

Legislation (Deferral of Sunsetting—Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations) Certificate 2018

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations) Certificate 2018* (the deferral certificate) was 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. The deferral certificate is not subject to the disallowance provisions of the Legislation Act as the deferred sunseting day specified in the deferral certificate is on or before the first anniversary of the sunseting day (subsection 51(4) of the Legislation Act).

OUTLINE

Sunseting is the automatic repeal of legislative instruments after a fixed period. The Australian Government's sunseting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunseting 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 sunseting 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 sunseting 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 The instrument will then be repealed on the day specified in the certificate instead of the scheduled sunseting day.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 sunseting day.

The deferral certificate defers the sunseting date of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (2009 Regulations) from 1 April 2019 to 1 April 2020.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A certificate of deferral of sunseting for six or 12 months issued by the Attorney-General under paragraph 51(1)(c) of the Legislation Act is not subject to disallowance (subsection 51(4) of the Legislation Act). As such, a statement of compatibility with human rights is not required (section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*).

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 this certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

Consultation involved the Minister for Resources and Northern Australia, Senator the Hon Matthew Canavan, advising the Attorney-General of the reasons in support of issuing the deferral certificate. The Minister for Resources and Northern Australia is responsible for administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act), the enabling legislation under which the 2009 Regulations were made. As such, the Minister is the relevant rule-maker for the purposes of section 6 of the Legislation Act.

The deferral 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 this certificate

If the statutory conditions in section 51 of the Legislation Act are met, an instrument's sunseting day can be deferred for either 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
- 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, or
 - 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, or
 - 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 the instrument, and
- c) the Attorney-General to issue a certificate. The explanatory statement for the certificate to include a statement of reasons for the issue of the certificate.

On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the instrument 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 deferral certificate

For the purposes of subsection 51(5) of the Legislation Act, this section sets out the statement of reasons for the issue of this certificate.

The 2009 Regulations are made under the OPGGS Act. They provide for the regulation of environmental management of upstream petroleum and greenhouse gas activities in offshore areas.

In mid-July 2018, the Department of Industry, Innovation and Science (DIIS) became aware that, should the 2009 Regulations be remade, amendments would be needed to both the OPGGS Act and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (OPGGS Levies Act) in order to update existing cross-references to specific references to the 2009 Regulations. If these amendments were not made, those references would become misleading once the regulations were remade. This would create a risk that the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) would not be able to inspect compliance with environment plans, nor be able to fund these activities through the imposition of levies. A 12 month deferral will allow the DIIS to investigate the best approach to ensure that the functions of the NOPSEMA are not affected.

As such, the 2009 Regulations are likely to cease to be in force within 24 months after its sunset day. A deferral of the sunset day of the 2009 Regulations would be 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 deferral certificate are provided in [Attachment A](#).

The 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 Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of this certificate, and from the DIIS about the instrument to which this certificate applies.

ATTACHMENT A

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the deferral certificate is named the *Legislation (Deferral of Sunsetting—Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations) Certificate 2018*. The deferral certificate may be cited by that name.

Section 2 Commencement

This section provides for the deferral certificate to commence on the day after it is registered.

Section 3 Authority

This section provides that the deferral certificate is made under paragraph 51(1)(c) of the Legislation Act.

Section 4 Deferral of sunsetting

This section provides that the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*, for which the sunsetting day is 1 April 2019, are taken to be repealed under section 51 of the Legislation Act on 1 April 2020.

Section 5 Repeal of this instrument

This section provides that the deferral certificate is repealed at the start of 2 April 2020.