substitute “**Election**”.

7 At the end of subsection 110E(1)

Add:

 ; or (e) where the sender is the operator of a notified foreign passport fund—the recipient is an Australian member of the fund; or

 (f) where the sender is the bidder under a takeover bid—the recipient is a holder of securities in the target for the bid; or

 (g) the recipient is of a kind specified in regulations made for the purposes of this paragraph.

8 At the end of subsection 110E(3)

Add:

Note: The documents in relation to which an election may be made include, for example, documents required or permitted to be sent under this Act in relation to a takeover bid: see section 648CB.

9 Paragraph 110E(5)(a)

Repeal the paragraph, substitute:

 (a) reports mentioned in section 314 or 314A (which deal with annual financial reporting to members);

10 After subsection 110F(4)

Insert:

No current address for sending documents in elected manner

 (4A) Subsection (2) does not apply if:

 (a) the sender reasonably believes that none of the addresses (including any electronic addresses) for the recipient known to the sender are a current address for the recipient to be sent the document in a manner that complies with the election; and

 (b) the sender sends the document to the recipient in a manner that does not comply with the election, as mentioned in paragraph (1)(b), other than in the manner mentioned in paragraph 110D(1)(e); and

 (c) if the document is a report mentioned in section 314A (annual reporting by notified foreign passport funds)—the requirement (if applicable) in paragraph 314A(4)(b) (about sending report in elected language) is satisfied.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4A), see subsection 13.3(3) of the *Criminal Code*.

11 At the end of subsection 110J(3)

Add:

 ; or (e) where the sender is the operator of a notified foreign passport fund—the recipient is an Australian member of the fund; or

 (f) where the sender is the bidder under a takeover bid—the recipient is a holder of securities in the target for the bid; or

 (g) the recipient is of a kind specified in regulations made for the purposes of this paragraph.

12 After section 110J

Insert:

110JA Sender does not need to send document if member uncontactable

Sender taken to send document

 (1) Subsection (2) applies if:

 (a) the sender is required or permitted to send a document to which this Division applies to the recipient under a provision of this Act; and

 (b) the conditions in subsection (3) are satisfied; and

 (c) any of the following apply:

 (i) the sender is a company and the recipient is a member of the company;

 (ii) the sender is the responsible entity of a registered scheme and the recipient is a member of the scheme;

 (iii) the sender is a disclosing entity mentioned in subsection 111AC(1) and the recipient is a member of the disclosing entity;

 (iv) the sender is a disclosing entity mentioned in subsection 111AC(2) and the recipient is a member of the managed investment scheme mentioned in that subsection; and

 (d) the sender sends the document in accordance with the provision mentioned in paragraph (a) to one or more other members of a kind mentioned in whichever of subparagraphs (c)(i) to (iv) applies.

 (2) For the purposes of the provision mentioned in paragraph (1)(a):

 (a) the sender is taken to send the document, as required or permitted in accordance with that provision, at the later of:

 (i) the time all the conditions in paragraphs (3)(a), (b) and (c) are first satisfied; and

 (ii) the time the sender first sends the document to one or more other members as mentioned in paragraph (1)(d); and

 (b) the recipient is taken to receive the document when it is taken to be sent under paragraph (a) of this subsection.

Conditions for relief

 (3) For the purposes of paragraph (1)(b), the conditions are that:

 (a) the sender has received notification in relation to each of the following addresses that indicates it is not a current address for the recipient:

 (i) if the sender is a company or responsible entity of a registered scheme—the recipient’s address in the company or scheme’s register of members;

(ii) any other addresses for the recipient, including any electronic addresses for receiving electronic communications, known to the sender; and

 (b) the sender reasonably believes that none of those addresses are a current address for the recipient; and

 (c) the sender is unable, after taking reasonable steps, to ascertain a current address for the recipient; and

 (d) if the period of 12 months that starts on the day all conditions in paragraphs (a), (b) and (c) are first satisfied has ended—within the last 6 months of that period, the sender took reasonable steps to advise the recipient that:

 (i) the sending of documents to which this Division applies to the recipient by the sender is suspended; and

 (ii) although that sending has been suspended, it will be resumed if the recipient provides a current address (which may be an electronic address) for being sent those documents.

 (4) For the purposes of paragraph (3)(c), the sender has not taken reasonable steps unless the sender has attempted to communicate with the recipient using all contact details for the recipient known to the sender.

13 Paragraph 110K(3)(a)

Omit “paragraph 110E(1)(c) or (d)”, substitute “subsection (3A)”.

14 After subsection 110K(3)

Insert:

 (3A) For the purposes of paragraph (3)(a), the members are:

 (a) for a disclosing entity mentioned in subsection 111AC(1)—the members of the disclosing entity; and

 (b) for a disclosing entity mentioned in subsection 111AC(2)—the members of the managed investment scheme mentioned in that subsection.

 (3B) The operator of a notified foreign passport fund must:

 (a) send the Australian members of the fund, at least once in each financial year, a notice setting out the matters mentioned in subsection (4); or

 (b) make such a notice readily available on a website.

15 At the end of subsection 110K(4)

Add:

 ; and (d) for a notified foreign passport fund—Australian members’ rights to elect to be sent reports mentioned in section 314A in English or in an official language of the home economy of the fund (see subsections 314A(3) and (4)).

16 Section 248D

Repeal the section, substitute:

248D Use of technology

 (1) A directors’ meeting may be called or held using any technology.

