

***Legislation (Deferral of Sunsetting—Parliamentary Service Determination)
Certificate 2023***

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Parliamentary Service Determination) Certificate 2023* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (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. 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 sunseting date of *Parliamentary Service Determination 2013* ('the Determination') by 12 months from 1 October 2023 to 1 October 2024.

The ability to defer sunseting dates is an integral part of the sunseting framework. It provides the necessary flexibility to ensure the standard 10-year sunseting 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 Determination 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 sunseting. In this case, the Determination is expected to be remade within 12 months of the sunseting date as a result of changes brought about by analogous instruments for the Australian Public Service departments and agencies, being the *Public Service Regulations 2023* and the *Australian Public Service Commissioner's Directions 2022* (the APS Instruments).

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 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 Determination is made under the *Parliamentary Service Act 1999*.

The Parliamentary Service Act provides a legal framework for the effective and fair employment, management, and leadership of Parliamentary Service employees. The Determination provides the detail of the operation of the employment relationship, and the rights and obligations between the Parliamentary Departments and their employees. Remaking of the Determination will involve aligning it with recent changes made to the APS Instruments. A consultation process involving key stakeholders in all of the Parliamentary Departments has been undertaken in respect of the remaking of the Determination. Consultation will also be undertaken with employees of each Parliamentary

Department via their Executive Committees. These consultation processes will be conducted with a view to ensuring that the new Determination is fit-for-purpose for all Parliamentary Departments, in addition to mirroring the mechanisms and conditions of employment that govern the APS.

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. 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 instrument 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.

A 12-month deferral will allow sufficient time for the amendments to the Determination to be drafted and subject to consultation, and will avoid the need to remake the Determination in its current form for the short period of time before it is repealed and a replacement instrument is made. As such, given that deferral of the sunseting date of the Determination 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.

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 issue of the certificate.

The rule-maker for the Determination, the Presiding Officers of the Australian Parliament, the Speaker of the House of Representatives, the Hon Milton Dick MP, and the President of the Senate, Senator the Hon Sue Lines, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the Instrument. 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 reasons for issuing the Certificate.

The Certificate defers the sunseting date of the Determination by 12 months to 1 October 2024 to enable the Department of Parliamentary Services to remake the Determination to reflect changes to the APS Instruments. Section 71 of the Parliamentary Service Act provides that Determination must adopt certain matters as prescribed in the *Public Service Regulations 2023*, and that other such matters may be incorporated into the Determination as appropriate. Given the Public Service Regulations were only remade as recently as 1 April 2023, the Determination could not be remade before this time, leaving a limited amount of time in which to remake the Determination before its sunseting date of 1 October 2023. The deferral of the sunseting date will facilitate the implementation of relevant changes to the APS Instruments in the Determination, while also enabling consultation on broader changes that may be required to improve the operation of the Determination.

Accordingly, the Determination will likely cease to be in force in its current form within 24 months of its original sunseting date.

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 Parliamentary Services about the Instrument 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—Parliamentary Service Determination) 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 *Parliamentary Service Determination 2013*, for which the sunseting day is 1 October 2023, is repealed by section 51 of the *Legislation Act 2003* on 1 October 2024.

Section 5 Repeal of the instrument

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