

Legislation (Deferral of Sunsetting—Foreign States Immunities Regulations) Certificate 2017

EXPLANATORY STATEMENT

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

INTRODUCTION

This certificate was made under paragraph 51(1)(c) of the *Legislation Act 2003* and is a legislative instrument for the purposes of the Legislation Act.

A certificate issued by the Attorney-General under subsection 51(1) of the Legislation Act is not subject to disallowance. As such, a statement of compatibility with human rights is not required (*Human Rights (Parliamentary Scrutiny) Act 2011*, section 9).

OUTLINE

The purpose of the sunset provisions of the Legislation Act 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 sunset day for an instrument for a period of either six or 12 months. The instrument will then be repealed on the day specified in the certificate instead of the scheduled sunset day.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. It also deals with certain situations where circumstances prevent the making of replacement instruments prior to the sunset day.

PROCESS BEFORE CERTIFICATE WAS MADE

Regulatory impact analysis

Certificates of deferral of sunset 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 this certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. Consultation involved advising the Department of the Treasury and Emergency Management Australia of the reasons for making this certificate and obtaining their agreement to the certificate being made. The Certificate is consistent with the policy intent of the sunset arrangements and 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 Legislation Act are met, an instrument's sunset day can be deferred for either six or 12 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
- b) the Attorney-General to be satisfied that the instrument meets the statutory conditions, and
- c) the Attorney-General to issue a certificate that includes a statement of reasons for the issue of the certificate.

As the Attorney-General is the relevant rule-maker in this instance, there is no formal correspondence associated with the making of the certificate.

The statement of reasons included in the certificate sets out the basis for the Attorney-General's satisfaction that the criteria in section 51(1)(b)(i) of the Legislation Act are satisfied.

The certificate must be laid before each House of Parliament no later than six sitting days after it is issued by the Attorney-General. It is a legislative instrument and must be registered on the Federal Register of Legislation, but is not subject to disallowance (*Legislation (Exemptions and Other Matters) Regulation 2015*, section 10, item 19).

More information

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

The instrument which is the subject of this certificate, and which will now sunset on a later day as specified in this certificate, is available on the Federal Register of Legislation.

Further information about the operation of this instrument may also be requested from the Attorney-General's Department.

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the certificate is named the *Legislation (Deferral of Sunsetting— Foreign States Immunities Regulations) Certificate 2017*. 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 2003*.

Section 4 Definitions

This section defines, for the purposes of the certificate, '*Legislation Act*' to mean the *Legislation Act 2003* (FRL reference C2004A01224) and '*Regulations*' to mean the *Foreign States Immunities Regulations 1987* (FRL reference F1996B00777), being the legislative instrument the subject of this Certificate.

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 *Legislation Act*.

As required by subparagraph 51(1)(b)(i) of the *Legislation Act*, the statement of reasons explains why the Attorney-General is satisfied that the Regulations would (apart from the operation of Part 4 of Chapter 3 of the *Legislation Act*) be likely to cease to be in force within 12 months after their sunset day.

Section 6 Deferral of sunsetting of the Foreign States Immunities Regulations

This section provides that the Regulations, for which the sunset day is 1 April 2018, are taken to cease to be in force under section 51 of the *Legislation Act* on 1 April 2019.

Section 7 Repeal of this instrument

This section provides that the certificate is repealed at the start of 2 April 2019.