 (2) However, if technology is used to call or hold a directors’ meeting, the technology must be reasonable.

17 Subsection 254P(2)

Omit “The notice must be sent by post.”.

18 Paragraphs 283EA(3)(b) and (c)

Repeal the paragraphs, substitute:

 (b) in the manner mentioned in paragraph 110D(1)(a), (b), (c) or (d); or

19 Subsection 283EA(4) (heading)

Omit “*fax*”, substitute “*electronic means*”.

20 Paragraph 283EA(4)(b)

Omit “fax or other”.

21 Subsection 314A(2)

Repeal the subsection, substitute:

 (2) A notified foreign passport fund may provide the reports by sending them to each Australian member.

22 Subsections 314A(3), (4), (5) and (6)

Repeal the subsections, substitute:

 (3) If an Australian member of a notified foreign passport fund elects under subsection 110E(2) to be sent reports mentioned in this section in physical form or in electronic form, that election may also include an election to be sent the reports in English or in an official language of the home economy of the fund.

 (4) If the member makes an election to be sent the reports in a language mentioned in subsection (3) of this section:

 (a) for the purposes of section 110F (failure to comply with member’s election), such a report is not sent in a manner that complies with the election under section 110E unless it is sent in that language; and

 (b) for the purposes of paragraph 110F(4A)(c), it is a requirement that such a report be sent in that language.

23 Subsections 314A(7) and (8)

Repeal the subsections, substitute:

 (7) A notified foreign passport fund must provide the reports in English, other than to the extent it provides reports in an official language of the home economy of the fund because of subsections (3) and (4).

24 Subsection 314A(9)

Omit “(1), (3)”, substitute “(1)”.

25 Subsection 315(6)

Repeal the subsection.

26 Section 316AA

Repeal the section.

27 Subsection 316A(1)

Omit “notice in writing to the company, elect to receive a hard copy or an electronic copy of”, substitute “notifying the company (whether or not in writing), elect to receive”.

28 Subsections 316A(3) and (4)

Omit “, in accordance with the election,”.

29 Subsection 414(2)

Omit “as prescribed”, substitute “, in accordance with the requirements mentioned in subsection (10B) (if applicable),”.

30 Paragraph 414(9)(a)

Omit “as prescribed”, substitute “, in accordance with the requirements mentioned in subsection (10B) (if applicable),”.

31 After subsection 414(10)

Insert:

 (10A) Without limiting the manner in which a notice mentioned in subsection (2) or paragraph (9)(a) may be given to a shareholder, the notice may be given to the shareholder personally.

 (10B) If a notice mentioned in subsection (2) or paragraph (9)(a) is given to a shareholder:

 (a) by sending the notice in a physical form in accordance with paragraph 110D(1)(a); or

 (b) by sending information in a physical form in accordance with paragraph 110D(1)(b);

the notice or information must be sent by prepaid post to the shareholder’s address shown in the books of the transferor company.

32 Section 600G

Repeal the section.

33 After paragraph 641(1)(a)

Insert:

 (aa) where the target knows the person’s electronic address for receiving electronic communications—that electronic address; and

 (ab) where an election of the person to be sent documents by the target in physical form, or in electronic form, is in force under section 110E (disregarding subsection 110E(8)) in relation to a kind of documents mentioned in subsection (1C) of this section—the fact that such an election is in force; and

34 After subsection 641(1B)

Insert:

 (1C) For the purposes of paragraph (1)(ab), the kinds of documents are:

 (a) all documents to which Division 2 of Part 1.2AA applies; or

 (b) one or more classes of documents that, taken together, include the documents mentioned in subsection 648CB(3) (documents relating to takeover bids).

35 After section 641

Insert:

641A Use or disclosure of information obtained from target

 (1) A person contravenes this subsection if:

 (a) the target gives the bidder information under section 641 in relation to another person (the ***security holder***); and

 (b) the person:

 (i) is the bidder; or

 (ii) obtains the information from the bidder (whether directly or indirectly); and

 (c) the person uses or discloses the information; and

 (d) the use or disclosure is not for the purposes of sending a document, or otherwise complying with an obligation, under:

 (i) this Chapter; or

 (ii) Part 6A.1; or

 (iii) any other provision of this Act, to the extent that it relates to the provisions mentioned in subparagraphs (i) and (ii).

Civil penalty:

(a) for an individual—2,000 penalty units; and

 (b) for a body corporate—10,000 penalty units.

 (2) Subsection (1) does not apply if the use or disclosure is required or permitted by a law of the Commonwealth or a prescribed law of a State or internal Territory.

 (3) A person who contravenes subsection (1) is not guilty of an offence.

Note: Subsection (1) is a civil penalty provision (see section 1317E).

36 Section 648B

After “address”, insert “(including the electronic address, if any)”.

37 Section 648C

Repeal the section, substitute:

648C Sending documents to holders of securities—general

 (1) This section applies if a document is required or permitted to be sent to a holder of securities under this Chapter.

Note 1: Division 2 of Part 1.2AA provides for technology neutral sending of documents.

Note 2: Section 109X makes general provision for service of documents.

(2) If the document is sent by sending the document in a physical form in accordance with paragraph 110D(1)(a), or by sending information in a physical form in accordance with paragraph 110D(1)(b), the document or information must be sent:

 (a) if the document or information is to be sent to the holder outside Australia—by pre‑paid airmail post or by courier; or

 (b) if the document or information is to be sent to the holder in Australia—by pre‑paid ordinary post or by courier.

