

Legislation (Deferral of Sunsetting—Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination) 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—Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination) 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 will be 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 originally scheduled sunsetting day, which means that subsection 51(4) of that Act (which provides an exemption from disallowance for deferrals of 12 months or less) 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011* from 1 April 2021 to 1 April 2023.

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 Communications, Cyber Safety and the Arts, the Hon Paul Fletcher MP, advised the Attorney-General of the reasons in support of issuing the Certificate. The Minister is the relevant rule-maker for the Determination 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 of 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 Determination, the Minister for Communications, Cyber Safety and the Arts, the Hon Paul Fletcher MP, provided a written application to the Attorney-General seeking a deferral of sunseting for the *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011*. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Determination 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 its 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 Universal Service Obligation (USO) is a statutory requirement under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act), which is designed to provide all people in Australia with reasonable access to a standard telephone service, wherever they reside or carry on business. The TCPSS Act requires the primary universal service provider, currently Telstra, to supply a service to people on reasonable request. The *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011* sets out the conditions for a reasonable request for a standard telephone service under the USO, and sets out circumstances in which the primary universal service provider is and is not required to provide such a service.

In December 2018, the Australian Government announced that the USO would be subsumed by a wider Universal Service Guarantee (USG)¹, which covers broadband as well as voice services. The Government also committed to retain the USO until there were robust and proven alternatives. Continuation of the Determination is consistent with this commitment.

At the same time, the Government also undertook to work with consumers and industry on ways to improve the USG over time. This work continues. For example, in August 2020, the Government launched the Alternative Voice Service Trials program.² The objective of the trials is to identify new ways to deliver voice services, including by new providers, and assess their effectiveness, given concerns about existing voice solutions and the potential for alternative technologies to provide better services and functionality. This and other work may provide a pathway for the better delivery of the USG, including more cost-effective technologies, better services for rural and remote consumers, and a clear trajectory for ongoing service improvement.

A 24 month deferral will maintain the Government's commitment to retain the USO and allow the current work on improved USG delivery to proceed without distraction. The deferral will avoid the need to remake the instrument in its current form for the short period of time before it would otherwise need to be repealed and a replacement instrument made. As such, deferral of the sunset date of the instrument 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.

More information

Further details on the provisions of the Certificate are provided in [Attachment A](#).

The Determination which is subject to 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 Department of Infrastructure, Transport, Regional Development and Communications about the Determination.

¹ See: www.mitchfield.com/2018/12/telecommunications-universal-service-guarantee/ (accessed 17 September 2020)

² See: www.communications.gov.au/what-we-do/phone/phone-services/universal-service-guarantee-telecommunications/alternative-voice-services-trials-program (accessed 17 September 2020)

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination) Certificate 2020* (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* (the Human Rights Act).

Overview of the Certificate

This Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*. 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 the *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011*.

The instrument is expected to be repealed and replaced, if required, within 24 months of its scheduled sunsetting date. The instrument sets out the conditions for a reasonable request for a standard telephone service under the Universal Service Obligation (USO), which is a statutory requirement under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act).

In December 2018, the Government announced that the USO would be subsumed by a wider Universal Service Guarantee (USG), which covers broadband as well as voice services. The Government committed to retain the USO until there were robust and proven alternatives. At the same time, the Australian Government also undertook to work with consumers and industry on ways to improve the USG over time. This work continues. A 24 month deferral will allow sufficient time for further work to be undertaken, and a replacement instrument to be made, if required.

The Certificate allows the instrument to continue to be in force for a further but limited period of time when it 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

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 instrument that has been deferred.

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 of its sunsetting date. Issuing a certificate of deferral therefore avoids the need to replace the instrument in its current form for a short period of time before it is expected to be repealed and possibly replaced.

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 instrument will be assessed at that time, including through the requirement to prepare a further Statement of Compatibility with Human Rights.

Conclusion

This 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 make a replacement instrument that unduly limits human rights and freedoms will be subject to parliamentary oversight and scrutiny.

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination) 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 *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011* for which the sunseting day is 1 April 2021, is repealed by section 51 of the Legislation Act on 1 April 2023.

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 April 2023.