

Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) Regulations) Certificate 2018

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* (Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The certificate is not subject to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the certificate is on or before the first anniversary of the sunsetting day (subsection 51(4) of the Legislation Act).

OUTLINE

Sunsetting is the automatic repeal of legislative instruments after a fixed period. The Australian Government's sunsetting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunsetting framework is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005. Legislative instruments registered on 1 January 2005 are subject to the staggered sunsetting timetable set out in subsection 50(2) of the Legislation Act.

Under paragraph 51(1)(c) of the Legislation Act the Attorney-General can issue a certificate to defer the sunsetting day of an instrument for a period of either six, 12, 18 or 24 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 The instrument will then be repealed on the day specified in the certificate instead of the scheduled sunsetting day.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, or where circumstances prevent the making of replacement instruments prior to the sunsetting day.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A certificate of deferral of sunsetting for six or 12 months issued by the Attorney-General under paragraph 51(1)(c) of the Legislation Act is not subject to disallowance (section 51(4) of the Legislation Act). As such, a statement of compatibility with human rights is not required (section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*).

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 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. Consultation involved the Minister for Revenue and Financial Services (the Minister) advising the Attorney-General of the reasons in support of issuing the certificate. Under the Administrative Arrangement Order on 19 April 2018, the Treasurer is responsible for administering the *A New Tax System (Australian Business Number) Act 1999* (ABN Act), the enabling legislation under which the *A New Tax System (Australian Business Number) Regulations 1999* (the ABN Regulations) were made. The Minister, as a Minister administering the Department of Treasury, was the relevant rule-maker for the purposes of section 6 of the Legislation Act (item 4, section 19 of the *Acts Interpretation Act 1901*). The certificate is consistent with the policy intent of the sunseting arrangements and does not significantly alter existing arrangements. Accordingly, further consultation was unnecessary.

Statutory preconditions relevant to this certificate

If the statutory conditions in section 51 of the Legislation Act are met, an instrument's sunseting day can be deferred for either six, 12, 18 or 24 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 sunseting provisions) be likely to cease to be in force within 24 months after its sunseting day, or
 - ii) the proposed replacement instrument will not be able to be completed before the sunseting 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, or
 - iv) the Attorney-General has approved Part 4 of Chapter 3 of the Legislation Act (Sunsetting) not applying to the instrument, and
- c) the Attorney-General to issue a certificate. The explanatory statement for the certificate to include a statement of reasons for the issue of the certificate.

On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied 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 24 months after their sunseting day. As such, the criterion in subparagraph 51(1)(b)(i) of the Legislation Act is met.

Statement of Reasons for issuing of the Certificate

For the purposes of subsection 51(5) of the Legislation Act, this section sets out the statement of reasons for the issue of this certificate.

The ABN Regulations are made under the ABN Act. The ABN Act implements and establishes a register of Australian Businesses and provides for the issue of Australian Business Numbers (ABN). The ABN Regulations prescribe information about the Australian Business Register.

In the 2018-19 Budget, the Government announced that it would consult on and design a new regulatory framework for ABNs (See Budget Measures, Budget Paper No. 2 2018-19 at p180). This measure will implement a recommendation of the ‘Black Economy Taskforce—Final Report’ and aim to strengthen the ABN register to provide improved confidence in the identity and legitimacy of Australian businesses. As such, it is expected that the ABN Regulations will cease to be in force within 24 months of their sunseting day.

A deferral would allow sufficient time for the amendments to the ABN Act and ABN Regulations to be made and avoid the need to amend them for the short period of time before they are remade.

A deferral would be consistent with the policy intent of the sunseting regime that legislative instruments should be kept up to date and only remain in force so long as they are needed.

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.

Further information may be requested from the Attorney-General’s Department about the operation of this declaration, and from the Department of the Treasury about the instrument to which this certificate applies.

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the certificate is named the *Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) 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 Deferral of sunseting

This section provides that the ABN Regulations for which the sunseting day is 1 April 2019, is taken to be repealed under section 51 of the Legislation Act on 1 April 2020.

Section 5 Repeal of this instrument

This section provides that the certificate is repealed at the start of 2 April 2020.