 (3) For the purposes of this Chapter, the document is taken to have been sent to the holder:

 (a) if the document is sent in a physical form in accordance with paragraph 110D(1)(a):

 (i) when the document is posted; or

 (ii) if the document is sent by courier—when the document is given to the courier; or

 (b) if the document is sent by sending information in accordance with paragraph 110D(1)(b) (sending information in physical form that allows electronic access):

 (i) when the information is posted; or

 (ii) if the information is sent by courier—when the information is given to the courier; or

 (c) if the document is sent by sending an electronic communication in accordance with paragraph 110D(1)(c)—when the electronic communication is sent; or

 (d) if the document is sent by sending an electronic communication in accordance with paragraph 110D(1)(d) (sending information in electronic form allowing electronic access)—when the electronic communication is sent.

Note: For when an electronic communication is ***sent***, see section 105A.

 (4) However, for the purposes of this Chapter, one or more documents are taken not to be sent if:

 (a) the bidder sends the documents to the holder of securities by sending information mentioned in paragraph 110D(1)(b) or (d); and

 (b) the requirements (if any) specified in regulations made for the purposes of this paragraph are not satisfied.

 (5) This section applies to a requirement or permission to send a document, whether the expression ***send***, ***give***, ***serve*** or ***dispatch***, or any other expression, is used.

648CA Sending documents to holders of securities—subsequent sending of document or information in physical form

 (1) A person commits an offence if:

 (a) the person is required or permitted to send a document to a holder of securities under this Chapter; and

 (b) the person sends the document to the holder by sending an electronic communication in accordance with paragraph 110D(1)(c) or (d) (sending document or information giving access by electronic communication); and

 (c) the person receives a notification that the electronic communication is unable to be delivered to the electronic address of the holder; and

 (d) the person fails to send the document to the holder in accordance with paragraph 110D(1)(a) or (b) (sending physical form of document or information in a physical form for electronic access to document) within 3 days after the day on which the person received that notification.

 (2) An offence against subsection (1) is an offence of strict liability.

 (3) This section applies to a requirement or permission to send a document, whether the expression ***send***, ***give***, ***serve*** or ***dispatch***, or any other expression, is used.

648CB Sending documents to holders of securities—effect of election by holder to be sent documents by target in particular form

 (1) This section applies if the target for a takeover bid has informed the bidder in accordance with paragraph 641(1)(ab) that an election of a holder of securities under section 110E to be sent documents in physical form or electronic form is in force.

 (2) An election of the holder under section 110E to be sent documents by the bidder in the relevant form is taken to be in force from the time the target informs the bidder of the election.

 (3) The election is taken to be made in relation to all documents required or permitted to be sent by the bidder under:

 (a) this Chapter; or

 (b) Part 6A.1; or

 (c) any other provision of this Act, to the extent that it relates to the provisions mentioned in paragraphs (a) and (b).

 (4) Subsection (2) has effect subject to any notification of withdrawal of the election received by the bidder from the holder of securities in accordance with paragraph 110E(7)(b).

38 Subsection 661B(3)

Repeal the subsection.

39 Subsection 661B(4)

Repeal the subsection (including the note).

40 Subsection 661D(1)

After “addresses”, insert “(but not the electronic addresses)”.

41 Subsection 662B(3)

Repeal the subsection.

42 Subsection 662B(4)

Repeal the subsection (including the note).

43 Subsection 663B(3)

Repeal the subsection.

44 Subsection 663B(4)

Repeal the subsection (including the note).

45 Subsection 664C(4)

Repeal the subsection.

46 Subsection 664C(5)

Repeal the subsection.

47 Subsection 664E(1)

Omit “returning”, substitute “giving”.

48 Subsection 664E(2)

Omit “returned” (wherever occurring), substitute “given”.

49 Subsection 665B(3)

Repeal the subsection.

50 Subsection 665B(4)

Repeal the subsection (including the note).

51 At the end of Chapter 6A

Add:

Part 6A.7—Miscellaneous

669A Sending documents

 (1) This section applies to any document that is required or permitted to be sent to a person (the ***recipient***) under this Chapter.

Note 1: Division 2 of Part 1.2AA provides for technology neutral sending of documents.

Note 2: Section 109X makes general provision for service of documents.

 (2) Without limiting the manner in which the document may be sent, the document may be sent to the recipient by giving it to the recipient personally.

 (3) For the purposes of this Chapter, the document is taken to have been sent to the recipient:

 (a) if the document sent in a physical form in accordance with paragraph 110D(1)(a):

 (i) 3 days after the document is posted; or

 (ii) if the document is sent by courier—3 days after the document is given to the courier; or

 (b) if the document is sent by sending information in accordance with paragraph 110D(1)(b) (sending information in physical form that allows electronic access):

 (i) 3 days after the information is posted; or

 (ii) if the information is sent by courier—3 days after the information is given to the courier; or

 (c) if the document is sent by sending an electronic communication in accordance with paragraph 110D(1)(c)—when the electronic communication is sent; or

 (d) if the document is sent by sending an electronic communication in accordance with paragraph 110D(1)(d) (sending information in electronic form allowing electronic access)—when the electronic communication is sent.

Note: For when an electronic communication is ***sent***, see section 105A.

