

# *Legislation (Deferral of Sunsetting—Migration 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—Migration Instruments) Certificate 2025* (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 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 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 sunseting date of the following instruments by 12 months from 1 April 2025 to 1 April 2026 (together, the ‘Migration Instruments’):

- a) *Migration Regulations 1994 – Specification of Language Tests, Score and Passports 2015 – IMMI 15/005;*
- b) *Migration Regulations 1994 – Specification of Evidence of Functional English Language Proficiency 2015 – IMMI 15/004.*

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 instruments 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 Migration Instruments are expected to be remade within 12 months of the sunseting date, as a result of a Request for Expression of Interest (REOI) for the selection of English language tests for Australian visas, being undertaken by the Department of Home Affairs (the department) inviting all interested English language test providers to provide responses. The department anticipates an outcome of the REOI will inform the making of the Migration Instruments.

## **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 Migration Instruments are made under the *Migration Regulations 1994* which is authorised by the *Migration Act 1958*.

The Migration Instruments set out the prescribed English language proficiency standards for functional, vocational, competent, proficient and superior levels, test scores and other related matters. These proficiency levels are a requirement for many visa subclasses, which are critical to the operation and integrity of various visa programs administered by the department. The department

initiated a REOI process to facilitate more choice in English language testing options for visa applicants and greater consistency across test providers. The REOI opened in 2022 for all eligible English language tests providers to provide responses and remains ongoing. The department expects to finalise the REOI by mid-2025. Once the REOI is completed, new Migration instruments will be made to reflect successful providers and their score equivalencies.

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 instruments 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 12-month deferral will allow sufficient time for the department to complete the REOI process and will avoid the need to remake the Migration 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 sunset date of the Migration Instruments is consistent with the policy intent of the sunset 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 sunset 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 sunset provisions) be likely to cease to be in force within 24 months after its sunset day
  - (ii) the proposed replacement instrument will not be able to be completed before the sunset 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 Migration Instruments, the Assistant Minister for Immigration, the Hon Matt Thistlethwaite MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunset for the Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Migration 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 sunset 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 sunset date of the Migration Instrument by 12 months to 1 April 2026 to enable the Department of Home Affairs to complete the REOI process and remake the instruments.

The Migration Instruments set out the prescribed English language proficiency standards and other matters that are a requirement for many visa subclasses, which are critical to the operation and integrity of various visa programs administered by the department. The instruments are an essential component of visa processing and the granting of visas. If the Migration Instruments were to sunset on the original sunset date of 1 April 2025, this would create significant disruptions, including delays in visa processing and potentially halting visa grants altogether. Moreover, the absence of these instruments could expose the department to substantial legal risks and challenges, undermining the ability to uphold immigration policies and efficiently manage migration outcomes. The ramifications could extend to stakeholder dissatisfaction, reputational damage, increased costs and broader implications for Australia's immigration system.

In order to facilitate more choice in English language testing options for visa applicants and provide greater consistency across test providers, the department initiated a REOI process in 2022 aimed at eliciting responses relating to the selection of English language tests for Australian visas. This process was open to all eligible English language test providers, both within Australia and internationally. In June 2023, the department extended a final opportunity for all REOI respondents to submit revised responses following their initial evaluation feedback. The department is currently evaluating the REOI respondents' responses. The REOI process is expected to be finalised in mid-2025. The REOI outcomes are anticipated to inform the content in the new Migration Instruments that specify English language tests for Australian visa purposes and other related matters. A 12-month deferral will allow sufficient time for the REOI to be finalised and avoid the need to remake the Migration Instruments in

their current form for a short period of time before they are repealed and replacement instruments are made.

Accordingly, the Migration Instruments 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 Migration Instruments which are the subjects of 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 Home Affairs about the Instruments 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—Migration 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 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 2026:

- a) *Migration Regulations 1994 – Specification of Language Tests, Score and Passports 2015 – IMMI 15/005*;
- b) *Migration Regulations 1994 – Specification of Evidence of Functional English Language Proficiency 2015 – IMMI 15/004*.

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

This section provides that the Certificate is repealed at the start of 2 April 2026.