

***Legislation (Deferral of Sunsetting—Building Energy Efficiency Disclosure
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—Building Energy Efficiency Disclosure 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 sunseting day specified in the Certificate is after the first anniversary of the originally scheduled sunseting 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

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunseting day.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 original sunseting dates of the following instruments (together, the ‘BEED Instruments’) were previously aligned to 1 October 2025 by the *Legislation (Building Energy Efficiency Disclosure Instruments) Sunset-altering Declaration 2020*:

- a) *Building Energy Efficiency Disclosure Regulations 2010*
- b) *Building Energy Efficiency Disclosure Determination 2016*
- c) *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016*

The Certificate defers the sunseting date of the BEED Instruments by 24 months from 1 October 2025 to 1 October 2027. 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 BEED Instruments are expected to be remade within 24 months of the sunseting date as a result of a review by the Department of Climate Change, Energy, the Environment and Water (the department). If the Certificate were to be disallowed, there would not be enough time to review and remake the BEED 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 BEED Instruments are made under the *Building Energy Efficiency Disclosure Act 2010* (the BEED Act). The BEED Act establishes the Commercial Building Disclosure (CBD) Program, which is a program that promotes energy efficiency and emissions reduction in commercial buildings through mandatory disclosure of energy and emissions information. The BEED Instruments, amongst other matters, give effect to provisions of the BEED Act including exemptions to the CBD Program, the administration of the CBD Program in relation to fees, accreditation of assessors for the Program,

the manner in which energy efficiency ratings must be expressed in advertisements, and the kinds of buildings, and areas of buildings, that are disclosure affected.

The sunseting dates for the BEED Instruments were previously aligned to 1 October 2025 to enable a single thematic review. A broader review of the BEED Act and its role in transitioning Australia's commercial buildings to net zero was initiated in 2023. As part of the broader review, an independent feasibility report has been completed that considers a range of options for expanding the CBD Program. Consultation closed on 13 September 2024 and departmental officers are in the process of developing policy options that will inform the next steps for any legislative reform.

The department will inform relevant stakeholders to ensure that they are aware it is seeking a deferral certificate to extend the operation of the current BEED Instruments.

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 complete the review and will avoid the need to remake the BEED 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 BEED 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 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 BEED Instruments, the Assistant Minister for Climate Change and Energy, the Hon Josh Wilson MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunsetting for the Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the BEED 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 sunsetting 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 sunsetting date of the BEED Instruments by 24 months to 1 October 2027 to enable the department to finalise its review of the BEED Act and consider legislative reform, which would inform the remaking of the instruments.

The *Building Energy Efficiency Disclosure Regulations 2010* is a legislative instrument that gives effect to provisions of the BEED Act, in particular the Commercial Building Disclosure (CBD) Program, which is established under that Act. The CBD Program requires the public disclosure of energy efficiency information relating to large commercial office buildings.

The *Building Energy Disclosure Determination 2016* specifies the manner in which energy efficiency ratings must be expressed in advertisements, the assessment methods and standards to be applied in working out the energy efficiency rating and also the lighting energy efficiency for a building, and the information to be set out in a building energy efficiency certificate.

The *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016* specifies the kinds of buildings, and areas of buildings, that are disclosure affected.

On 21 March 2020, the Attorney-General issued the *Legislation (Building Energy Efficiency Disclosure Instruments) Sunset-altering Declaration 2020*. This instrument aligned the sunset date of the BEED Instruments to 1 October 2025. This was done to enable a single thematic review. The aligned sunset date also intended to facilitate consideration of any recommendations arising from a review that commenced in 2019. This 2019 review was an independent review of the CBD Program conducted by the Centre for International Economics with a defined terms of reference. However, as a result of the COVID-19 pandemic, this review was not finalised and instead a broader review of the BEED Act was initiated in 2023. As part of this broader review, an independent feasibility report has been completed that considers a range of options for expanding the CBD Program.

The department has used the feasibility report and proposed roadmap as the basis for consultation on the expansion of the CBD Program. The department is in the process of developing policy options that will inform the next steps for any legislative reform. This reform will not be finalised before 1 October 2025. A 24-month deferral will provide sufficient time to complete the broader review and ensure the reforms are reflected in remade instruments.

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

More information

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

The BEED 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 Climate Change, Energy, the Environment and Water about the Instruments to which the Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—Building Energy Efficiency Disclosure 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 ‘BEED Instruments’):

- a) *Building Energy Efficiency Disclosure Regulations 2010*
- b) *Building Energy Efficiency Disclosure Determination 2016*
- c) *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016*

The BEED Instruments 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 BEED 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 BEED 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 sunseting day.

Human Rights Implications

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

The BEED 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.

Therefore, overall, the BEED Instruments are compatible with human rights because they do not engage any of the applicable rights nor raise any human rights issues.

Before issuing the Certificate, the Attorney-General was satisfied that the BEED Instruments would, apart from the operation of the sunseting provisions, cease to be in force within 24 months of their sunseting date. Issuing a certificate of deferral therefore avoids the need to replace the BEED 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 BEED 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—Building Energy Efficiency Disclosure Instruments) Certificate 2025*. 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 following instruments, for which the sunset day is 1 October 2025, are repealed by section 51 of the *Legislation Act 2003* on 1 October 2027:

- a) *Building Energy Efficiency Disclosure Regulations 2010*
- b) *Building Energy Efficiency Disclosure Determination 2016*
- c) *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016*

Section 5 Repeal of the instrument

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