

***Legislation (Deferral of Sunsetting—Major Sporting Events (Indicia and Images) Protection Rules) 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—Major Sporting Events (Indicia and Images) Protection Rules) Certificate 2024* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (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 sunseting day specified in the Certificate is on or before the first anniversary of the originally scheduled sunseting day. Subsection 51(4) of the Legislation Act provides that a certificate of deferral is exempt from disallowance if it defers the sunseting day of an instrument by up to 12 months.

**OUTLINE**

Sunseting is the automatic repeal of legislative instruments after a fixed period.

The Australian Government's sunseting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunseting 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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 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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunseting day. This allows instruments to continue to be in force for a further but limited period of time after the date 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 Major Sporting Events (Indicia and Images) Protection Rules 2014 ('the Rules') by 12 months from 1 October 2024 to 1 October 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. Where the deferral is for a short period (6 or 12 months), the certificate is exempt from disallowance because the instrument 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 Rules are expected to be remade within 12 months of the sunseting date as part of a Bill that will also amend the *Major Sporting Events (Indicia and Images) Protection Act 2014* ('the Act'). The Minister for Sport expects that the Bill will be introduced and passed within 12 months of the sunseting date.

## **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 Rules are made under the *Major Sporting Events (Indicia and Images) Protection Act 2014*. The Minister for Sport is aiming to introduce a Bill to amend the Act in the Autumn 2025 sitting of Parliament which will include proposed amendment of the Rules to remove references to historical events and update any references to state and territory-based legislation as they relate to major sporting events. In the development of this Bill, the Department of Health and Aged Care (department) will consult with IP Australia and the Australian Border Force as has been the case for previous amendments to the 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 an instrument 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 department to develop new legislation and will avoid the need to remake the Rules in their current form for the short period of time before they are repealed and a replacement instrument is made. As such, given that deferral of the sunseting date of the Rules 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 issuing of the certificate.

The rule-maker for the Rules, the Minister for Sport, the Hon Anika Wells 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 Rules 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 Rules by 12 months to 1 October 2025 to enable amendments to the Rules as part of a Bill, which will also amend the *Major Sporting Events (Indicia and Images) Protection Act 2014* expected to be progressed within the next 12 months.

The *Major Sporting Events (Indicia and Images) Protection Act 2014* provides protection for the unauthorised commercial use of specific indicia and images associated with major sporting events listed in the Schedules. The Act's purposes include the prevention of "ambush marketing by association" by businesses falsely implying sponsorship arrangements with major sporting events.

The Rules provide the Comptroller-General of Customs with timeframes for action to be taken or a claim to be made for goods seized at the border under the Act consistent with the framework under which the Comptroller-General of Customs would exercise powers and functions under the *Trade Marks Act 1995* and the *Copyright Act 1968*.

The Minister for Sport intends to introduce a Bill in the Autumn 2025 sitting of Parliament to amend the *Major Sporting Events (Indicia and Images) Protection Act 2014* to provide protections for the Men's Rugby World Cup 2027 and Asian Football Confederation Women's Asian Cup 2026 and their owners and organisers. This recognises the size and significance of these events and will also honour a commitment made by the Government as part of Rugby Australia's bid to host the Rugby World Cup 2027 in Australia.

As a part of the process of amending the Act, the Bill will also propose updates to the Rules to remove references to historical events and update any references to state and territory-based legislation as they relate to major events.

Accordingly, the Rules 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 Rules 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 Health and Aged Care 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—Major Sporting Events (Indicia and Images) Protection Rules) 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 *Major Sporting Events (Indicia and Images) Protection Rules 2014*, for which the sunseting day is 1 October 2024, are repealed by section 51 of the *Legislation Act 2003* on 1 October 2025.

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

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