 (4) This section does not apply to a document that is required or permitted to be sent by or to ASIC under this Chapter.

 (5) This section applies to a requirement or permission to send a document, whether the expression ***send***, ***give***, ***serve*** or ***dispatch***, or any other expression, is used.

669B Sending documents—subsequent sending of document or information in physical form

 (1) A person commits an offence if:

 (a) the person (the ***sender***) is required or permitted to send a document to another person (the ***recipient***) under this Chapter; and

 (b) the sender sends the document to the recipient by sending an electronic communication in accordance with paragraph 110D(1)(c) or (d) (sending document or information giving access by electronic communication); and

 (c) the sender receives a notification that the electronic communication is unable to be delivered to the electronic address of the recipient; and

 (d) the sender fails to send the document to the recipient in accordance with paragraph 110D(1)(a) or (b) (sending physical form of document or information in a physical form for electronic access to document), or by giving it to the recipient personally, within 3 days after the day on which the person received that notification.

 (2) For the purposes of paragraph (1)(d), if the document is sent in accordance with paragraph 110D(1)(a) or (b), it is taken to be sent:

 (a) when the document is posted; or

 (b) if the document is sent by courier—when the document is given to the courier.

 (3) Subsection (2) has effect despite subsection 669A(3).

 (4) An offence against subsection (1) is an offence of strict liability.

 (5) This section does not apply to a document that is required or permitted to be sent by or to ASIC under this Chapter.

 (6) This section applies to a requirement or permission to send a document, whether the expression ***send***, ***give***, ***serve*** or ***dispatch***, or any other expression, is used.

52 In the appropriate position in Chapter 10

Insert:

Part 10.63—Application and transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (Modernising Business Communications) Act 2021

1693 Definitions

 In this Part:

***amending Schedule*** means Schedule 1 to the *Treasury Laws Amendment (Modernising Business Communications) Act 2021*.

***commencement day*** means the day the amending Schedule commences.

1693A Application—signing documents

 The amendments made by the amending Schedule apply in relation to the signing of a document (including a deed) on or after the commencement day.

1693B Application—sending documents

 The amendments made by the amending Schedule apply in relation to a document sent on or after the commencement day.

1693C Application—uncontactable members

 Section 110JA, as inserted by the amending Schedule, applies in relation to documents required or permitted to be sent on or after the commencement day, if the notification under paragraph 110JA(3)(a) of this Act was received on or after that day.

1693D Application—director’s meetings

 The amendment of section 248D made by the amending Schedule applies in relation to the calling or holding of a directors’ meeting on or after the commencement day.

1693E Transitional—elections by Australian members of notified foreign passport funds to receive annual reports in particular form etc.

 (1) This section applies in relation to an election by an Australian member of a notified foreign passport fund, to receive reports in hard copy or as an electronic copy, that is in force under subsection 314A(3) of this Act immediately before the commencement day.

 (2) Despite the amendment of that subsection by the amending Schedule, the election continues in force on and after that day as if it were an election under section 110E of this Act, as amended by the amending Schedule:

 (a) to be sent such reports:

 (i) for an election to receive in hard copy—in physical form; or

 (ii) for an election to receive as an electronic copy—in electronic form; and

 (b) if the election included an election to receive the reports in English, or in an official language of the home economy of the fund—to be sent such reports in that language.

1693F Transitional—elections by members of companies limited by guarantee to receive reports etc.

 (1) This section applies in relation to an election by a member of a company limited by guarantee, to receive reports in hard copy or as an electronic copy, that is in force under subsection 316A(1) immediately before the commencement day.

 (2) Despite the amendment of that section by the amending Schedule:

 (a) the election continues in force on and after the commencement day as an election under subsection 316A(1) of this Act to receive such reports (in accordance with subsection 316A(2)); and

 (b) an election of the member is taken to be in force under section 110E on and after the commencement day to be sent such reports:

 (i) for an election to receive in hard copy—in physical form; or

 (ii) for an election to receive as an electronic copy—in electronic form.

 (3) Paragraph (2)(b) has effect subject to paragraph 110E(7)(b) (withdrawal of election).

53 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 110K(3B) | 30 penalty units |

54 Schedule 3 (table item dealing with subsections 314A(1), (3) and (7), column headed “provision”)

Omit “Subsections 314A(1), (3) and (7)”, substitute “Subsections 314A(1) and (7)”.

55 In the appropriate position in subsection 1317E(3) (table)

Insert:

|  |  |  |
| --- | --- | --- |
| subsection 641A(1) | use or disclosure of information obtained from target | uncategorised |

56 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 648CA(1) | 30 penalty units |

57 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 669B(1) | 30 penalty units |

Schedule 2—Documents under the National Credit Code and payments

Part 1—Documents under the National Credit Code

National Consumer Credit Protection Act 2009

1 At the end of section 187 of the *National Credit Code*

Add:

 (3) Despite subsection (2), paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* do not apply to a requirement or permission by or under this Code to give information in writing.

Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information to the information being given by way of electronic communication.

2 Section 195 of the *National Credit Code*

Repeal the section, substitute:

195 Manner of giving notice or other document

 (1) This section applies in relation to a notice or other document required or permitted by this Code to be given by a person (the ***giver***) to another person (the ***recipient***).

