

***Legislation (Deferral of Sunsetting—National Land (Road Transport)
Ordinance) 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—National Land (Road Transport) Ordinance) 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. 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 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 National Land (Road Transport) Ordinance 2014 ('the Ordinance') by 12 months from 1 April 2024 to 1 April 2025.

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 Ordinance is expected to be remade within 12 months of the original sunseting date, with modifications to modernise its administrative framework to make it consistent with other Ordinances applying to National Land.

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 Ordinance establishes the legal framework for the management of road transport and related activities on National Land, which is land within the Australian Capital Territory (ACT) reserved for use by or on behalf of the Commonwealth, distinguished from Territory Land administered by the ACT Government. The Ordinance applies limited aspects of ACT road transport legislation to National Land that are deemed necessary for the appropriate management of roads and parking, and empowers the National Capital Authority (NCA) Chief Executive to administer ACT paid parking legislation on National Land.

The Ordinance applies ACT road transport laws to ensure a seamless experience for the public when moving between Territory Land and National Land. The deferral of the sunseting of the Ordinance will maintain this status quo, and continue to minimise any confusion about the legal obligations of road users in the ACT. Consultation on the deferral of the sunseting of the Ordinance has been

undertaken by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) with relevant Australian Government agencies.

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 12-month deferral will allow sufficient time for a modernised framework to be finalised and will avoid the need to remake the Ordinance in its current form for a short period of time. As such, given that deferral of the sunseting date of the Ordinance is consistent with the policy intent of the sunseting regime and does not 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 Ordinance is the Minister for Regional Development, Local Government and Territories, the Hon Kristy McBain MP. The Acting Minister for Regional Development, Local Government and Territories, the Hon Madeleine King MP, provided a written application to the

Attorney-General seeking a certificate of deferral of sunseting for the Ordinance. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Ordinance 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 National Land (Road Transport) Ordinance 2014 (the Ordinance) by 12 months to 1 April 2025 to enable DITRDCA to develop a modernised framework which is consistent with other recently re-made National Land Ordinances.

The Ordinance establishes the legal framework for the management of road transport and related activities on National Land, by applying ACT road transport legislation and empowering the NCA Chief Executive to administer applied ACT paid parking legislation on National Land. The Ordinance facilitates the harmonisation of road laws applying across National Land and Territory Land, giving certainty to road users and law enforcement agencies about the legal obligations that apply on public roads across the ACT. It also facilitates the Commonwealth's administration of paid parking on National Land, through the NCA.

A 12-month deferral of the Ordinance's sunseting date will allow the NCA to progress the standardising and modernisation of the administration framework, which will be incorporated into a replacement instrument. DITRDCA and the NCA are pursuing an alternative Ordinance construction that would vest certain responsibilities and powers under the Ordinance in the Minister for Territories, and enable the Minister to delegate those functions and powers to appropriate persons. When implemented, this design would make the re-made Ordinance consistent with other Ordinances applicable to National Land and administered by the NCA, whereby power and statutory functions are held by the relevant Minister and delegated to officials at the NCA. The unique construction of the current National Land (Road Transport) Ordinance compared to other National Lands Ordinances, has necessitated a greater level of policy development and may require consideration of amendment to primary legislation.

Accordingly, the Ordinance 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 Ordinance 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 Infrastructure, Transport, Regional Development, Communications and the Arts 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— National Land (Road Transport) Ordinance) 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 sunsetting

This section provides that the *National Land (Road Transport) Ordinance 2014*, for which the sunsetting day is 1 April 2024, is repealed by section 51 of the *Legislation Act 2003* on 1 April 2025.

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 April 2025.