

***Legislation (Deferral of Sunsetting—Social Security (Administration)
Instruments) Certificate 2022***

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Social Security (Administration) Instruments) Certificate 2022* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (Cth) (the Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation.

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration. 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 6, 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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 sunseting date of the following instruments by 12 months from 1 October 2022 to 1 October 2023 (together, the ‘Income Management Instruments’):

- (a) the *Social Security (Administration) (Declared child protection State—New South Wales, Queensland, South Australia and Victoria) Determination 2012*;
- (b) the *Social Security (Administration) (Declared income management area—Anangu Pitjantjatjara Yankunytjatjara lands) Determination 2012*;
- (c) the *Social Security (Administration) (Declared voluntary income management areas—New South Wales, Queensland, South Australia and Victoria) Determination 2012*;
- (d) the *Social Security (Administration) (Recognised State or Territory—Northern Territory) Determination 2012*;
- (e) the *Social Security (Administration) (Specified income management Territory—Northern Territory) Specification 2012*; and
- (f) the *Social Security (Administration) (Vulnerable income management areas) Specification 2012*.

Pursuant to subsection 51(4) of the Legislation Act the Certificate will not be subject to the disallowance provisions of that Act as the deferred sunseting day specified in the Certificate is on or before the first anniversary of the originally scheduled sunseting day. Subsection 51(4) of the Legislation Act provides that a certificate of deferral is exempt from disallowance if it defers the sunseting day of an instrument by up to 12 months.

The ability to defer sunseting dates is an integral part of the sunseting framework. It provides the necessary flexibility to ensure the standard 10 year sunseting period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. Where the deferral is for a short period (6 or 12 months), the certificate is exempt from disallowance because the instrument will shortly be reviewed and, if remade, subject to parliamentary scrutiny. Subjecting short term certificates of deferral to disallowance would undermine the flexibility afforded by their further but strictly limited postponement of sunseting. In this case, the Income Management Instruments are expected to be reviewed and remade within 12 months of the current sunseting date as a result of necessary consultation with communities to develop long term arrangements in abolishing the Cashless Debit Card and reforming compulsory income management arrangements, pursuant to the Government’s policy. If this Certificate were to be disallowed, there would not be enough time to thoroughly review and replace the Income Management Instruments prior to the sunseting day.

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 Income Management Instruments are made under Part 3B of the *Social Security (Administration) Act 1999* (the SSA Act) and provide a regime for recipients of certain welfare payments. Part 3B provides the objectives of the income management regime are aimed at, among other things, ensuring welfare payments are directed to meet the priority needs of the recipient as well as their children, partner or other dependants, providing support in budgeting to meet priority needs, and reducing the likelihood of harassment or abuse in relation to welfare payments. Under the regime, the Secretary of the Department of Social Services (or his delegate) has the power to set aside a proportion of a person's welfare payments to pay for those priority needs such as food, clothing, housing and utilities. The regime operates in specified locations around Australia. Each of the Income Management Instruments declare or specify geographic areas for the purposes of one or more income management measures, or determine a state or territory is a recognised state or territory for the purposes of Part 3B of the SSA Act.

The Government has committed to abolish the Cashless Debit Card and work with communities on the future of the income management regime and will need time to work with communities on what future arrangements should be.

The Department of Social Services consulted with relevant departments and agencies on the approach to defer the sunseting of instruments through formal steering committee meetings, with membership of the steering committee comprising the Department of the Prime Minister and Cabinet, Department of Social Services, Services Australia, National Indigenous Australians Agency and the Department of Health. Further consultations on the approach to defer the instruments took place in regular meetings with the Department of Finance, the Treasury and the Attorney-General's Department

Further consultation with communities will occur to develop long term arrangements. This work will take until mid-2023 to complete. There is a wide range of stakeholders and First Nations groups that will need to be consulted about the future of the income management regime, and what supports may be required to ensure communities are best placed to address the complex social issues they face. Consultation will be required in each of the sites these instruments apply, including in remote and very remote communities across Australia. This consultation will seek the views of local government, shires, service providers, First Nations leaders, participants and advocacy groups. In some cases, multiple consultations will be required to ensure consultation is undertaken in a meaningful and culturally appropriate manner.

Over 40 per cent of people on income management have been on the program for 10 years or more. Some have grown accustomed to the high level of support. It is critical that these people, their families and local providers and leaders are able to put their views forward about any change to these arrangements. In addition, ending these arrangements abruptly creates the risk of unfavourable outcomes for people who are not prepared for, or supported through, changes to their financial arrangements.

Certificates of deferral are machinery in nature, and enable legislative instruments that would otherwise sunset to remain in force for a further, but strictly limited, period of time. This will minimise the administrative burden on stakeholders associated with consultation on a deferral that will only have effect for a limited amount of time. Any replacement instruments will be subject to further consultation and parliamentary oversight, including oversight of whether adequate consultation occurred with persons likely to be affected by the replacement instruments.

A 12 month deferral will allow sufficient time for further consultation and will avoid the need to remake the Income Management Instruments in their current form for the short period of time before they are repealed and replacement instruments made. As such, deferral of the sunseting date of the Income Management Instruments is consistent with the policy intent of the sunseting regime, and does not significantly alter existing arrangements.

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 6, 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 sunset provisions) be likely to cease to be in force within 24 months after its sunset day
 - (ii) the proposed replacement instrument will not be able to be completed before the sunset 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 Income Management Instruments, the Minister for Social Services, the Hon Amanda Rishworth MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunset for the Income Management Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Income Management 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 sunset 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 the reasons for issuing the Certificate.

The SSA Act provides for the general administration of social security law, provision of benefits, appointment of nominees and the income management regime. The Income Management Instruments are made under Part 3B of the SSA Act and provide a regime for recipients of certain welfare payments. Each of the Income Management Instruments declare or specify geographic areas for the purposes of one or more income management measures, or determine a state or territory is a recognised state or territory for the purposes of Part 3B of the SSA Act.

The Income Management Instruments will likely cease to be in force in their current form within 24 months of their original sunset day. The Department of Social Services will establish and implement transitional arrangements for the abolition of the Cashless Debit Card in accordance with the Government's policy, including consideration of pathways for participants, where appropriate, to transition onto income management arrangements. Accordingly, to allow sufficient time for the

Department of Social Services to consult communities and develop these long-term arrangements, it is practical and appropriate for the existing Income Management Instruments to remain in place until until they are repealed as anticipated within the next 12 months.

More information

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

The Income Management 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 Social Services about the Income Management Instruments to which the Certificate applies.

NOTES ON SECTIONS

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Income Management Instruments) Certificate 2022*. The Certificate may be cited by this 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 Deferral of sunsetting

This section provides that the following instruments, for which the sunsetting day is 1 October 2022, are repealed by section 51 of the *Legislation Act 2003* on 1 October 2023:

- the *Social Security (Administration) (Declared child protection State—New South Wales, Queensland, South Australia and Victoria) Determination 2012*;
- the *Social Security (Administration) (Declared income management area—Anangu Pitjantjatjara Yankunytjatjara lands) Determination 2012*;
- the *Social Security (Administration) (Declared voluntary income management areas—New South Wales, Queensland, South Australia and Victoria) Determination 2012*;

- the *Social Security (Administration) (Recognised State or Territory—Northern Territory) Determination 2012*;
- the *Social Security (Administration) (Specified income management Territory—Northern Territory) Specification 2012*; and
- the *Social Security (Administration) (Vulnerable income management areas) Specification 2012*.

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 October 2023.