

# ***Legislation (Deferral of Sunsetting—Income Tax Assessment 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**

The *Legislation (Deferral of Sunsetting—Income Tax Assessment Regulations) Certificate 2018* (the 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 subject to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the certificate is after the first anniversary of the sunsetting day, which means that subsection 51(4) of that Act does not apply.

### **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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instrument will then be repealed on the day specified in the certificate instead of the scheduled sunsetting day.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.

The certificate defers the sunsetting date of the *Income Tax Assessment Regulations 1997* (the Regulations) from 1 April 2019 to 1 April 2021.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The *Legislation (Deferral of Sunsetting—Income Tax Assessment Regulations) Certificate 2018* (the certificate) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Human Rights Act).

### *Overview of the Certificate*

This certificate is made under paragraph 51(1)(c) of the Legislation Act. Under that paragraph 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. The instrument specified in this certificate is *Income Tax Assessment Regulations 1997* (the Regulations).

The certificate allows the Regulations 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.

### *Human Rights Implications*

Before issuing the certificate, the Attorney-General was satisfied that the instrument would, apart from the operation of the sunsetting provisions, cease to be in force within 24 months. Issuing a certificate of deferral therefore avoids the need to remake the Regulations in their current form for a short period of time before they are expected to be repealed and replaced.

To avoid pre-empting the nature of the replacement instrument, and with the knowledge that any instruments replaced as a consequence of the review will face future parliamentary scrutiny, the Statement of Compatibility for a certificate of deferral of sunsetting focuses on the effect of the deferral instrument, rather than the substantive effect of continuing the instruments that have been deferred.

Instruments that are replaced will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the instruments will be individually assessed at that time, including through the requirement to prepare the Statements of Compatibility with Human Rights.

### *Conclusion*

The certificate is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act by ensuring that any proposal to remake instruments that unduly limit human rights and freedoms will be subject to parliamentary oversight and scrutiny.

## **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 the certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

Consultation involved the Assistant Treasurer, the Hon Stuart Robert MP, advising the Attorney-General of the reasons in support of issuing the certificate. The Treasurer is responsible for administering the *Income Tax Assessment Act 1997* (the ITA Act), the enabling legislation under which the Regulations were made. However, the Assistant Treasurer also has a role in administering the Department of Treasury and aspects of the ITA Act, and is the relevant rule-maker for the purposes of section 6 of the Legislation Act.

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 the 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.

The rule-maker for this instrument, the Assistant Treasurer, provided a written application to the Attorney-General seeking a deferral of sunseting day for the Regulations. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the instrument 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 the certificate.

The Regulations are made under the ITA Act. That Act provides the main body of rules for the calculation of tax payable by entities in relation to a financial year. Division 995 of the ITA Act contains the definitions that support those calculations. The Regulations ensure that the ITA Act operates as intended.

The Regulations will be reviewed to ensure that they remain fit for purpose, are operating efficiently and effectively and are drafted consistently with modern drafting practices. It is expected that, as a result of the review, the Regulations will be repealed and replaced within the next 24 months.

A 24 month deferral of the sunseting day for the Regulations will allow sufficient time for the Regulations to be reviewed and will avoid the need to remake the Regulations in their current form for a short period of time before they are expected to be repealed and replaced by new regulations arising from the review.

As such, a deferral of the sunseting day for the Regulations 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 the certificate, and which will now sunset at a later day as specified in the certificate, is available on the Federal Register of Legislation.

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

**NOTES ON THE CERTIFICATE**

**Section 1      Name**

This section provides that the certificate is named the *Legislation (Deferral of Sunsetting—Income Tax Assessment 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 Regulations for which the sunseting day is 1 April 2019, are taken to be repealed under section 51 of the Legislation Act on 1 April 2021.

**Section 5      Repeal of this instrument**

This section provides that the certificate is repealed at the start of 2 April 2021.