

Legislation (Deferral of Sunsetting—Guide to the Assessment of the Degree of Permanent Impairment Instruments) Certificate 2021

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Guide to the Assessment of the Degree of Permanent Impairment Instruments) Certificate 2021* (the Certificate) is 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 will not be subject to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the certificate is on or before the first anniversary of the originally scheduled sunsetting day, pursuant to subsection 51(4) of that Act (which provides an exemption from disallowance for deferrals of 12 months or less).

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 following instruments (the PI Guides) by 12 months from 1 April 2022 to 1 April 2023:

- the *Safety, Rehabilitation and Compensation Act 1988 - Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1*; and
- the *Seafarers Rehabilitation and Compensation Act 1992 - Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1*.

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 Chief Executive Officer of Comcare, Ms Sue Weston PSM, advised the Attorney-General of the reasons in support of issuing the certificate. Ms Weston is the relevant rule-maker for the PI Guides for the purposes of section 6 of the Legislation Act. Comcare is currently well progressed in drafting new PI Guides. Consultation on the draft replacement PI Guides opened on 30 June 2021 and closed in mid-August 2021.

The PI Guides will cease to be in force prior to 1 April 2023 due to their repeal and replacement with new instruments as part of their sunseting review. A 12 month deferral will allow sufficient time for further consultation and replacement PI Guides to be made. Consultation on the draft replacement PI Guides opened on 30 June 2021 and closed in mid-August 2021. The deferral will avoid the need to remake the PI Guides in their current form for the short period of time before they are repealed and replacement instruments are made. As such, deferral of the sunseting date of the PI Guides is consistent with the policy intent of the sunseting regime, and does not significantly alter existing arrangements.

As the deferral certificate is machinery in nature, further consultation in relation to the deferral was considered unnecessary. This will minimise the administrative burden on stakeholders associated with deferral. Any replacement instruments will be subject to parliamentary oversight, including whether adequate consultation occurred with persons likely to be affected by the replacement instruments.

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; 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 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 instrument, the Chief Executive Officer of Comcare, Ms Sue Weston PSM, provided a written application to the Attorney-General seeking a deferral of sunseting for the PI Guides. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the PI Guides 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.

Comcare is currently well progressed in drafting new PI Guides for both workers' compensation schemes under the *Safety, Rehabilitation and Compensation Act 1988* and the *Seafarers Rehabilitation and Compensation Act 1992*. Without the PI Guides in force, no compensation would be payable in respect of permanent impairment or non-economic loss under either Act. The new PI Guides will be based on Safe Work Australia's template National Guidelines for the Evaluation of Permanent Impairment, with amendments as necessary to fit within the relevant legislative framework.

Consultation on the draft replacement PI Guides opened on 30 June 2021 and closed in mid-August 2021. Following this consultation, it is anticipated that amendments will be required to the draft PI Guides, which should be completed in early 2022.

A 12 month deferral of the sunseting date will allow sufficient time for amendments resulting from recent consultations to be undertaken and replacement instruments to be made. The deferral will avoid the need to remake the PI Guides in their current form for the short period of time before they are repealed and replacement instruments are made. As such, deferral of the sunseting date of the PI Guides 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 PI Guides 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 Comcare about the PI Guides.

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Guide to the Assessment of the Degree of Permanent Impairment Instruments) Certificate 2021*. 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 following instruments, for which the sunseting day is 1 April 2022, are repealed by section 51 of the Legislation Act on 1 April 2023:

- *Safety, Rehabilitation and Compensation Act 1988 - Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1*; and
- *Seafarers Rehabilitation and Compensation Act 1992 - Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1*.

Section 5 Repeal of the instrument

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