

Legislation (Deferral of Sunsetting—Australian Jobs (Australian Industry Participation) Rule) Amendment Certificate 2025

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Australian Jobs (Australian Industry Participation) Rule) Amendment Certificate 2025* (the Amendment Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (the Legislation Act). It amends the *Legislation (Deferral of Sunsetting—Australian Jobs (Australian Industry Participation) Rule) Certificate 2023* (the Principal Certificate). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Amendment Certificate will be subjected to the disallowance provisions of the Legislation Act as the deferred sunseting day specified in the Amendment Certificate is after the first anniversary of the originally scheduled sunseting day, which means that subsection 51(4) of that Act (which provides an exemption for disallowance for deferrals of 12 months or less) does not apply.

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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 sunseting 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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunseting day. This allows instruments to continue to be in force for a further but limited period of time after the date on which 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 sunset day.

Through the operation of subsection 33(3) of the *Acts Interpretation Act 1901*, the Attorney-General's power under paragraph 51(1)(c) includes the power to repeal, rescind, revoke, amend or vary such a certificate.

The Amendment Certificate amends the Principal Certificate, extending the previously granted deferral of sunset for the *Australian Jobs (Australian Industry Participation) Rule 2014* (the Rule) by an additional 12 months, resulting in a deferral of 24 months in total. The Rule, for which the previous sunset day was 1 April 2025, will now sunset on 1 April 2026.

The ability to defer sunset dates is an integral part of the sunset framework. It provides the necessary flexibility to ensure the standard 10-year sunset period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. In this case, the Rule is expected to be remade within 24 months of the sunset date as a result of a potential review of the current legislative framework. If the Amendment Certificate were to be disallowed, there would not be enough time to conduct the review and remake the Instrument 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 Impact Analysis (OIA). The OIA reference for this standing exemption is ID19633.

Consultation before making

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

The Rule is made under the *Australian Jobs Act 2013* (the Jobs Act). The Jobs Act requires proponents of eligible major projects to develop and implement an Australian Industry Participation (AIP) Plan. The Jobs Act includes six-monthly compliance reporting by proponents. The Rule sets out the content of compliance reports. It also contains the requirements for gaining an exception from submitting an AIP plan and the functions of the AIP Authority.

The Department of Industry, Science and Resources (the department) is considering amending the Jobs Act but this is unlikely to be completed prior to the sunseting date of the Rule. The potential amendments to the Jobs Act are in light of the proposed *Future Made in Australia Act 2024* (FMIA Act), and informed by feedback from the department's Annual Performance Statement Audit 2022-2023 undertaken by the Australian National Audit Office (ANAO) and the department's AIP Impact Evaluation (2022-2023).

The department is working with key stakeholders (including project proponents, suppliers, Australian Government Specialist Investment Vehicles, and Commonwealth agencies) as part of program and policy delivery to identify and determine potential areas for legislative change. As part of the AIP Impact Evaluation, the department undertook targeted consultations (surveys and interviews) with industry and other relevant stakeholders, which included the relevance of current legislation. The department plans to address future reforms to the Jobs Act once the finer details around the FMIA Act are settled.

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 instrument 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.

The Amendment Certificate will allow sufficient time for the department to consider and conduct a review. The Amendment Certificate will avoid the need to remake the Rule in its current form for the short period of time before it is repealed and a replacement instrument is made. As such, given that deferral of the sunseting date of the Rule is consistent with the policy intent of the sunseting regime and does not significantly alter existing arrangements, appropriate consultation has occurred for the purposes of section 17 of the Legislation Act.

Statutory preconditions relevant to the Amendment 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 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 Rule, the Minister for Industry and Science, the Hon Ed Husic MP, provided a written application to the Attorney-General seeking an amendment of the previous deferral certificate to extend the deferral of sunseting for the Instrument for a further 12 months, making a total of 24 months. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Rule 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 its 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 Amendment Certificate

For the purposes of subsection 51(5) of the Legislation Act this section sets out the statement of reasons for issuing the Amendment Certificate.

On 3 July 2023, the Attorney-General issued the Principal Certificate under section 51 of the Legislation Act, deferring the sunseting of the Rule from 1 April 2024 to 1 April 2025. The rule-maker for the Rule, the Minister for Industry and Science, the Hon Ed Husic MP, subsequently sought the Attorney-General's approval to further defer the sunseting of the Instrument by a further 12 months through the issuing of an Amendment Certificate that would defer the repeal date specified in the Principal Certificate. The new sunseting date for the Instrument is 1 April 2026.

Deferring the sunseting date will allow additional time to conduct a review of the Jobs Act and consider further reforms before remaking the instrument.

The Jobs Act commenced in 2013 and is accompanied by the Rule. The primary objective of the Jobs Act is to provide a full, fair and reasonable opportunity for Australian entities to participate in major Australian projects. The Jobs Act requires proponents of eligible major projects to develop and implement an AIP plan for each eligible major project, with capital expenditure of \$500 million or more. The Jobs Act includes six-monthly compliance reporting requirements by proponents. It also

requires that the AIP Authority prepare an annual report on its operations. The AIP Authority is a statutory position established by the Jobs Act. The Rule sets out the required content of compliance reports, and contains the requirements for gaining an exemption from AIP plan requirements.