Appropriate address for giving documents

 (2) The appropriate address of the recipient is:

 (a) an address nominated by the recipient to the giver; or

 (b) if there is no such nomination, and the giver has never before given a notice or other document to the recipient in accordance with this paragraph:

 (i) where the recipient does not carry on a business—the address of the place of residence of the recipient last known to the giver; or

 (ii) where the recipient carries on a business—the address of the place of residence or business of the recipient last known to the giver; or

 (iii) in any case—the electronic address (if any) for receiving electronic communications for the recipient last known to the giver; or

 (c) if:

 (i) there is no such nomination; and

 (ii) the giver has given a notice or other document to the recipient in accordance with paragraph (b); and

 (iii) paragraph (d) does not apply;

 the address at which the giver gave the most recent notice or other document as mentioned in subparagraph (ii) of this paragraph; or

 (d) if:

 (i) there is no such nomination; and

 (ii) the giver has given a notice or other document to the recipient in accordance with paragraph (b); and

 (iii) notice given by the giver to the recipient in accordance with subsection (8), specifying an address of a kind mentioned in paragraph (b) of this subsection, is in force under subsection (9);

 the address specified in the most recent notice in force under that subsection.

Note: A nominated address may be an electronic address.

Recipient taken to nominate physical address in certain circumstances

 (3) Subsection (4) applies if the recipient notifies the giver that the recipient does not want to receive documents electronically, but does not nominate an address under paragraph (2)(a) in that notification.

 (4) For the purposes of this section, the notification is taken to be a nomination under paragraph (2)(a) by the recipient to the giver of the address of the place of residence or business of the recipient last known to the giver.

Making, changing or cancelling nomination

 (5) If the recipient nominates an address under paragraph (2)(a), the recipient may, by notice to the giver, change the nominated address or cancel the nomination.

 (6) The nomination of an address under this section or the giving of notice under subsection (3) or (5) may be made in any appropriate manner (whether or not in writing).

Note: The nomination or notice may, for example, be given in writing, by telephone or in person.

 (7) A nomination under this section ceases to have effect if it is cancelled by the recipient.

Notice of address at which documents will be given

 (8) For the purposes of paragraph (2)(d), the giver may give the recipient notice that contains a prominent statement to the effect that:

 (a) unless the recipient nominates another physical or electronic address, the giver will give relevant documents and notices to the giver at a specified physical or electronic address after the expiry of 14 days after the notice is given; and

 (b) that specified physical or electronic address is:

 (i) the address of the place of residence or business of the recipient last known to the giver; or

 (ii) the electronic address for receiving electronic communications for the recipient last known to the giver; and

 (c) the recipient may at any time nominate an alternative physical or electronic address to the giver.

Note: The appropriate address for giving the notice is worked out under subsection (2).

 (9) Notice under subsection (8) comes into force 14 days after it is given (regardless whether the recipient has responded to that notice).

3 Paragraph 196(1)(c) of the *National Credit Code*

Omit “subsection 14(3)”, substitute “section 14A”.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

4 In the appropriate position

Insert:

Schedule 21—Application and transitional provisions for Schedule 2 to the Treasury Laws Amendment (Modernising Business Communications) Act 2021

1 Definitions

In this Schedule:

***amending Part*** means Part 1 of Schedule 2 to the *Treasury Laws Amendment (Modernising Business Communications) Act 2021*.

***commencement day*** means the day the amending Part commences.

2 Application—giving documents

The amendments made by the amending Part apply in relation to notices or other documents given on or after the commencement day.

3 Transitional—addresses used before commencement

A reference in section 195 of the *National Credit Code*, as amended by the amending Part, to a notice or other document given in accordance with paragraph (2)(b) of that section, includes a reference to a notice or other document given before the commencement day in accordance with paragraph 195(1)(b) or (2)(b) of the *National Credit Code*, as in force immediately before the commencement day.

4 Transitional—cancellations of nominations before commencement

Subparagraph 195(2)(b)(iii) of the *National Credit Code*, as inserted by the amending Part, does not apply in relation to the giving of a notice or other document to a person (the ***recipient***) by another person (the ***giver***) if:

 (a) the recipient, before the commencement day, cancelled a nomination of an address under section 195 of the *National Credit Code*, as in force at the time of the cancellation, in relation to documents to be given by the giver; and

 (b) between the time of that cancellation and start of the commencement day, the recipient did not nominate an address to the giver under paragraph 195(1)(a) or (2)(a) of the *National Credit Code*, as in force immediately before the commencement day; and

 (c) the recipient does not nominate an address to the giver on or after the commencement day under paragraph 195(2)(a) of the *National Credit Code*, as inserted by the amending Part.

5 Saving—nominated addresses

A nomination of an address under paragraph 195(1)(a) or (2)(a) of the *National Credit Code* that is in force immediately before the commencement day continues in force on and after that day as a nomination under paragraph 195(2)(a) of the *National Credit Code*, as amended by the amending Part.

Part 2—Payments

Corporations Act 2001

5 Paragraph 254P(2)(c)

Repeal the paragraph, substitute:

 (c) details for making the payment.

6 Subsection 254P(2)

Omit “The notice must be sent by post.”.

Excise Act 1901

7 Paragraph 129C(2)(a)

Repeal the paragraph, substitute:

 (a) the person may pay the penalty stated in the notice in any way stated in the notice; and

Small Superannuation Accounts Act 1995

8 Section 32

Repeal the section.

Schedule 3—Publication requirements and other amendments

Part 1—Main amendments

Competition and Consumer Act 2010

1 Paragraph 28(2)(a)

Omit “such newspapers and other journals as”, substitute “any other manner”.

