

*Legislation (Deferral of Sunsetting—Public Interest Disclosure Standard)  
Certificate 2024*

**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—Public Interest Disclosure Standard) Certificate 2024* (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. 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration. 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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 the *Public Interest Disclosure Standard 2013* ('the PID Standard') by 24 months from 1 April 2024 to 1 April 2026.

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. In this case, the PID Standard is expected to be remade within 24 months of the sunseting date to reflect the second stage of reforms to the *Public Interest Disclosure Act 2013* (the PID Act). If the Certificate were to be disallowed, there would not be enough time to review and remake the Instrument prior to the sunseting day.

## **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 PID Standard is made under the PID Act. The Australian Government is undertaking a second stage of reform to the PID Act to address the underlying complexity of the scheme and ensure it provides effective and accessible supports for public sector whistleblowers. These reforms are expected to impact the matters addressed in the PID Standard. The Commonwealth Ombudsman will consult on the remaking of a replacement PID Standard that is consistent with the requirements of the second stage reforms to the PID 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 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 instrument.

A 24-month deferral will allow sufficient time for the Ombudsman to consult on and make a replacement instrument consistent with the requirements of an amended PID Act, and will avoid the need to remake the PID Standard 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 PID Standard 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 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 PID Standard, the Commonwealth Ombudsman, 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 PID Standard 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 the 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 PID Standard by 24 months to 1 April 2026 to enable the Commonwealth Ombudsman to make a replacement instrument consistent with the requirements of the second stage of reforms to the PID Act.

Subsection 74(1) of the PID Act provides that the Commonwealth Ombudsman may, by legislative instrument, determine standards in relation to specific matters, including procedures concerning internal disclosures, the conduct of and reporting on investigations under the PID Act, and annual reporting. Subsection 74(1) is given effect by the PID Standard, of which the Commonwealth Ombudsman is the maker.

In June 2023, the PID Standard was amended to ensure consistency with the PID Act as amended by the *Public Interest Disclosure Amendment (Review) Act 2023* (the Amendment Act). Specifically, the PID Standard was updated to reflect changes to notification and reporting obligations in the PID Act as amended by the Amendment Act, as well as providing for additional record-keeping obligations and some minor technical amendments.

The Australian Government is undertaking a second stage of reform to the PID Act to address the underlying complexity of the scheme and ensure it provides effective and accessible supports for public sector whistleblowers. Subject to passage of reforms to the PID Act, the replacement instrument would be made consistent with the requirements of an amended PID Act.

A 24-month deferral of the sunseting day would therefore:

- recognise the Standard was recently amended;
- recognise the PID Act is proposed to be amended again as part second stage reforms, soon after the Standard is due to sunset; and
- streamline legislative and consultative processes enabling the Ombudsman to make a replacement instrument consistent with the requirements of the second stage PID Act reforms.

Accordingly, the PID Standard 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 PID Standard, 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 Commonwealth Ombudsman about the Instrument to which the Certificate applies.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The *Legislation (Deferral of Sunsetting—Public Interest Disclosure Standard) Certificate 2024* (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**

The 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 6, 12, 18 or 24 months. The instrument will then be repealed on the day specified in the Certificate instead of the originally scheduled sunsetting day. The Instrument specified in the Certificate is the *Public Interest Disclosure Standard 2013* (‘the PID Standard’).

The PID Standard is expected to be repealed and replaced within 24 months of its scheduled sunsetting day following passage of the second stage of reforms to the PID Act.

Before issuing the Certificate, the Attorney-General was satisfied that the PID Standard 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 replaced.

The Certificate allows the PID Standard 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 the Instrument which would have a limited duration prior to its expected repeal and replacement, or where circumstances prevent the making of a replacement instrument prior to the sunsetting day.

### **Human Rights Implications**

A certificate of deferral of sunsetting extends the operation of the instrument but does not change or affect the rights engaged under the original instrument.

The PID Standard does not engage in any issues of human rights and freedoms recognised or declared by the international instruments in section 3 of the Human Rights Act. The PID Standard is of a

procedural nature, and the requirements it imposes are on the agencies covered by the PID Act to support good administration of the Scheme, not upon individual citizens in a private capacity.

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 replacement PID Standard will be assessed at the time it is made, including through the requirement to prepare a 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, as it does not raise any human rights issues. A replacement instrument 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— Public Interest Disclosure Standard) Certificate 2024*. 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 *Public Interest Disclosure Standard 2013*, for which the sunseting day is 1 April 2024, is repealed by section 51 of the *Legislation Act 2003* on 1 April 2026.

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

This section provides that the Certificate is repealed at the start of 2 April 2026.