

Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) Regulations) Amendment Certificate 2020

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) Regulations) Amendment Certificate 2020* (the amendment certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003*. It amends the *Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) Regulations) Certificate 2018* (the principal certificate). It is a legislative instrument for the purposes of the *Legislation Act* and must be registered on the Federal Register of Legislation. The amendment will be subjected to the disallowance provisions of the *Legislation Act* as the deferred sunsetting day specified in the amendment certificate is after the first anniversary of the originally scheduled sunsetting day, which means that subsection 51(4) of that Act (which provides an exemption for disallowance for deferrals of 12 months or less) should 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Subsection 50(1) of the *Legislation Act* provides that the legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 date of an instruments for a period of 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 The instrument will then be repealed on the day specified in the certificate instead of the scheduled sunsetting day.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.

Through the operation of subsection 33(3) of the *Acts Interpretation 1901*, the Attorney-General's power under paragraph 51(1)(c) includes the power to repeal, rescind, revoke, amend or vary such a certificate.

The amendment certificate amends the principal certificate, extending the previously granted deferral of sunseting for the *A New Tax System (Australian Business Number) Regulations 1999* (the ABN Regulations) by an additional 12 months, resulting in a deferral of 24 months in total. The ABN Regulations, for which the original sunseting day was 1 April 2019, will now sunset on 1 April 2021.

PROCESS BEFORE THE AMENDMENT CERTIFICATE WAS MADE

Regulatory impact analysis

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

The Minister for Housing and Assistant Treasurer advised the Attorney-General of the reasons in support of issuing an amendment certificate. The Minister is responsible for administering the ABN Regulations and is therefore the relevant rule-maker for the purposes of section 6 of the Legislation Act.

The amendment certificate is consistent with the policy intent of the sunseting arrangements and does not significantly alter existing arrangements. Accordingly, further consultation was not necessary.

Statutory preconditions relevant to the Amendment 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 the 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 originally scheduled 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 or avoided, or
 - iii. the dissolution or expiration of the House of Representatives of 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 the sunseting provisions not applying to the instrument, and
- c) the Attorney-General to issue a certificate, and
- d) the explanatory statement for the certificate to include a statement for the reasons of 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 ABN Regulations would, apart from the operation of the sunset provisions, be likely to cease to be in force within 24 months of their originally scheduled sunset day. As such, the criterion in subparagraph 51(1)(b)(i) of the Legislation Act is met.

Statement of Reasons for issuing the Amendment Certificate

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

On 17 October 2018, the Attorney-General issued the principal certificate under section 51 of the Legislation Act, deferring the sunset of the ABN Regulations from 1 April 2019 to 1 April 2020. The rule-maker for the ABN Regulations, the Minister for Housing and Assistant Treasurer, subsequently sought the Attorney-General's approval to further defer the sunset of the ABN Regulations by a further 12 months through the issue of an amendment certificate that would delay the repeal date specified in the principal certificate.

The ABN Regulations prescribe information about access to the Australian Business Register, implemented and established under the *A New Tax System (Australian Business Number) Act 1999* (ABN Act) which provides for the issue of Australian Business Numbers (ABNs). The Government has been working on a new regulatory framework for ABNs to be designed and implemented as recommended by the 'Black Economy Taskforce – Final Report'. The Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 was introduced to Parliament on 13 February 2019, and sought to make amendments to the ABN Act which would make the ABN Regulations redundant and cease to apply. However, this Bill lapsed when Parliament was dissolved on 11 April 2019.

Deferring the sunset date of the ABN Regulations for a further 12 months will allow additional time for reintroduction and passage of the Bill and avoid the need to remake the ABN Regulations for a short period of time.

As such, the amendment is consistent with the policy intent of the sunset regime, that legislative instruments should be kept up to date and only remain in force so long as they are needed.

Further information

Further details on the provisions of the certificate are provided in **Attachment A**. As the amendment certificate is a purely amending instrument, it will be automatically repealed by the operation of section 48A of the Legislation Act at the conclusion of the disallowance period.

The ABN Regulations, which will now be repealed on a later day as specified in the certificate, are available on the Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of the amendment certificate, and from the Department of the Treasury about the ABN Regulations.

STATEMENT OF COMPATABILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) Regulations) Amendment Certificate 2020* (the amendment certificate) is compatible with human rights and freedoms recognised or declared in international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

Overview of the Amendment Certificate

The amendment 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 6, 12, 18 or 24 months. The instrument will then be repealed on the day specified in the certificate instead of the scheduled sunsetting day.

Through the operation of subsection 33(3) of the Acts Interpretation Act, the Attorney-General's power under paragraph 51(1)(c) of the Legislation Act includes power to repeal, rescind, revoke, amend or vary such a certificate.

The amendment certificate amends the *Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) Regulations) Certificate 2018* (the principal certificate), extending the previously granted deferral of sunsetting for the *A New Tax System (Australian Business Number) Regulations 1999* (the ABN Regulations) by an additional 12 months, resulting in a deferral of 24 months in total. The ABN Regulations, for which the originally scheduled sunsetting day was 1 April 2019, will now sunset on 1 April 2021.

The ABN Regulations prescribe information about access to the Australian Business Register, implemented and established under the ABN Act, which provides for the issue of Australian Business Numbers (ABNs). The Government has been working on a new regulatory framework for ABNs to be designed and implemented as recommended by the 'Black Economy Taskforce – Final Report'. The Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 was introduced to Parliament on 13 February 2019, and sought to make amendments to the ABN Act which would make the ABN Regulations redundant and cease to apply. However, this Bill lapsed when Parliament was dissolved on 11 April 2019.

Deferring the sunsetting date of the ABN Regulations for a further 12 months will allow additional time for reintroduction and passage of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 and avoid the need to remake the ABN Regulations for a short period of time.

Human rights implications

The Statement of Compatibility with Human Rights for a certificate of deferral of sunsetting focuses on the effect of the deferral instrument, rather than the substantive effect of the instruments that have been deferred.

Before issuing the amendment certificate, the Attorney-General was satisfied that the ABN Regulations would, apart from the sunsetting provisions, cease to be in force within 24 months of the originally scheduled sunsetting day. Should the proposed amendments not be made, any replacement instruments that are required will be subject to parliamentary

scrutiny and oversight through disallowance processes unless otherwise exempt. The human rights impact will be individually assessed at that time, including through the requirement to prepare further Statement of Compatibility with Human Rights.

Conclusion

The amendment certificate is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act as it does not engage any of those rights or freedoms.

NOTES ON THE AMENDMENT CERTIFICATE

Section 1 Name

This section provides that the amendment certificate is named the *Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) Regulations) Amendment Certificate 2020*. The amendment certificate may be cited by this name.

Section 2 Commencement

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

Section 3 Authority

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

Section 4 Schedules

This section provides that each instrument specified in a Schedule to the amendment certificate is amended or repealed as set out in that Schedule, and any other items have effect according to their terms.

Schedule 1 Amendments

This schedule sets out the amendments to the *Legislation (Deferral of Sunsetting—A New Tax System (Australian Business Number) Regulations) Certificate 2018* (the principal certificate) that are necessary to further defer the sunsetting of the *A New Tax System (Australian Business Number) Regulations 1999* (the ABN Regulations) to 1 April 2021.

Item 1 Sections 4

This item repeals and replaces section 4 of the principal certificate.

New section 4 provides that the ABN Regulations, for which the originally scheduled sunsetting day was 1 April 2019, will now be repealed on 1 April 2021.

Item 2 Section 5

This item changes the self-repealing provision of the principle certificate so that it takes effect on 2 April 2021, rather than 2 April 2020.