

Legislation (Deferral of Sunsetting—Airports (Control of On-Airport Activities) Regulations) Certificate 2024

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Airports (Control of On-Airport Activities) Regulations 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 after the day on which 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 sunseting day.

The Certificate defers the sunseting date of the Airports (Control of On-Airport Activities) Regulations 1997 ('Airports Activities Regulations') 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 Airports Activities Regulations are expected to be remade within 24 months of the sunseting date once necessary changes are decided and applied to legislation and instruments that regulate leased federal airports in New South Wales, in order to improve regulatory settings. The need for these legislative reforms was identified during a sunseting review of the Instrument, in light of the opening of the Western Sydney International (Nancy-Bird Walton) Airport and associated business precincts. If the Certificate were to be disallowed, there would not be enough time to incorporate these changes into 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 Airports Activities Regulations sets out a regulatory framework to control certain activities on leased federal airports that are usually regulated by a state, territory or local government, including the control of liquor, gambling, commercial trading, smoking and vehicle movement and parking.

As part of the sunseting review of the Airports Activities Regulations, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) identified a number of significant changes that are needed in the lead-up to opening the Western Sydney International (Nancy-Bird Walton) Airport and associated business precincts.

Deferring the sunset date of the Airports Activities Regulations to 1 April 2026 will provide time for consultation and negotiations with the New South Wales Government in relation to necessary changes to the Airports Activities Regulations and legislation that regulate leased federal airports.

DITRDCA has undertaken three broad public consultations as part of the sunset review of the Airport Activities Regulations. There will be upcoming consultation with both impacted stakeholders and state regulators, who will be contacted directly to provide input about any changes to obligations. Regular updates are provided through ongoing airport stakeholder meetings. DITRDCA is also required under section 178 of the *Airports Act 1996* to undertake consultation with all airport operator companies as part of the reforms, and has committed to undertake a public exposure draft consultation to allow appropriate time for consideration by stakeholders. The public will also be able to comment on the Instrument and its replacement during the exposure draft period.

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 instruments.

A 24-month deferral will allow sufficient time for DITRDCA to conduct further consultation with the New South Wales Government and other stakeholders on substantial and essential changes to legislation and instruments that regulate leased federal airports, including the Airports Activities Regulations, therefore avoiding the need to remake the Instrument 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 sunset date of the Airports Activities Regulations is consistent with the policy intent of the sunset 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 sunset 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 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 Airports Activities Regulations, 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 Instrument. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the instrument proposed to be made in substitution for the Airports Activities Regulations will not be able to be completed before the sunseting day for reasons that could not have been foreseen and avoided. As such, the criterion in subparagraph 51(1)(b)(ii) 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 Airports Activities Regulations by 24 months to 1 April 2026 to enable the Department of Infrastructure, Transport, Regional Development and the Arts (DITRDCA) to implement necessary changes to the legislative framework that regulates leased federal airports, including the Airports Activities Regulations, in order to improve regulatory settings.

The Airports Activities Regulations sets out a regulatory framework to control certain activities on leased federal airports that are usually regulated by a state, territory or local government, including the control of liquor, gambling, commercial trading, smoking and vehicle movement and parking. The Airports Activities Regulations operate in conjunction with state and territory legislation, to ensure that regulation of leased federal airports is consistent with state off-airport law and other Commonwealth regimes. The Airports Activities Regulations previously had its sunseting day aligned to 1 April 2024 by the *Legislation (Airport Instruments) Sunset-altering Declaration 2018* to facilitate a single thematic review of instruments critical to the administration of federally leased airports.

DITRDCA conducted a fitness-for-purpose review in the lead up to the Instrument's 1 April 2024 sunseting date. As part of the review, DITRDCA has identified a number of significant changes that are needed in the lead-up to opening the Western Sydney International (Nancy-Bird Walton) Airport (WSI Airport) and associated business precincts. The review identified required changes that are more substantial than anticipated and require significantly more work to implement. These changes are necessary for the regulation of WSI Airport and provide an opportunity to improve the regulatory settings across all leased federal airports in New South Wales. The need to make these substantial changes means that the Airports Activities Regulation will not be remade before the 1 April 2024 sunseting date.

In particular, provisions around liquor control, gambling and commercial trading need to be adjusted so that they can appropriately apply to WSI Airport, which is being developed as the core of the Western Sydney Aerotropolis. The review also demonstrated some inconsistencies in how state and territory law is applied and modified, which were not foreseen. This was largely due to the nature of applied state law modifications requiring expert advice from state regulators to appropriately review. It is therefore unavoidable that reforms need to be undertaken to provide for continuity and greater uniformity across the framework. Further, consultation undertaken as part of the review revealed that businesses that will operate in WSI Airport will be opening prior to the Airport's opening in 2026. Therefore, regulations governing the operations of these businesses must be updated with significant changes earlier than anticipated as they were subject to ongoing commercial negotiations.

Accordingly, the instrument proposed to be made in substitution for the Airports Activities Regulations will not be able to be completed before the sunseting day for reasons that could not have foreseen and avoided.

More information

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

The Airports Activities Regulations 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 Instrument to which the Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation Deferral of Sunsetting—Airports (Control of On-Airport Activities) Regulations 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 *Airports (Control of On-Airport Activities) Regulations* (the ‘Airports Activities Regulations’).

The Airports Activities Regulations are expected to be repealed and replaced within 24 months of their scheduled sunsetting day once necessary changes are decided and applied to the Instrument and related legislation that regulate leased federal airports, in order to improve regulatory settings and in anticipation of the Western Sydney International (Nancy-Bird Walton) Airport opening.

The Certificate allows the Airports Activities Regulations 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 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 Airports Activities Regulations engage certain rights and freedoms declared by the international instruments set out in section 3 of the Human Rights Act.

The Airports Activities Regulations engage the following human rights:

- the right to freely dispose of natural wealth (restriction on gambling)
- the right to liberty of movement (control of vehicle movement and parking)

- the right to justice (strict liability for infringement notices)
- the right to privacy (personal information within infringement notices)
- the right to self-determination to freely pursue own economic development (commercial trading through applied state law)
- the right to safe and healthy conditions (positively engaged by no smoking areas, and airside vehicle controls)
- the right to personal mobility of persons with a disability (positively engaged through parking controls).

While the Airports Activities Regulations engage a number of human rights, any limitation is minor in nature and is necessary and proportionate to the safe, secure and good governance of airport sites. Strict liability offences and personal information requirements are in line with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Therefore, overall, the Airports Activities Regulations are compatible with human rights because all engagement is either minimal or appropriate in that, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate to the safe, secure and good governance of airport sites.

Before issuing the Certificate, the Attorney-General was satisfied that the instrument proposed to be made in substitution for the Airports Activities Regulations will not be able to be completed before the sunset day for reasons that could not have been foreseen and avoided. 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.

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 Airports Activities Regulations 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 the human rights engaged by the Airports Activities Regulations are minimal or limited to a reasonable, necessary and proportionate extent. 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— Airports (Control of On-Airport Activities) Regulations) 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 Airports (Control of On-Airport Activities) Regulations 1997, 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.