

Legislative Instruments (Deferral of Sunsetting – Radiocommunications Instruments) Certificate 2013

EXPLANATORY STATEMENT

Issued by the Attorney-General
in compliance with section 26 of the *Legislative Instruments Act 2003*

INTRODUCTION

This certificate was made under paragraph 51(1)(c) of the *Legislative Instruments Act 2003* (the LIA) and is a legislative instrument for the purposes of the LIA. The LIA provides that a certificate issued by the Attorney-General under subsection 51(1) of the LIA is not subject to the disallowance provisions of the LIA. Accordingly, a human rights statement of compatibility is not required.

OUTLINE

The purpose of Part 6 of the LIA on sunsetting of legislative instruments is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Paragraph 51(1)(c) enables the Attorney-General to issue a certificate to defer the sunsetting day for an instrument for a period of six or 12 months. The instrument will then cease to be in force on the day specified in the certificate instead of the 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 when they are already fit-for-purpose.

PROCESS BEFORE CERTIFICATE WAS MADE

Regulatory impact analysis

Before this certificate was issued, its expected impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). The OBPR considered that the proposal could be expected to have a minor impact on business and community organisations because of the short term of the deferral. Therefore, a RIS or an agency ‘assessment of the performance’ of the proposal was not required.

Consultation before making

Before this certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the LIA, and the specific circumstances where consultation may be unnecessary or inappropriate set out in section 18. Consultation involved the Minister for Communications and the Australian Communications and Media Authority advising the Attorney-General of the reasons for issuing a certificate to defer the sunsetting days of particular instruments. The certificate does not significantly alter existing arrangements. Accordingly, further consultation was unnecessary.

Statutory preconditions relevant to this certificate

If the Attorney-General is satisfied that the statutory conditions in section 51 of the LIA are met, an instrument's sunset day can be deferred for either 6 or 12 months by means of a certificate made under that section. In terms of process, the LIA requires:

- the responsible rule maker to apply to the Attorney-General in writing
- the Attorney-General to be satisfied that the instrument meets the statutory conditions, and
- the Attorney-General to make a certificate that includes a statement of reasons for the issue of the certificate—this certificate must be registered (LIA s 51(3)) but is exempt from disallowance (LIA s 44(2), item 43).

More information

The detail of the certificate is provided in [Attachment A](#).

A copy of each instrument which is the subject of this certificate, and which will now sunset at a later day as specified in this certificate, is available on the whole-of-government ComLaw website.

Further information about an instrument may be requested from the Australian Communications and Media Authority.

NOTES ON THE CERTIFICATE

Part 1 - Preliminary

Section 1 Name of certificate

This section provides for the certificate to be named as the *Legislative Instruments (Deferral of Sunsetting – Radiocommunications Instruments) Certificate 2013*. 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 *Legislative Instruments Act 2003*.

Section 4 Definitions

This section defines ‘Act’ to mean the *Legislative Instruments Act 2003*, for the purposes of the certificate.

Part 2 – Deferral of sunsetting of legislative instruments

Section 5 Statement of reasons for issue of certificate

This section provides the statement of reasons as required by paragraph 51(2)(a) of the Act.

The statement of reasons provides that the Attorney-General is satisfied that the relevant instruments would (apart from the operation of Part 6 of the Act) be likely to cease to be in force within 12 months after the sunseting day, as required by subparagraph 51(1)(b)(i) of the Act.

Section 6 Deferral of sunsetting of legislative instruments

This section provides that the legislative instruments which are specified in Schedule 1 will now cease to be in force under section 51 of the Act on 1 April 2016. This is the deferred sunseting day for those instruments, which would otherwise sunset on the earlier day of either 1 April 2015 or 1 October 2015.

Schedule 1- Legislative instruments for which sunseting is deferred to 1 April 2016

Item [1] Legislative instruments with the sunseting day 1 April 2015

This item inserts a table of legislative instruments with the sunseting day of 1 April 2015, for which sunseting is deferred to 1 April 2016. The second column of the table identifies the name of the legislative instrument and the third column identifies the Federal Register of Legislative Instruments (FRLI) identifier number for each instrument.

Item	Legislative instrument	FRLI identifier
1	<i>Radiocommunications Spectrum Marketing Plan (3.4 GHz Bands) 2002</i>	F2005B00251
2	<i>Radiocommunications (Unacceptable Levels of Interference—27 GHz Band) Determination 2000</i>	F2005B00149

Item [2] Legislative instruments with the sunseting day 1 October 2015

This item inserts a table of legislative instruments with the sunseting day of 1 October 2015, for which sunseting is deferred to 1 April 2016. The second column of the table identifies the name of the legislative instrument and the third column identifies the FRLI identifier number for each instrument.

Item	Legislative instrument	FRLI identifier
1	<i>Radiocommunications Advisory Guidelines (Managing Interference from Non-Spectrum-Licensed Transmitters—27 GHz Band) 2000</i>	F2005B00150
2	<i>Radiocommunications Advisory Guidelines (Managing Interference to Apparatus Licensed Receivers—3.4 GHz Band) 2000</i>	F2005B00344
3	<i>Radiocommunications Advisory Guidelines (Managing Out-of-band Interference in Receivers Operating in Spectrum Licensed Space—3.4 GHz Band) 2000</i>	F2005B00345
4	<i>Radiocommunications Advisory Guidelines (Protection of Non-Spectrum-Licensed Receivers—27 GHz Band) 2000</i>	F2005B00151
5	<i>Radiocommunications Spectrum Marketing Plan (3.4 GHz Band) 2004</i>	F2005B00224
6	<i>Radiocommunications Spectrum Marketing Plan (3.4 GHz Bands) 2000</i>	F2005B00335
7	<i>Radiocommunications Spectrum Marketing Plan (27 GHz Band) 2000</i>	F2005B01317
8	<i>Radiocommunications (Unacceptable Levels of Interference—3.4 GHz Band) Determination 2000</i>	F2005B00340