2 Subsection 44GA(10)

Omit “national newspaper”, substitute “manner that results in the notice being accessible to the public and reasonably prominent”.

3 Subsection 44LD(10)

Omit “national newspaper”, substitute “manner that results in the notice being accessible to the public and reasonably prominent”.

4 Subsection 44NC(10)

Omit “national newspaper”, substitute “manner that results in the notice being accessible to the public and reasonably prominent”.

5 Subsection 44ZZOA(10)

Omit “national newspaper”, substitute “manner that results in the notice being accessible to the public and reasonably prominent”.

Corporations Act 2001

6 Section 9 (definition of *daily newspaper*)

Repeal the definition.

7 Section 9 (definition of *national newspaper*)

Repeal the definition.

8 Paragraph 103(2)(b)

Omit all the words after “published”.

9 Subsections 254Q(3), (4) and (4A)

Repeal the subsections, substitute:

Advertisement of sale

 (3) At least 14 days, and not more than 21 days, before the day of the sale, a notice of the sale must be published in accordance with subsection (5A). The specific number of shares to be offered need not be specified in the notice and it is sufficient for the notice to be to the effect that all shares on which a call remains unpaid will be sold.

Postponement of sale

 (4) An intended sale of forfeited shares of which a notice has been published in accordance with subsection (3) may be postponed for not more than 21 days from the date of sale specified in the notice. A notice of the date to which the sale is postponed must be published in accordance with subsection (5A).

10 After subsection 254Q(5)

Insert:

Publishing notices

 (5A) A notice under subsection (3) or (4) is published in accordance with this subsection if the notice is published:

 (a) unless paragraph (b) of this subsection applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or

 (b) if a determination in force under subsection (5B) specifies one or more manners in which such a notice may be published—in a manner so specified.

 (5B) For the purposes of paragraph (5A)(b), ASIC may, by legislative instrument, make a determination specifying one or more manners in which a notice under subsection (3) or (4) may be published.

 (5C) A manner of publication may be specified in the determination only if ASIC considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

11 Paragraph 601CC(14)(a)

Omit “advertisement in a daily newspaper circulating generally in each State or Territory where the body carried on business at any time during the 6 years before the liquidation”, substitute “a notice published in accordance with subsection 601CCA(1)”.

12 At the end of Division 1 of Part 5B.2

Add:

601CCA Publishing notices relating to cessation of business etc.

 (1) A notice mentioned in paragraph 601CC(14)(a) is published in accordance with this subsection if it is published:

 (a) unless paragraph (b) of this subsection applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or

 (b) if a determination under subsection (2) is in force:

 (i) if the determination specifies one or more manners of publication under paragraph (2)(a)—in a manner specified in the determination; or

 (ii) if the determination specifies that such a notice may be published in the prescribed manner—in the prescribed manner.

Note: For publication in the prescribed manner, see section 1367A.

 (2) For the purposes of paragraph (1)(b), ASIC may, by legislative instrument, make a determination specifying:

 (a) unless the matter in paragraph (b) of this subsection is specified—one or more manners in which a notice mentioned in paragraph 601CC(14)(a) may be published; or

 (b) that such a notice may be published in the prescribed manner.

 (3) A manner of publication may be specified in the determination under paragraph (2)(a) only if ASIC considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

13 Paragraph 601CL(15)(a)

Omit “advertisement in a daily newspaper circulating generally in each State or Territory where the foreign company carried on business at any time during the 6 years before the liquidation”, substitute “a notice published in accordance with subsection 601CLA(1)”.

14 After section 601CL

Insert:

601CLA Publishing notices relating to cessation of business etc.

 (1) A notice mentioned in paragraph 601CL(15)(a) is published in accordance with this subsection if it is published:

 (a) unless paragraph (b) of this subsection applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or

 (b) if a determination under subsection (2) is in force:

 (i) if the determination specifies one or more manners of publication under paragraph (2)(a)—in a manner specified in the determination; or

 (ii) if the determination specifies that such a notice may be published in the prescribed manner—in the prescribed manner.

Note: For publication in the prescribed manner, see section 1367A.

 (2) For the purposes of paragraph (1)(b), ASIC may, by legislative instrument, make a determination specifying:

 (a) unless the matter in paragraph (b) of this subsection is specified—one or more manners in which a notice mentioned in paragraph 601CL(15)(a) may be published; or

 (b) that such a notice may be published in the prescribed manner.

 (3) A manner of publication may be specified in the determination under paragraph (2)(a) only if ASIC considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

15 Paragraph 601WDA(1)(b)

Repeal the paragraph, substitute:

 (b) publish notice of the cancellation of the licence on the trustee company’s website (if any), and in another manner that is in accordance with subsection (4).

16 Subsection 601WDA(3)

Repeal the subsection (not including the note), substitute:

 (3) If a certificate of transfer for a voluntary transfer determination comes into force, the transferring company must, as soon as practicable, publish notice of the transfer of estate assets and liabilities on the transferring company’s website (if any), and in another manner that is in accordance with subsection (4).

17 At the end of section 601WDA

Add:

Publishing notices

 (4) A manner of publishing notice under paragraph (1)(b) or subsection (3) is in accordance with this subsection if the manner:

 (a) unless paragraph (b) applies—results in the notice being accessible to the public and reasonably prominent; or

 (b) if a determination in force under subsection (5) specifies one or more manners in which such a notice may be published—is so specified.

