

Legislation (Deferral of Sunsetting—Life Insurance (Prudential Standard) Instruments) Certificate 2022

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Life Insurance (Prudential Standard) Instruments) Certificate 2022* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (Cth) (the Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation.

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration. 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 6, 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 The instrument will then be repealed on the day specified in the Certificate instead of the previously scheduled sunsetting day.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 by 12 months from 1 April 2023 to 1 April 2024 (together, the 'Life Insurance (Prudential Standard) Instruments'):

- (a) the *Life Insurance (prudential standard) determination No. 2 of 2012*;
- (b) the *Life Insurance (prudential standard) determination No. 3 of 2012*;
- (c) the *Life Insurance (prudential standard) determination No. 4 of 2012*;
- (d) the *Life Insurance (prudential standard) determination No. 6 of 2012*;
- (e) the *Life Insurance (prudential standard) determination No. 7 of 2012*;
- (f) the *Life Insurance (prudential standard) determination No. 10 of 2012*;
- (g) the *Life Insurance (prudential standard) determination No. 12 of 2012*; and
- (h) the *Life Insurance (prudential standard) determination No. 15 of 2012*.

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.

In 2017, the Australian Accounting Standards Board (AASB) issued a new accounting standard, AASB 17 Insurance Contracts (AASB 17), which establishes principles for the recognition, measurement, presentation and disclosure of insurance contracts. Since 2017, the Australian Prudential Regulation Authority (APRA) has been consulting on proposals to align APRA's life and general insurance capital frameworks to the modified, and new, accounting concepts in AASB 17. The Life Insurance (Prudential Standard) Instruments form part of APRA's consultations on the alignment of APRA's capital frameworks with AASB 17. In December 2021, APRA released a Response Paper advising that revised Life Insurance (Prudential Standard) Instruments would be implemented on 1 July 2023. Until the revised Life Insurance (Prudential Standard) Instruments commence, companies carrying on life insurance business in Australia will be required to comply with the currently in force instruments. Accordingly, the current Life Insurance (Prudential Standard) Instruments are required to be in force until 1 July 2023, at which time they will be actively revoked by the legislative instruments which will also determine the revised instruments.

Certificates of deferral are machinery in nature, and enable legislative instruments that would otherwise sunset to remain in force for a further, but strictly limited, period of time. This will minimise the administrative burden on stakeholders associated with consultation on a deferral that will only have effect for a limited amount of time. The Life Insurance (Prudential Standard) Instruments have been subject to consultation by APRA since 2017 which is ongoing with the expectation of replacement instruments commencing on 1 July 2023. A 12-month deferral will allow sufficient time for further consultation prior to the revised instruments being made. The deferral will avoid the need to remake the Life Insurance (Prudential Standard) Instruments in their current form for the short period of time before they are repealed and replacement instruments made. As such, deferral of the sunseting date of the Life Insurance (Prudential Standard) Instruments is consistent with the policy intent of the sunseting regime, and does not significantly alter existing arrangements.

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 6, 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 sunset provisions) be likely to cease to be in force within 24 months after its sunset day
 - (ii) the proposed replacement instrument will not be able to be completed before the sunset 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 Life Insurance (Prudential Standard) Instruments, the Executive Director of the Policy and Advice Division of APRA Ms Renee Roberts, provided a written application to the Attorney-General seeking a certificate of deferral of sunset for the Life Insurance (Prudential Standard) Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Life Insurance (Prudential Standard) Instruments 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 sunset 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 *Life Insurance Act 1995* provides that APRA may determine prudential standards for the prudential supervision of life companies. The Life Insurance (Prudential Standard) Instruments are prudential standards that impose capital and other prudential requirements on companies carrying on life insurance business in Australia. Since the Australian Accounting Standards Board issued a new accounting standard for insurance contracts in 2017, APRA has been consulting on proposals to align current life and general insurance capital frameworks to the modified, and new, concepts provided by the Board. A 12 month deferral would ensure APRA has the time necessary to conduct further industry consultation to determine revised versions of the Life Insurance (Prudential Standard) Instruments such that the new instruments will commence on 1 July 2023. Accordingly, the Life Insurance (Prudential Standard) Instruments will likely cease to be in force in their current form within 24 months of their original sunset day.

More information

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

The Life Insurance (Prudential Standard) Instruments, 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 APRA about the Life Insurance (Prudential Standard) Instruments to which the Certificate applies.

NOTES ON THE CERTIFICATE

Section 1 Name

This instrument is the *Legislation (Deferral of Sunsetting—Life Insurance (Prudential Standard) Instruments) Certificate 2022*. 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 2003*.

Section 4 Deferral of sunsetting

This section provides that the following instruments, for which the sunsetting day is 1 April 2023, are repealed by section 51 of the *Legislation Act 2003* on 1 April 2024:

- the *Life Insurance (prudential standard) determination No. 2 of 2012*;
- the *Life Insurance (prudential standard) determination No. 3 of 2012*;
- the *Life Insurance (prudential standard) determination No. 4 of 2012*;
- the *Life Insurance (prudential standard) determination No. 6 of 2012*;
- the *Life Insurance (prudential standard) determination No. 7 of 2012*;
- the *Life Insurance (prudential standard) determination No. 10 of 2012*;
- the *Life Insurance (prudential standard) determination No. 12 of 2012*; and
- the *Life Insurance (prudential standard) determination No. 15 of 2012*.

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 April 2024.