

Legislation (Deferral of Sunsetting—Automotive Transformation Scheme Instruments) Certificate 2020

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Automotive Transformation Scheme Instruments) Certificate 2020* (the certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003*. It is a legislative instrument for the purposes of the *Legislation Act* and must be registered on the Federal Register of Legislation. The certificate is not subject to the disallowance provisions of the *Legislation Act* as the deferred sunsetting day specified in the certificate is the first anniversary of the sunsetting day, which means that subsection 51(4) of that Act (which provides an exemption from disallowance for deferrals of 12 months or less) will 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Subsection 50(1) of the *Legislation Act* provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005. Legislative instruments registered on 1 January 2005 are subject to the staggered sunsetting timetable set out in subsection 50(2) of the *Legislation Act*.

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 six, 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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 when 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 following instruments (together, the ATS instruments) from 1 October 2020 to 1 October 2021:

- (a) the *Automotive Transformation Scheme Regulations 2010*
- (b) the *Automotive Transformation Scheme Order 2010*.

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 Best Practice Regulation (OBPR). The OBPR 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 Minister for Industry, Science and Technology, the Hon Karen Andrews MP, advised the Attorney-General of the reasons in support of issuing the certificate. The Minister is the relevant rule-maker for the instruments for the purposes of section 6 of the Legislation Act.

The certificate is consistent with the policy intent of the sunseting arrangements and does not significantly alter existing arrangements. Accordingly, further consultation was unnecessary.

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 six, 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 these instruments, the Minister for Industry, Science and Technology, the Hon Karen Andrews MP, provided a written application to the Attorney-General seeking a deferral of the sunseting days for the ATS instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the ATS 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 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 the issue of the certificate.

The ATS instruments are related and share a common theme; being instruments critical to the establishment and functioning of Automotive Transformation Scheme (ATS). The instruments relate primarily to the powers and functions of the Australian Government in relation to the ATS, which is an entitlement scheme with assistance being paid, subject to conditions, for eligible investment in Plant and Equipment and Research and Development, and for eligible production for motor vehicle producers.

The ATS instruments are expected to be repealed within 12 months of the scheduled sunset date of 1 October 2020. The Minister for Industry, Science and Technology has requested a 12-month deferral of the sunset date to enable the orderly wind-down of the ATS, which carries financial obligations to 31 December 2020 and may owe final payments to recipients until 31 March 2021. A deferral will enable the Department of Industry, Innovation and Science to meet its financial obligations under the ATS and reduce any risks associated with any potential payment issues, and avoid the need to replace the instruments in their existing form for a short period of time before they are expected to be repealed.

As such, deferral of the sunset date of the ATS instruments is consistent with the policy intent of the sunset regime, that legislative instruments should be kept up to date and only remain in force so long as they are needed.

More information

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

The ATS 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 Industry, Innovation and Science about the ATS instruments to which the certificate applies.

ATTACHMENT A

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the certificate is named the *Legislation (Deferral of Sunsetting—Automotive Transformation Scheme Instruments) Certificate 2020*. The certificate may be cited by that 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.

Section 4 Deferral of sunsetting

This section provides that the *Automotive Transformation Scheme Regulations 2010* and the *Automotive Transformation Scheme Order 2010*, for which the sunseting day is 1 October 2020, are repealed under section 51 of the Legislation Act on 1 October 2021.

Section 5 Repeal of this instrument

This section provides that the certificate is repealed at the start of 2 October 2021.