

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Superannuation, Financial Services and Financial Technology

Coronavirus Economic Response Package Omnibus Act 2020

Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020

In March 2020, the Government announced its economic response to the spread of the Coronavirus known as COVID-19, including measures in the *Coronavirus Economic Response Package Omnibus Act 2020* (the Act). Schedule 16 to the Act provides that a Minister who administers legislation in the Minister's portfolio that is due to sunset on or before 15 October 2020 may defer, by up to six months, the sunsetting date of that legislation.

Ordinarily, the Attorney-General is responsible for deferring the sunsetting date of all legislative instruments by way of a certificate made under paragraph 51(1)(c) of the *Legislation Act 2003*. However, time and resource constraints during the current Coronavirus pandemic necessitates a more streamlined approach, such that responsibility is given to each portfolio to defer the sunsetting of legislation for which it has administrative responsibility. Deferring the sunsetting date provides sufficient time to properly review and remake the sunsetting legislation, following public consultation processes.

The *Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020* (the Determination) defers the sunsetting date of the *ASIC Class Order [CO 10/407]*, *ASIC Class Order [CO 10/654]* and *Australian Securities and Investments Commission Act 2001 – Takeovers Panel – Procedural Rules (12/04/2010)* until 1 April 2021.

The Act specifies no conditions that need to be met before the power to make the Determination is exercised.

The Australian Securities and Investments Commission and the Takeovers Panel requested the deferral of the sunsetting of the legislative instruments that are the subject of this Determination as the preparation of replacement instruments was delayed by urgent work in response to the Coronavirus pandemic and constraints on public consultation as a result of the availability of stakeholders.

The Australian Securities and Investments Commission and the Takeovers Panel were consulted in making the Determination and supported the Determination. The Attorney-General's Department was provided an opportunity to comment on the Determination and expressed no concerns. The Office of Best Practice Regulation was also consulted. It advised that a regulation impact statement was not required for the Determination, as the Determination merely postpones consideration of whether a regulation impact statement needs to be prepared for each of the legislative instruments that has its sunsetting date deferred. No public consultation was undertaken as the instrument is machinery in nature.

Details of the Determination are set out in Attachment A.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination commenced on the day after it was registered.

A statement of Compatibility with Human Rights is at Attachment B.

Details of the Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020

Section 1 – Name of the Determination

This section provides that the name of the Determination is the *Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020*.

Section 2 – Commencement

The Determination commenced on the day after the instrument was registered on the Federal Register of Legislation.

Section 3 – Authority

The Determination is made under Schedule 16 of the *Coronavirus Economic Response Package Omnibus Act 2020*.

Section 4 – Definitions

Section 4 includes a definition of ***sunsetting instrument*** which sets the scope of the Determination.

Section 5 – Deferral of original sunset date

Section 5 defers the sunsetting date of three Treasury portfolio legislative instruments, due to be repealed by section 50 of the *Legislation Act 2003* (that is, due to sunset) on 1 October 2020. These instruments are:

- *ASIC Class Order [CO 10/407] (Federal Register of Legislation ID F2010L01522)*;
- *ASIC Class Order [CO 10/654] (Federal Register of Legislation ID F2017C00172)*; and
- *Australian Securities and Investments Commission Act 2001 – Takeovers Panel – Procedural Rules (12/04/2010) (Federal Register of Legislation ID F2010L000948)*.

The sunsetting date of each of these instruments is deferred until the earlier of the following days (known as the later sunset day):

- 1 April 2021 (six months after the original sunset day of each of these instruments);
- the day that sunsetting instrument is repealed if it is remade and repealed before 1 April 2021.

Each instrument is repealed on that later sunset day.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020* defers the sunsetting date of the following legislative instruments that are due to sunset on 1 October 2020:

- *ASIC Class Order [CO 10/407]*;
- *ASIC Class Order [CO 10/654]*; and
- *Australian Securities and Investments Commission Act 2001 – Takeovers Panel – Procedural Rules (12/04/2010)*.

Each of these instruments now continue to operate until the earlier of the following days (known as the later sunset day):

- 1 April 2021;
- the day that sunsetting instrument is repealed.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.