

# ***Legislation (Deferral of Sunsetting—Freedom of Information (Charges) Regulations) Certificate 2018***

## **EXPLANATORY STATEMENT**

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

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### **INTRODUCTION**

This certificate was made under paragraph 51(1)(c) of the *Legislation Act 2003* and is a legislative instrument for the purposes of the Legislation Act.

A certificate issued by the Attorney-General under subsection 51(1) of the Legislation Act is not subject to disallowance. As such, a statement of compatibility with human rights is not required (*Human Rights (Parliamentary Scrutiny) Act 2011*, section 9).

### **OUTLINE**

The purpose of the sunsetting provisions of the Legislation Act 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 either six or 12 months. The instrument will then be repealed on the day specified in the certificate instead of the scheduled sunsetting day.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 prior to their repeal and potential replacement. It also deals with certain situations where circumstances prevent the making of replacement instruments prior to the sunsetting day.

### **PROCESS FOR ISSUING CERTIFICATES OF DEFERRAL**

#### **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 ID19633.

#### **Consultation before making**

Before this certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. The Attorney-General is responsible for the *Freedom of Information Act 1982*, the enabling legislation under which the Regulations are made, under section 6 of the Legislation Act and under the current Administrative Arrangements Order. The certificate is consistent with the policy intent of the sunsetting

arrangements and does not significantly alter existing arrangements. Accordingly, consultation was considered unnecessary.

### **Statutory preconditions relevant to this certificate**

If the Attorney-General is satisfied that the statutory conditions in section 51 of the Legislation Act 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 Legislation Act requires:

- a) the responsible rule maker to apply to the Attorney-General in writing
- b) the Attorney-General to be satisfied that:
  - i) the instrument would (apart from the operation of the sunset provisions) be likely to cease to be in force within 12 months after its sunset day, or
  - ii) the proposed replacement instrument will not be able to be completed before the sunset day for reasons that the rule maker could not have foreseen and avoided, or
  - iii) the dissolution or expiration of the House of Representatives or the prorogation of the Parliament renders it inappropriate to make a replacement instrument before a new government is formed, and
- c) the Attorney-General to issue a certificate that includes a statement of reasons for the issue of the certificate.

As the Attorney-General is the relevant rule-maker in this instance, there is no formal correspondence associated with the making of the certificate.

The statement of reasons included in the certificate sets out the basis for the Attorney-General's satisfaction that the criterion in subparagraph 51(1)(b)(i) of the Legislation Act is met.

The certificate issued by the Attorney-General must be laid before each House of the Parliament no later than six sitting days after it is made. It is a legislative instrument and must be registered on the Federal Register of Legislation, but is not subject to disallowance (Legislation (Exemptions and Other Matters) Regulation 2015, section 10, item 19).

### **MORE INFORMATION**

Further details on the provisions of the certificate are provided in Attachment A.

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 Federal Register of Legislation.

## NOTES ON THE CERTIFICATE

### **Section 1      Name**

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Freedom of Information (Charges) Regulations) Certificate 2018*. 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 Legislation Act.

### **Section 4      Definitions**

This section defines, for the purposes of this Certificate, 'Act' to mean the *Freedom of Information Act 1982* (FRL reference C2018C00016), 'Legislation Act' to mean the *Legislation Act 2003* (FRL reference C2017C00300), 'Hawke Review' to mean the independent review published in 2013 of the *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010* by Dr Allan Hawke AC and entitled Review of the *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010*, and 'Regulations' to mean the *Freedom of Information (Charges) Regulations 1982* (FRL reference F2010C00740).

### **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 Legislation Act.

The statement of reasons explains why the Attorney-General is satisfied that the criterion set out in subparagraph 51(1)(b)(i) – that the Regulations would (apart from the operation of Part 4 of Chapter 3 of the Legislation Act) be likely to cease to be in force within 12 months after their sunset day – has been met.

### **Section 6      Deferral of sunsetting of the Regulations**

This section provides that the Regulations, for which the sunset day is 1 April 2018, are taken to cease to be in force under section 51 of the Legislation Act on 1 April 2019.

### **Section 7      Repeal of this instrument**

This section provides that the Certificate is repealed at the start of 2 April 2019.