Since the Rule's last deferral, the department has completed an impact evaluation of the AIP Policy and Programs and have identified potential areas for legislative reform. The department is continuing its engagement with relevant stakeholders to assess and determine potential amendments to the Jobs Act. The department notes that some proposed changes will require substantial reform to the Jobs Act.

Additionally, the FMIA Act is currently under development and the department is not in a position to comment on the full impact of the FMIA Act on the Jobs Act. The department considers there is the possibility that the FMIA Act and related government decisions may have nil impact on the Jobs Act. However, noting there is some alignment in the objectives of both acts and the instrument, the department considers it important to understand the implications of the FMIA Act before amending the Jobs Act and remaking the Rule.

While amendments to the Jobs Act are being considered, the department has conducted a review of the Rule and identified minimum amendments to refresh the instrument, as informed by the ANAO Performance Audit and Impact Evaluation. In the event that further legislative reform related to the Jobs Act is postponed, the department is well placed to undertake a refresh of the Rule with other identified minimum amendments (within the next 12 months prior to the new sunset day).

Accordingly, the Rule will likely cease to be in force in its current form within 24 months of its original sunset date.

More information

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

As the Amendment Certificate is a purely amending instrument, it will be automatically repealed by the operation of section 48A of the Legislation Act at the conclusion of the disallowance period.

The Rule, which will now be repealed on a later day as specified in the Amendment 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 Amendment Certificate, and from the Department of Industry, Science and Resources about the Instrument to which the Amendment Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—Australian Jobs (Australian Industry Participation) Rule) Amendment Certificate 2025* (the Amendment 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 Amendment Certificate

The Amendment Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*. Under that paragraph the Attorney-General can issue a certificate to defer the sunseting 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 originally scheduled sunseting day.

Through the operation of subsection 33(3) of the *Acts Interpretation Act 1901*, the Attorney-General's power under paragraph 51(1)(c) includes power to repeal, rescind, revoke, amend or vary such a certificate.

The Amendment Certificate amends the Principal Certificate, extending the previously granted deferral of sunseting for the *Australian Jobs (Australian Industry Participation) Rule 2014* (the Rule) by an additional 12 months, resulting in a deferral of 24 months in total. The Rule, for which the previous sunseting day was 1 April 2025, will now sunset on 1 April 2026.

The Rule is expected to be repealed and replaced within 24 months of its scheduled sunseting day once the anticipated reforms are implemented.

The Amendment Certificate allows the Rule 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 remaking the Instrument which would have a limited duration prior to its expected repeal and replacement, or where circumstances prevent the making of a replacement instrument prior to the sunseting day.

Human Rights Implications

An amending certificate of deferral of sunseting extends the operation of the instrument but does not change or affect the rights engaged under the original instrument.

The Rule does not engage in any issues of human rights and freedoms recognised or declared by the international instruments in section 3 of the Human Rights Act.

Therefore, overall, the Rule is compatible with human rights because it does not engage any human rights and freedoms recognised or declared by the international instruments in section 3 of the Human Rights Act.

Before issuing the Amendment Certificate, the Attorney-General was satisfied that the Rule would, apart from the operation of the sunset provisions, cease to be in force within 24 months of its sunset date. Issuing an amending certificate of deferral therefore avoids the need to replace the Instrument in its current form for a short period of time before it is expected to be repealed and replaced.

Any replacement instrument will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the remade Rule will be assessed at the time it is made, including through the requirement to prepare a Statement of Compatibility with Human Rights.

Conclusion

This Amendment 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, as it does not raise any human rights issues, and ensures that any proposal to make a replacement instrument will be subject to parliamentary oversight and scrutiny.

NOTES ON THE AMENDMENT CERTIFICATE

Section 1 Name

This section provides that the Amendment Certificate is named the *Legislation (Deferral of Sunsetting—Australian Jobs (Australian Industry Participation) Rule) Amendment Certificate 2025*. The Amendment Certificate may be cited by this name.

Section 2 Commencement

This section provides for the Amendment Certificate to commence on the day after it is registered.

Section 3 Authority

This section provides that the Amendment Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*.

Section 4 Schedules

This section provides that each instrument specified in a Schedule to the Amendment Certificate is amended or repealed as set out in that Schedule, and any other items have effect according to their terms.

Schedule 1 Amendments

This schedule sets out the amendments to the Principal Certificate that are necessary to further defer the sunsetting of *Australian Jobs (Australian Industry Participation) Rule 2014* to 1 April 2026.

Item 1 Section 4

This item amends section 4 of the Principal Certificate by substituting the sunsetting date of 1 April 2025 with the amended date of 1 April 2026.

Item 2**Section 5**

This item changes the self-repealing provision of the Principal Certificate so that it takes effect on 2 April 2026, rather than 2 April 2025.