 (5) For the purposes of paragraph (4)(b), ASIC may, by legislative instrument, make a determination specifying one or more manners in which notice under paragraph (1)(b) or subsection (3) may be published.

 (6) A manner of publication may be specified in the determination only if ASIC considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

18 Paragraph 1070D(6)(a)

Omit “place an advertisement in a daily newspaper circulating in a place specified by the directors”, substitute “publish a notice in a mannerspecified by the directors”.

19 Paragraph 1071D(6)(b)

Omit all the words after “and”, substitute “by publishing a notice in any other manner the company thinks fit”.

20 After subclause 38(2) of Schedule 4

Insert:

 (2A) Without limiting paragraph (2)(c), regulations made under this clause may provide for ASIC to make, by legislative instrument, a determination relating to manners in which notice mentioned in that paragraph may be published.

Income Tax Assessment Act 1936

21 Subsection 45D(2) (heading)

Omit “*in national newspaper*”.

22 Subsection 45D(2)

Omit “daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory”, substitute “manner that results in the notice being accessible to the public and reasonably prominent”.

23 Subsection 177EA(7) (heading)

Omit “*in national newspaper*”.

24 Subsection 177EA(7)

Omit “daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory”, substitute “manner that results in the notice being accessible to the public and reasonably prominent”.

Income Tax Assessment Act 1997

25 Subsection 204‑50(3)

Omit “daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory”, substitute “manner that results in the notice being accessible to the public and reasonably prominent”.

Insurance Act 1973

26 Subsection 29(1)

Repeal the subsection, substitute:

 (1) A general insurer who changes its name must publish a notice of that fact:

 (a) unless paragraph (b) applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or

 (b) if a determination under subsection (2A) is in force—in a manner specified in the determination.

27 After subsection 29(2)

Insert:

 (2A) For the purposes of paragraph (1)(b), APRA may, by legislative instrument, make a determination specifying one or more manners in which a notice mentioned in subsection (1) may be published.

 (2B) A manner of publication may be specified in the determination only if APRA considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

28 Subsection 29(3)

Omit “placed”, substitute “published”.

Life Insurance Act 1995

29 Paragraph 191(2)(b)

Repeal the paragraph, substitute:

 (b) notice of intention to make the application has been published in accordance with subsection (2A); and

30 After subsection 191(2)

Insert:

 (2A) A notice referred to in paragraph (2)(b) is published in accordance with this subsection if:

 (a) the form of the notice is approved by APRA in accordance with subsection (2B); and

 (b) the applicant publishes the notice in a manner that:

 (i) unless subparagraph (ii) of this paragraph applies—results in the notice being accessible to the public and reasonably prominent; or

 (ii) if a determination under subsection (2C) is in force—is specified in the determination; and

 (c) any other requirements set out in regulations made for the purposes of this paragraph are satisfied.

 (2B) For the purposes of paragraph (2A)(a), APRA may approve, in writing, the form of a notice referred to in paragraph (2)(b).

 (2C) For the purposes of subparagraph (2A)(b)(ii), APRA may, by legislative instrument, make a determination specifying one or more manners in which a notice referred to in paragraph (2)(b) may be published.

 (2D) A manner of publication may be specified in the determination only if APRA considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

31 Subsection 191(3)

Omit “(2)(b)”, substitute “(2A)(c)”.

32 Section 223 (heading)

Repeal the heading, substitute:

223 Other matters relating to certain replacement policy documents

33 Subsections 223(3) and (4)

Repeal the subsections.

34 Subsection 224(1)

Omit “(1)”.

35 Subparagraph 224(1)(b)(i)

Repeal the subparagraph.

36 Subparagraph 224(1)(b)(ii)

Omit “after giving notice,”.

37 Subsections 224(2) and (3)

Repeal the subsections.

38 Application provision—publishing notices

The amendments of section 191 of the *Life Insurance Act 1995* made by this Part apply in relation to the publishing of notice of intention under that section on or after the commencement of this Part.

39 Saving provision—approved form of notice

(1) This item applies if an approval by APRA of a form of a notice mentioned in paragraph 191(2)(b) of the *Life Insurance Act 1995* is in force immediately before the commencement of this Part under regulations made for the purposes of that paragraph.

(2) The approval continues in force (and may be dealt with) on and after that commencement as if it were an approval of a form by APRA under subsection 191(2B) of the *Life Insurance Act 1995*, as amended by this Part.

40 Saving provision—regulations

Despite the amendment of paragraph 191(2)(b) of the *Life Insurance Act 1995* by this Part, regulations made for the purposes of that paragraph in force immediately before this Part commences continue in force (and may be dealt with) on and after that commencement as if they had been made for the purposes of paragraph 191(2A)(c) of that Act as inserted by this Part.

National Consumer Credit Protection Act 2009

41 Subsection 64(2) of the *National Credit Code*

Omit “in a newspaper circulating throughout each State and Territory”, substitute “in accordance with subsection (8)”.

42 Subsection 64(3) of the *National Credit Code*

Omit “in a newspaper circulating throughout each State and Territory”, substitute “by publishing a notice in accordance with subsection (8)”.

