

Legislation (Deferral of Sunsetting—A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care) Instruments) Certificate 2025

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care) Instruments) Certificate 2025* (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 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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 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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 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 following instruments by 24 months from 1 April 2025 to 1 April 2027 (together, the Determinations):

- a) A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015
- b) A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Non-government Funded Supplier) Determination 2015.

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 Determinations are expected to be remade within 24 months of the sunseting date as a result of the Department of Health and Aged Care (the department) developing a new legislative framework. If the Certificate were to be disallowed, there would not be enough time to review and remake the 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 Determinations are made under *A New Tax System (Goods and Services Tax) Act 1999* (A New Tax Act). The Determinations refer to Schedule 1 of the Quality of Care Principles 2014 (the Principles) made under the *Aged Care Act 1997* (Aged Care Act). The Schedule sets out the care and services that must be delivered to residents of Commonwealth funded residential care homes. The Determinations ensure that the same GST-free supply provisions that apply to residents of Commonwealth funded residential care homes, also apply to those people living in residential care homes which are either funded privately, or funded by state or territory governments.

Following the recommendations made by the Royal Commission into Aged Care Quality and Safety (Royal Commission) in its *Final Report: Care, Dignity and Respect* (the Final Report), the department is undertaking significant legislative reform. The current Aged Care Act will be repealed from the commencement of the *Aged Care Act 2024* (the new Act) on 1 July 2025, along with other legislative instruments. This includes the Principles, which are referred to in the Determinations.

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 commencement of the new Act and the remaking of the Determinations to reflect the new legislative framework. It will avoid the need to remake the Determinations 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 Determinations 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 Determinations, the Minister for Aged Care, the Hon Anika Wells 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 Determinations 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 Determinations by 24 months to 1 April 2027 to enable the department to remake the Determinations to reflect the new legislative framework, which is due to commence on 1 July 2025.

The Determinations are made under *A New Tax Act* and refer to Schedule 1 of the Principles, made under the Aged Care Act. The Schedule sets out the care and services that must be delivered to residents of Commonwealth funded residential care homes. Both instruments ensure that the same GST-free supply provisions that apply to residents of Commonwealth funded residential care homes, also apply to individuals living in residential care homes which are either funded privately, or funded by state or territory governments.

The government has a significant program of legislative reform underway to deliver high quality and safe aged care to older Australians in response to the recommendations of the Royal Commission. The Royal Commission conducted an inquiry into the quality of aged care services and publicly released the Final Report on 1 March 2021.

The Final Report recommended that the existing aged care legislative framework be replaced with a new Aged Care Act to give effect to recommendations of the Royal Commission. The new Act passed Parliament on 25 November 2024 and is due to commence on 1 July 2025.

The current Aged Care Act will be repealed from the commencement of the new Act, along with other legislative instruments. This includes the Principles, which is referred to in these two determinations.

Under the new Act, a Service List will be developed which will replace the existing Schedule 1 of the Principles, and the Determinations will be remade to reflect these updates.

Accordingly, the Determinations 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 Determinations 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 Instruments to which the Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care) Instruments) Certificate 2025* (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 Determinations):

- a) A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015
- b) A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Non-government Funded Supplier) Determination 2015.

The Determinations are expected to be repealed and replaced within 24 months of their scheduled sunseting day as part of the review of the legislative framework.

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

Both Determinations positively engage certain rights and freedoms declared by the international instruments set out in section 3 of the Human Rights Act. This is because the Determinations promote the right to an adequate standard of living as contained in article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the right to enjoy the highest standard of physical and mental health as provided by article 12(1) of the ICESCR.

In line with article 11(1) of the ICESCR, the Determinations engage the human right to an adequate standard of living, including the human right to adequate food, water and housing, by providing for an exemption from GST on certain supplies of aged care accommodation and services such as meals and refreshments and cleaning services for people living in residential care homes that are funded privately or by state and territory governments. Exemption from GST on these care and services will assist consumers in residential care homes that are funded privately or by state and territory government to better access those care and services, and thereby promote better access to adequate food, water and housing.

Additionally, in line with article 12 of the ICESCR, the Determinations engage the right to health by providing for exemption from GST on certain supplies of aged care services such as medical treatment and procedures, nursing and therapy services for people living in residential care homes that are funded privately or by state and territory governments. This will assist consumers to better access health facilities and goods, including essential medications and services and other health services, and thereby promote the enjoyment of the highest attainable standard of physical and mental health.

Therefore, overall, the Determinations are compatible with human rights because they promote the protection of human rights.

Before issuing the Certificate, the Attorney-General was satisfied that the Determinations 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 Determinations 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 both Determinations promote the protection of human rights.

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care) Instruments) Certificate 2025* (the Certificate). 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 2025, are repealed by section 51 of the *Legislation Act 2003* on 1 April 2027:

- a) A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015
- b) A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Non-government Funded Supplier) Determination 2015.

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 April 2027.