

# *Legislation (Deferral of Sunsetting—Sydney Airport Instruments) 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—Sydney Airport Instruments) 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 subjected 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 following instruments by 24 months from 1 April 2024 to 1 April 2026 (together, ‘the Demand Management Instruments’):

- *Sydney Airport Compliance Scheme 2012*
- *Sydney Airport Demand Management Regulations 1998*
- *Sydney Airport Slot Management Scheme 2013*.

The Demand Management Instruments previously had their sunseting days aligned to 1 April 2024 by the *Legislation (Airport Instruments) Sunset-altering Declaration 2018*.

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 Demand Management Instruments are expected to be remade within 24 months of the sunseting date following a comprehensive review currently underway. If the Certificate were to be disallowed, there would not be enough time to undertake further consultation with industry that will inform replacement instruments 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 Demand Management Instruments are made under the *Sydney Airport Demand Management Act 1997* (SADM Act). The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) is currently undertaking a comprehensive review of the Demand Management Instruments to enhance efficiencies and provide flexibility for growing demand, whilst safeguarding local community interests as far as possible. The review has already canvassed a number of options to achieve a balanced regulatory approach. Due to the complex nature of the regulatory framework and the sensitivities around aircraft noise, the Department is undertaking an extensive internal and external consultation process.

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.

A 24-month deferral will allow sufficient time for the Department to undertake further consultation with industry on improvements to the Sydney Airport Demand Management Framework and will avoid 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 Demand Management 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.

### **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 Demand Management Instruments, the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the Instruments.

On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Demand Management 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 Certificate defers the sunseting date of the Demand Management Instruments by 24 months to 1 April 2026 to enable the Department to undertake further consultation with industry that will shape the instruments that replace the Demand Management Instruments.

The Demand Management Instruments previously had their sunseting days aligned to 1 April 2024 by the *Legislation (Airport Instruments) Sunset-altering Declaration 2018*. The former Attorney-General approved this alignment in order for the responsible department at the time, the Department of Infrastructure, Regional Development and Cities, to conduct a single holistic review of instruments related to the administration of federally leased airports, which began in September 2018. The Demand Management Instruments were originally due to sunset on 1 April 2019.

The Demand Management Instruments facilitate the air traffic in and out of Sydney Airport and also establish a compliance framework for adherence to noise abatement measures, movement caps as well as ensuring carriers operate in their designated take-off and landing times.

The 2019 Productivity Commission inquiry into the economic regulation of airports, the Review of the Sydney Airport Demand Management Scheme (the Harris Review), acknowledged the need to retain the Demand Management Framework. Industry stakeholders have expressed the same support for the framework and an interest in engaging in discussions about meaningful change to provide better service to the travelling public at Australia's busiest international and domestic gateway.

The Department is currently undertaking a comprehensive review of the Demand Management Instruments to enhance efficiencies and provide flexibility for growing demand, whilst safeguarding local community interests as far as possible. The review has already canvassed a number of options to achieve a balanced regulatory approach. Due to the complex nature of the regulatory framework and the sensitivities around aircraft noise, the Department is undertaking an extensive internal and external consultation process to inform the making of the instruments that replace the Demand Management Instruments. A 24-month deferral of the Instruments' sunseting day

is necessary for the Department to undertake further consultation with industry on improvements of the framework and to provide sufficient time to be able to properly canvass options to implement changes while limiting, as far as possible, the potential impacts on stakeholders.

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

### **More information**

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

The Demand Management 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 the Department of Infrastructure, Transport, Regional Development, Communications and the Arts about the Instruments to which the Certificate applies.

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

The *Legislation (Deferral of Sunsetting—Sydney Airport Instruments) 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 sunseting 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 sunseting day. The Instruments specified in the Certificate are (together, the 'Demand Management Instruments'):

- a) the *Sydney Airport Compliance Scheme 2012*
- b) the *Sydney Airport Demand Management Regulations 1998*
- c) the *Sydney Airport Slot Management Scheme 2013*.

The Demand Management Instruments are expected to be repealed and replaced within 24 months of their scheduled sunseting day following further industry consultation on improvements to the Demand Management Framework.

The Certificate allows the Demand Management 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 the Instruments which would have a limited duration prior to their expected repeal and replacement, or where circumstances prevent the making of a replacement instrument prior to the sunset day.

### **Human Rights Implications**

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

The Demand Management Instruments do 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.

Before issuing the Certificate, the Attorney-General was satisfied that the Demand Management Instruments would, apart from the operation of the sunset provisions, cease to be in force within 24 months of their sunset date. Issuing a certificate of deferral therefore avoids the need to replace the Instruments in their current form for a short period of time before they are expected to be repealed and replaced.

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 remade Demand Management Instruments will be assessed at the time they are 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, and ensures that any proposal to make 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—Sydney Airport Instruments) 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 following instruments, for which the sunseting day is 1 April 2024, are repealed by section 51 of the *Legislation Act 2003* on 1 April 2026:

- a) Sydney Airport Compliance Scheme 2012
- b) Sydney Airport Demand Management Regulations 1998
- c) Sydney Airport Slot Management Scheme 2013.

### **Section 4 (note)      Deferral of sunseting**

This note provides that the instruments deferred in the provision previously had their sunseting days aligned to 1 April 2024 by the *Legislation (Airport Instruments) Sunset-altering Declaration 2018*.

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

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