43 At the end of section 64 of the *National Credit Code*

Add:

Publishing notices

 (8) A notice under subsection (1) or (3) is published in accordance with this subsection if it is published:

 (a) unless paragraph (b) of this subsection applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or

 (b) if a determination in force under subsection (9) specifies one or manners in which such a notice may be published—in a manner so specified.

 (9) For the purposes of paragraph (8)(b), ASIC may, by legislative instrument, make a determination specifying one or more manners in which a notice under subsection (1) or (3) may be published.

 (10) A manner of publication may be specified in the determination only if ASIC considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

44 Subsection 66(2) of the *National Credit Code*

Omit “in a newspaper circulating throughout each State and Territory”, substitute “in accordance with subsection (6)”.

45 At the end of section 66 of the *National Credit Code*

Add:

Publishing notices

 (6) A notice under subsection (2) is published in accordance with this subsection if it is published:

 (a) unless paragraph (b) of this subsection applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or

 (b) if a determination under subsection (7) is in force—in a manner specified in the determination.

 (7) For the purposes of paragraph (6)(b), ASIC may, by legislative instrument, make a determination specifying one or more manners in which a notice under subsection (2) may be published.

 (8) A manner of publication may be specified in the determination only if ASIC considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

46 Subsection 119(2) of the *National Credit Code*

Omit “in a newspaper circulating throughout one or more States or Territories, as the court determines”, substitute “and in a manner determined by the court”.

Private Health Insurance (Prudential Supervision) Act 2015

47 Paragraph 20(4)(a)

Omit “national newspaper, or in a newspaper circulating in each jurisdiction where the insurer has its registered office or carries on business”, substitute “manner that results in the notice being accessible to the public and reasonably prominent”.

48 Paragraph 40(2)(b)

Repeal the paragraph, substitute:

 (b) notify the termination day by publishing a notice:

 (i) unless subparagraph (ii) applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or

 (ii) if a determination under subsection (2A) is in force—in a manner specified in the determination.

49 After subsection 40(2)

Insert:

 (2A) For the purposes of subparagraph (2)(b)(ii), APRA may, by legislative instrument, make a determination specifying one or more manners in which a notice mentioned in paragraph (2)(b) may be published.

 (2B) A manner of publication may be specified in the determination only if APRA considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

50 Paragraph 75(2)(b)

Repeal the paragraph, substitute:

 (b) after the external management or terminating management began but on or before the day on which the manager gives to the ADI written notice of the appointment that began the external management or terminating management.

Productivity Commission Act 1998

51 Sections 13 and 14

Omit “in each State and internal Territory, by advertisement published in a newspaper circulating in the State or Territory”, substitute “, by publishing a notice in a manner that results in the notice being accessible to the public and reasonably prominent”.

Superannuation Industry (Supervision) Act 1993

52 Subsection 10(1) (definition of *licensing transition period*)

Repeal the definition.

53 Section 29CB

Repeal the section.

54 Section 29CC (heading)

Omit “**other**”.

55 Subsection 29CC(1)

Repeal the subsection, substitute:

 (1) APRA must decide an application for an RSE licence within 90 days after receiving it, unless APRA extends the period for deciding the application under subsection (2).

56 Subsection 29CC(2)

Omit “an application covered by paragraph (1)(a) or (b)”, substitute “the application”.

57 Paragraph 29D(1)(h)

Omit “, refused consideration under subsection 29CB(3)”.

58 Subsections 142(7) and (9)

Repeal the subsections, substitute:

Publishing notice

 (7) The Regulator must publish notice of the making of each instrument under subsection (1) in a manner that results in the notice being accessible to the public and reasonably prominent.

Taxation Administration Act 1953

59 Subsection 260‑145(3) in Schedule 1

Omit “twice in a daily newspaper circulating in the State or Territory in which the person resided at the time of death”, substitute “in a manner that results in the notice being accessible to the public and reasonably prominent”.

Part 2—Contingent amendments

Corporations Act 2001

60 Subsections 254Q(5B) and (5C)

Omit “ASIC”, substitute “the Registrar”.

61 Subsections 601CCA(2) and (3)

Omit “ASIC”, substitute “the Registrar”.

62 Subsections 601CLA(2) and (3)

Omit “ASIC”, substitute “the Registrar”.

63 In the appropriate position in Chapter 10

Insert:

Part 10.64—Transitional provisions relating to Schedule 3 to the Treasury Laws Amendment (Modernising Business Communications) Act 2021

1694 Definitions

 In this Part:

***amending Schedule*** means Schedule 3 to the *Treasury Laws Amendment (Modernising Business Communications) Act 2021*.

1694A Savings—determinations made by ASIC

 (1) Subsection (2) applies if:

 (a) a determination made by ASIC under subsection 254Q(5B) of this Act (as inserted by Part 1 of the amending Schedule) (the ***empowering provision***) is in force immediately before the commencement of this Part; or

 (b) a determination made by ASIC under subsection 601CCA(2) of this Act (as inserted by Part 1 of the amending Schedule) (also the ***empowering provision***) is in force immediately before the commencement of this Part; or

 (c) a determination made by ASIC under subsection 601CLA(2) of this Act (as inserted by Part 1 of the amending Schedule) (also the ***empowering provision***) is in force immediately before the commencement of this Part.

 (2) Treat the determination as having been made by the Registrar, and being in force under the empowering provision, on the commencement of this Part.

 (3) However, if the Registrar has not amended or repealed the determination before the end of the period of 6 months after that commencement, the determination is repealed at the end of that period.