

# *Legislation (Deferral of Sunsetting—Insurance Instruments) Certificate 2023*

## **EXPLANATORY STATEMENT**

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

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### **INTRODUCTION**

The *Legislation (Deferral of Sunsetting—Insurance Instruments) Certificate 2023* (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. Pursuant to subsection 51(4) of the Legislation Act, the Certificate will not be subject to the disallowance provisions of that Act as the deferred sunsetting day specified in the Certificate is on or before the first anniversary of the originally scheduled sunsetting day. Subsection 51(4) of the Legislation Act provides that a certificate of deferral is exempt from disallowance if it defers the sunsetting day of an instrument by up to 12 months.

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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

- a) *Insurance Acquisitions and Takeovers Act 1992—Decision-Making Principles IDM 1/1992* ('the Decision-Making Principles');
- b) *Insurance Acquisitions and Takeovers (Notices) Regulations*;
- c) *Insurance Regulations 2002*;
- d) *Life Insurance Regulations 1995*.

The ability to defer sunset dates is an integral part of the sunset framework. It provides the necessary flexibility to ensure the standard 10-year sunset period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. Where the deferral is for a short period (6 or 12 months), the certificate is exempt from disallowance because the instruments will shortly be reviewed and, if remade, subject to disallowance and parliamentary scrutiny. Subjecting short term certificates of deferral to disallowance would undermine the flexibility afforded by their further but strictly limited postponement of sunset. In this case, the Insurance Instruments are expected to be remade within 12 months of the sunset date once the Parliament has considered the Treasury Laws Amendment (2023 Law Improvement Package No. 1) Bill 2023 (the Bill). The Bill is proposed to amend the Insurance Instruments' enabling Acts to implement the findings of a thematic review of regulation imposed on the insurance industry, and to transition to the new framework of instruments proposed to replace the Insurance Instruments. This review was conducted by Treasury following an alignment of the sunset days of the Insurance Instruments under the *Legislation (Insurance Instruments) Sunset-altering Declaration 2018* to 1 October 2023.

## **PROCESS BEFORE CERTIFICATE WAS MADE**

### **Regulatory impact analysis**

Certificates of deferral of sunset are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Impact Analysis (OIA). The OIA 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 Decision-Making Principles and the *Insurance Acquisitions and Takeovers (Notices) Regulations* are made under the *Insurance Acquisitions and Takeovers Act 1991*. The *Insurance Regulations 2002*

are made under the *Insurance Act 1973*. The *Life Insurance Regulations 1995* are made under the *Life Insurance Act 1995*.

The implementation of the new framework of instruments proposed to replace the Insurance Instruments is contingent upon the passage and commencement of the Bill, which is currently being considered by the Parliament. The Bill proposes to amend the enabling Acts for the Insurance Instruments to implement the findings of the recent thematic review and to transition to the new framework. This review was conducted by Treasury in 2022 following an alignment of the sunseting days of the Insurance Instruments to 1 October 2023 under the *Legislation (Insurance Instruments) Sunset-altering Declaration 2018*. A number of provisions in the enabling Acts and Insurance Instruments were identified as being inoperative, spent, or necessary to clarify in order to ensure the law operates as intended. A number of provisions contained in the Insurance Instruments were also identified as being appropriate to incorporate into the primary law, in accordance with the hierarchy of laws. Following the review, Treasury undertook public consultation between 11 April 2023 and 26 April 2023 on draft legislation proposed to:

- replace and improve the Decision-Making Principles, *Insurance Regulations 2002* and *Life Insurance Regulations 1995*;
- repeal the *Insurance Acquisitions and Takeovers (Notices) Regulations*, and
- amend the enabling Acts for the Insurance Instruments (now in the Bill).

A 12-month deferral will allow sufficient time for the Bill to be considered by Parliament, avoiding the need to remake the instruments in their current form for the short period of time before they are repealed and replacement instruments are made. As such, given that deferral of the sunseting date of the Insurance Instruments is consistent with the policy intent of the sunseting regime and does not significantly alter existing arrangements, appropriate consultation has occurred for the purposes of section 17 of the Legislation Act.

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. Any replacement instruments will be subject to further consultation and parliamentary oversight, including oversight of 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 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 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 issuing of the certificate.

The rule-maker for the Insurance Instruments, the Assistant Treasurer and Minister for Financial Services, the Hon Stephen Jones MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the Insurance Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the 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 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 reasons for issuing the Certificate.

The Insurance Instruments have the following operation and effect:

- the Decision-Making Principles determine, under subsection 65(2) of the *Insurance Acquisitions and Takeovers Act 1991*, matters to which regard must be had in determining whether a matter is contrary to the public interest or is likely to have the effect or result mentioned in subsection 5(1) of that Act;
- the *Insurance Acquisitions and Takeovers (Notices) Regulations* prescribe in a specific form the requirements for giving certain notices under the *Insurance Acquisitions and Takeovers Act 1991*;
- the *Insurance Regulations 2002* set out:
  - circumstances in which foreign insurers who are not authorised under the *Insurance Act 1973* are able to enter into insurance contracts in Australia;
  - certain entities and types of insurance business to which that Act does not apply; and
  - technical details associated with the financial claims scheme;
- the *Life Insurance Regulations 1995* set out:
  - a threshold for the term of a policy to be considered a life policy under the *Life Insurance Act 1995*;
  - provisions to facilitate the operation of Australian branches of foreign life insurance companies in Australia;
  - administrative requirements including, for example, notice to be given to the Australian Prudential Regulation Authority on establishing a statutory fund, maximum rates for interest on overdue premiums and mechanics relating to unclaimed money.

The *Legislation (Insurance Instruments) Sunset-altering Declaration 2018* aligned the sunseting dates for the Insurance Instruments to 1 October 2023 to enable Treasury to conduct a comprehensive thematic review of regulation imposed on the insurance industry. Treasury conducted the review in 2022.

The Certificate defers the sunseting date of the Insurance Instruments by 12 months to 1 October 2024 to enable sufficient time for the Bill to pass. Should the Bill pass Parliament, the Bill will amend the enabling Acts for the Insurance Instruments to implement the findings of the 2022 thematic review and to transition to the new framework. A 12-month deferral would avoid the need to remake the Insurance Instruments in their current form for the short period of time before they are repealed and the new framework of instruments made.

Accordingly, the Insurance Instruments will likely cease to be in force in their current form within 24 months of their original sunset date.

**More information**

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

The Insurance 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 Treasury about the instruments to which the Certificate applies.

## NOTES ON THE CERTIFICATE

### **Section 1      Name**

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting— Insurance Instruments) Certificate 2023*. 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 sunseting**

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

- a) the *Insurance Acquisitions and Takeovers Act 1992—Decision-Making Principles IDM 1/1992*;
- b) the *Insurance Acquisitions and Takeovers (Notices) Regulations*;
- c) the *Insurance Regulations 2002*; and
- d) the *Life Insurance Regulations 1995*.

### **Section 5      Repeal of the instrument**

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