

Legislation (Deferral of Sunsetting—A New Tax System (Goods and Services Tax) (Average Input Tax Credit Fraction) Determination) 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—A New Tax System (Goods and Services Tax) (Average Input Tax Credit Fraction) Determination) 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 subject to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the certificate is after 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) does not 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 *A New Tax System (Goods and Services Tax) (Average Input Tax Credit Fraction) Determination 2010* (the Determination) from 1 October 2020 to 1 October 2022.

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 Housing and Assistant Treasurer, the Hon Michael Sukkar 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 the Determination, the Minister for Housing and Assistant Treasurer, the Hon Michael Sukkar MP, provided a written application to the Attorney-General seeking a deferral of the sunseting day for the Determination. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that, apart from the operation of Part 4 of Chapter 3 of the Legislation Act, the instrument proposed to be made in substitution for the Determination will not be able to be completed before the sunseting day for reasons that could not be foreseen and avoided. As such, the criterion in subparagraph 51(1)(b)(ii) 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 *New Tax System (Goods and Services Tax) Act 1999* levies a tax on the taxable supply and taxable importation of goods and services in Australia. Under the goods and services tax, compulsory third party insurance operators use the average input tax credit fraction to work out the amount of decreasing adjustments they have when certain payments are made under the scheme. The Determination specifies the average input tax credit fractions for a particular compulsory third party scheme for the purposes of goods and services tax.

The instrument proposed to be made in substitution for the Determination will not be able to be completed before the sunseting day for reasons that could not be foreseen and avoided. The delay is due to the acceleration of other Government commitments in the implementation of recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, which will require significant resourcing. This will impact the ability of the Department of Treasury to complete the necessary processes of reviewing and revising the Determination. The Minister for Housing and Assistant Treasurer has requested a 24-month deferral of the sunseting date to allow sufficient time for the preparation of a replacement for the Determination. A deferral will avoid the need to replace the Determination in its existing form for a short period of time before it is expected to be repealed and replaced.

As such, deferral of the sunseting date of the Determination is consistent with the policy intent of the sunseting 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 Determination which is subject to the certificate, and which will now sunset at a later day as specified in the certificate, is 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 Treasury about the Determination.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—A New Tax System (Goods and Services Tax) (Average Input Tax Credit Fraction) Determination) Certificate 2020* (the certificate) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

Overview of the Certificate

This certificate is made under paragraph 51(1)(c) of the Legislation Act. Under that paragraph 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 scheduled sunsetting day. The instrument affected by this certificate is the *A New Tax System (Goods and Services Tax) (Average Input Tax Credit Fraction) Determination 2010* (the Determination). The instrument proposed to be made in substitution for the Determination will not be able to be completed before the sunsetting date for reasons that could not have been foreseen and avoided. The deferral of the sunsetting date would allow sufficient time to prepare the replacement for the Determination.

The certificate allows the Determination to continue to be in force for a further but limited period of time when it would otherwise sunset. This removes the administrative burden of replacing the Determination in its current form, where it would have a limited duration prior to its subsequent repeal and potential replacement, or where circumstances prevent the making of a replacement instrument prior to the sunsetting day.

Human rights implications

The Statement of Compatibility for a certificate of deferral of sunsetting focuses on the effect of the deferral instrument, rather than the substantive effect of continuing the instruments that have been deferred.

Before issuing the certificate, the Attorney-General was satisfied that, apart from the operation of the sunsetting provisions, the instrument proposed to be made in substitution for the Determination will not be able to be completed before the sunsetting day for reasons that could not be foreseen and avoided. Issuing a certificate of deferral therefore avoids the need to replace the Determination in its current form for a short period of time before it is expected to be repealed and replaced.

Instruments that are replaced will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the instrument will be individually assessed at that time, including through the requirement to prepare further Statements of Compatibility with Human Rights.

Conclusion

This certificate is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act by ensuring that any proposal to make replacement instruments that unduly limit human rights and freedoms will be subject to parliamentary oversight and scrutiny.

ATTACHMENT A

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the certificate is named the *Legislation (Deferral of Sunsetting—A New Tax System (Goods and Services Tax) (Average Input Tax Credit Fraction) Determination) 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 *A New Tax System (Goods and Services Tax) (Average Input Tax Credit Fraction) Determination 2010*, for which the sunsetting day is 1 October 2020, is repealed under section 51 of the Legislation Act on 1 October 2022.

Section 5 Repeal of this instrument

This section provides that the certificate is repealed at the start of 2 October 2022.