

Legislation (Deferral of Sunsetting—Commerce Imports) Certificate 2016

EXPLANATORY STATEMENT

Issued by the Attorney-General
in compliance with section 15G of the *Legislation Act 2003*

INTRODUCTION

This certificate was made under paragraph 51(1)(c) of the *Legislation Act 2003* (the LA) and is a legislative instrument for the purposes of the LA. Section 10 of the *Legislative (Exemptions and Other Matters) Regulation 2015* (the Regulation) provides that a certificate issued by the Attorney-General under subsection 51(1) of the LA is not subject to the disallowance provisions of the LA. Accordingly, a human rights statement of compatibility is not required.

OUTLINE

The purpose of Part 4 of the LA on 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 LA. Consultation involved the Minister for Immigration and Border Protection advising the Attorney-General of the reasons for issuing a certificate to defer the sunsetting days of the particular instrument. The certificate 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 LA are met, an instrument's sunsetting day can be deferred for either six or 12 months by means of a certificate made under that section. In terms of process, the LA 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 is a legislative instrument (LA s 51(3)) but is exempt from disallowance (LA s 44(2)(b) and item 19 of s 10 of the Regulation).

More information

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

A copy of the instrument which is the subject of this certificate, and which will now sunset at a later day as specified in this certificate, is available on the whole-of-government ComLaw website.

Further information about an instrument may 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 *Legislation (Deferral of Sunsetting—Commerce Imports) Certificate 2016*. The certificate may be cited by that name.

Section 2 Commencement

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

Section 3 Authority

This section provides that the certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*.

Section 4 Definitions

This section defines ‘Act’ to mean the *Legislation 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 an instrument proposed to be made in substitution for the relevant instrument will not be able to be completed before the scheduled sunseting day for reasons that the rule-maker could not have foreseen and avoided, as required by subparagraph 51(1)(b)(i) of the Act.

Section 6 Deferral of sunseting of the instrument

This section provides that the *Commerce (Imports) Regulations 1940*, for which the sunseting day is 1 April 2016, are taken to cease to be in force under section 51 of the Act on 1 April 2017.

Section 7 Repeal

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