

Legislation (Deferral of Sunsetting—Student Assistance Regulations) 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—Student Assistance Regulations) Certificate 2020* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003*. 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 the first anniversary of the sunsetting day, which means that subsection 51(4) of that Act (which provides an exemption from disallowance for deferrals of 12 months or less) will 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instrument will then be repealed on the day specified in the Certificate instead of the previously scheduled sunsetting day.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 *Student Assistance Regulations 2003* (the Regulations) from 1 April 2020 to 1 April 2021.

PROCESS BEFORE CERTIFICATE WAS MADE

Regulatory impact analysis

Certificates of deferral of sunseting 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.

The Minister for Families and Social Services, Senator the Hon Anne Ruston, advised the Attorney-General of the reasons in support of issuing the Certificate. The Minister is the relevant rule-maker for the instrument 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 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, and
- (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
 - (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
 - (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 that instrument, and
- (c) the Attorney-General to issue a certificate. The explanatory statement for the certificate must include a statement of reasons for the issue of the certificate.

The rule-maker for the Regulations, the Minister for Families and Social Services, Senator the Hon Anne Ruston, provided a written application to the Attorney-General seeking a deferral of sunseting for the Regulations. 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 the reasons for issuing the Certificate.

The *Student Assistance Act 1973* provides certain benefits to certain students including Indigenous students eligible for ABSTUDY payments and students eligible for payments under the Assistance for Isolated Children (AIC) scheme.

The ABSTUDY scheme (also known as the Aboriginal and Torres Strait Islander Study Scheme) provides benefits to Aboriginal and Torres Strait Islander people most in need of assistance to promote equity of educational opportunity. The AIC scheme helps the families of primary, secondary and certain tertiary students who are unable to attend an appropriate government school on a daily basis because of geographical isolation, or because the student has special educational needs due to disability or a health-related condition.

The ABSTUDY and AIC schemes are executive schemes, which are supplemented by statutory measures (for example, relating to information management, compliance and debt recovery) in the Student Assistance Act. The Regulations prescribe certain compliance requirements for the administration of these schemes.

During the drafting of the replacement regulations unanticipated drafting issues arose which include definitional inconsistencies between the Student Assistance Act, the Regulations and the ABSTUDY and AIC policy guides. These issues impacted the ability to remake the Regulations in their current form before 1 April 2020. The Minister for Families and Social Services has requested a 12-month deferral of sunseting to provide time to receive further advice and consult with Services Australia and other government agencies to address the inconsistencies and minimise disruption to the administration of the schemes. A deferral will provide time to draft replacement regulations to operate in alignment with the Act and avoid the legal risk and administrative burden associated with replacing the Regulations in their current form for a short period of time.

As such, deferral of the sunseting date of the instruments is 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 Regulations which are subject to the Certificate, and which will now sunset at 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 Certificate, and from the Department of Social Services about the Regulations.

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting– Student Assistance Regulations) Certificate 2020*. The Certificate may be cited by this 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 *Student Assistance Regulations 2003*, for which the sunseting day is 1 April 2020, is repealed under section 51 of the Legislation Act on 1 April 2021.

Section 5 Repeal of the instrument

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