

Legislative Instruments (Deferral of Sunsetting—Legal Services Directions) Certificate 2016

EXPLANATORY STATEMENT

Issued by the Attorney-General
in compliance with section 26 of the *Legislative Instruments Act 2003*

INTRODUCTION

This Certificate was made under paragraph 51(1)(c) of the [Legislative Instruments Act 2003](#) (the LIA) and is a legislative instrument for the purposes of the LIA. The LIA provides that a certificate issued by the Attorney-General under subsection 51(1) of the LIA is not subject to the disallowance provisions of the LIA. Accordingly, a human rights statement of compatibility is not required.

OUTLINE

The purpose of Part 6 of the LIA on the sunsetting of legislative instruments is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Paragraph 51(1)(c) enables the Attorney-General to issue a certificate to defer the sunsetting day for an instrument for a period of six or 12 months. The instrument will then cease to be in force on the day specified in the certificate instead of the scheduled sunsetting day.

This allows instruments to continue to be in force for a further but limited period of time when they would otherwise sunset. This removes the administrative burden of remaking instruments which would have a limited duration when they are already fit-for-purpose.

PROCESS BEFORE CERTIFICATE WAS MADE

Regulatory impact analysis

Certificates of deferral of sunsetting are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Best Practice Regulation (OBPR). The OBPR reference for this standing exemption is ID 19633.

Consultation before making

Before this Certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the LIA, and the specific circumstances where consultation may be unnecessary or inappropriate set out in section 18. Section 55ZF of the *Judiciary Act 1903* empowers the Attorney-General to issue Legal Services Directions that are to apply generally to Commonwealth legal work, or that are to apply to Commonwealth legal work being performed, or to be performed, in relation to a particular matter. The Attorney-General's Department is consulting a number of agencies and all Commonwealth Departments in developing new Directions. The Attorney-General's Department and the Office of Parliamentary Counsel developed the certificate. The Certificate is consistent with the policy intent of the sunsetting arrangements and does not significantly alter existing arrangements. Accordingly, further consultation was unnecessary.

Statutory preconditions relevant to this Certificate

If the Attorney-General is satisfied that the statutory conditions in section 51 of the LIA are met, an instrument's sunset day can be deferred for either six or 12 months by means of a certificate made under that section. In terms of process, the LIA requires:

- the responsible rule maker to apply to the Attorney-General in writing
- the Attorney-General to be satisfied that the instrument meets the statutory conditions, and
- the Attorney-General to make a certificate that includes a statement of reasons for the issue of the certificate—this certificate must be registered (LIA s 51(3)) but is exempt from disallowance (LIA s 44(2), item 43).

As the Directions are in the Attorney-General's own portfolio, there was no formal written application in this case.

More information

The detail of the Certificate is provided in [Attachment A](#).

Copies of the instrument subject to this Certificate, which will now sunset at a later day as specified in this Certificate, are available on the whole-of-government ComLaw website. Further information about this instrument may also be requested from the Attorney-General's Department.

NOTES ON THE CERTIFICATE

Section 1 Name of Certificate

This section provides for the Certificate to be named as the *Legislative Instruments (Deferral of Sunsetting—Legal Services Directions) Certificate 2015*. The Certificate may be cited by that name.

Section 2 Commencement

This section provides for the Certificate to commence on the day after it is registered.

Section 3 Authority

This section provides that the Certificate is made under paragraph 51(1)(c) of the *Legislative Instruments Act 2003*.

Section 4 Definitions

This section defines 'Act' to mean the *Legislative Instruments Act 2003*, for the purposes of the Certificate.

Section 5 Statement of reasons for issue of Certificate

This section provides the statement of reasons as required by paragraph 51(2)(a) of the Act.

The statement of reasons provides that the Attorney-General is satisfied that the *Legal Services Directions 2005* (the Directions) would (apart from the operation of Part 6 of the Act) be likely to cease to be in force within 12 months after the scheduled sunseting day, as required by subparagraph 51(1)(b)(i) of the Act.

Section 6 Deferral of sunseting of the instrument

This section provides that the Directions, for which the sunseting day is 1 April 2016, are taken to cease to be in force under section 51 of the *Legislative Instruments Act 2003* on 1 April 2017.

Section 7 Repeal

This section provides that the Certificate is repealed on 2 April 2017.