***Legislation (Deferral of Sunsetting—Excise Regulation) 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—Excise Regulation) 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 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 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 sunsetting day.

The Certificate defers the sunsetting date of the *Excise Regulation 2015* (Excise Regulation) by 24 months from 1 April 2025 to 1 April 2027.

The ability to defer sunsetting dates is an integral part of the sunsetting framework. It provides the necessary flexibility to ensure the standard 10-year sunsetting period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. In this case, the Excise Regulation is expected to be remade within 24 months of the sunsetting date as a result of a review by Treasury. If the Certificate were to be disallowed, there would not be enough time to review and remake the Instrument prior to the sunsetting day.

**PROCESS BEFORE CERTIFICATE WAS MADE**

**Regulatory impact analysis**

Certificates of deferral of sunsetting 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 Excise Regulation is made under the *Excise Act 1901* (Excise Act). The Excise Regulation sets out provisions in relation to excisable goods such as refunds and remissions, and drawbacks and regulation of duty-free stores and ships stores. It is part of the principal legislative framework for the excise system that includes the *Excise Act 1901* and the *Excise Tariff Act 1921*.

On 21 March 2024, the Attorney-General deferred the sunset date of the *Customs Regulation 2015* (Customs Regulation) from 1 April 2025 to 1 April 2027. The Customs Regulation, made under the *Customs Act 1901* (Customs Act) impacts on the operation of the Excise Regulation as both support the relevant Acts which impose duties on fuel, tobacco and alcohol at the same rate. Both regulations have some common definitions and some similar provisions.

The Customs Regulation is expected to be remade as part of a review of customs laws, which will be required once broader trade reforms have been implemented. The Department of Home Affairs (Home Affairs) has undertaken industry consultation on a range of matters related to the Customs Regulation. The deferral of the Excise Regulation would provide an opportunity for Treasury and Home Affairs, in consultation with the Australian Taxation Office (ATO) and the Australian Border Force (ABF), to jointly conduct a robust and thorough review of regulations made under the Excise Act and the Customs 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 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 to conduct the review and will avoid the need to remake the Excise Regulation in its current form for the short period of time before it may likely need to be repealed and a replacement instrument made. As such, given that deferral of the sunsetting date of the Excise Regulation is consistent with the policy intent of the sunsetting 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 sunsetting 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:

1. the responsible rule-maker to apply to the Attorney-General in writing, and
2. the Attorney-General to be satisfied that:
3. the instrument would (apart from the operation of the sunsetting provisions) be likely to cease to be in force within 24 months after its sunsetting day
4. the proposed replacement instrument will not be able to be completed before the sunsetting day for reasons that the rule-maker could not have foreseen and avoided
5. 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
6. the Attorney-General has approved Part 4 of Chapter 3 of the Legislation Act (Sunsetting) not applying to that instrument, and
7. 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 Excise Regulation, the Assistant Minister for Competition, Charities and Treasury, the Hon Dr Andrew Leigh MP, provided a written application to the Attorney‑General seeking a certificate of deferral of sunsetting for the Instrument.On the basis of the information contained in the statement of reasons below, the Attorney‑General is satisfied that the Excise Regulation 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 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 Excise Regulation by 24 months to 1 April 2027 to enable Treasury to conduct a review of the Excise Regulation in the light of potential changes to the Customs Regulation following the review of customs laws, which will be required once broader trade reforms have been implemented. The Customs Regulation impacts on the operation of the Excise Regulation as both the Excise and Customs Acts impose duties on fuel, tobacco and alcohol at the same rate. The Regulations have some common definitions and a number of similar provisions.

The deferral of the Excise Regulation will ensure that review of both the Excise Regulation and the Customs Regulation occurs at the same time so that issues affecting both Regulations are considered together and do not require the Excise Regulation to be remade again after review of the Customs Regulation.

Accordingly, the Excise Regulation will likely cease to be in force in its current form within 24 months of its original sunsetting date.

**More information**

Further details on the provisions of the Certificate are provided in Attachment A.

The Excise Regulation 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 Treasury about the interaction between the Excise Regulations and the Certificate. Any questions about the operation of the Excise Regulations should be directed to the Australian Taxation Office.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The *Legislation (Deferral of Sunsetting—Excise Regulation) 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 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 *Excise Regulation 2015* (Excise Regulation).

The Excise Regulation is expected to be repealed and replaced within 24 months of its scheduled sunsetting day as part of the review of the legislative framework.

The Certificate allows the Excise Regulation to continue to be in force for a further, but limited, period of time from when it 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 Excise Regulation engages certain rights and freedoms declared by the international instruments set out in section 3 of the Human Rights Act.

**Right to Privacy**

Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) prohibits the unlawful or arbitrary interferences with a person’s privacy. It also prohibits unlawful attacks on a person’s honour and reputation. It provides that persons have the right to protection of the law against such interferences and attacks. An interference with privacy will not be arbitrary if it is authorised by law or consistent with the provisions, aims and objectives of the ICCPR and reasonable in the circumstances. Reasonableness in this context incorporates notions of proportionality, appropriateness and necessity.

Sections 10, 16 and 37 of the Excise Regulation engage the right to privacy as contained in Article 17 of the ICCPR as they require the collection of personal information for individuals that hold an excise licence and for certain travellers with excisable goods.

Subsection 10(2) of the Excise Regulation requires an applicant making an application for remission, rebate or refund of excise duty to provide records or to give further information if required by the Commissioner of Taxation (CEO). This condition is a reasonable, necessary and proportionate measure to ensure that the remission, rebate or refund is validly claimed and the requirement to provide records or information is proportionate to the factual nature and particulars of the claim.

Section 16 of the Excise Regulation specifies that the drawback of excise duty is conditional upon the owner of the relevant goods having records that show that excise duty has been paid on the goods and relevant details of the receipt, use and disposal of the goods by the owner is available at all reasonable times for examination by an officer. This condition is a reasonable, necessary and proportionate measure to ensure that the drawback of excise duty is proportionate to the facts of the purchase, and not fraudulent or otherwise disqualified.

Section 37 of the Excise Regulation applies if the CEO requires the proprietor of a shop to comply with the condition in a particular case, whereby the proprietor must give to the CEO various details relating to the sale of the goods from the shop to a relevant traveller. Section 28 of the Excise Regulation provides that when deciding whether to give permission in relation to an off-airport duty-free shop, the CEO must consider whether the proprietor of the shop to which the permission would relate is likely to be able to comply with the conditions set out in sections 37 and 38 of the Excise Regulation. The provision of records that may be required under section 37 of the Excise Regulation is a reasonable, necessary and proportionate response to the need to assess whether the proprietor of the shop could comply with the conditions.

Therefore, overall, the Excise Regulation is compatible with human rights because to the extent that the engagement limits human rights, those limitations are reasonable, necessary and proportionate to achieving the objective of regulating excisable goods and duty-free stores.

Before issuing the Certificate, the Attorney-General was satisfied that the Excise Regulation would, apart from the operation of the sunsetting provisions, cease to be in force within 24 months of their sunsetting date. 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 Excise Regulation will be assessed at the time it is 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 any limitations on human rights are necessary and proportionate to achieving the objectives of regulating excisable goods and duty-free stores. Any proposal to make a replacement instrument will be subject to parliamentary oversight and scrutiny.

**ATTACHMENT A**

**NOTES ON THE CERTIFICATE**

**Section 1 Name**

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Excise Regulation) 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 *Excise Regulation 2015*, for which the sunsetting day is 1 April 2025, is repealed by section 51 of the *Legislation Act 2003* on 1 April 2027.

**Section 5 Repeal of the instrument**

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