***Legislation (Deferral of Sunsetting—National Land (Road Transport) Ordinance) 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—National Land (Road Transport) Ordinance) 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—National Land (Road Transport) Ordinance) Certificate 2024* (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 sunsetting day specified in the Amendment Certificate is after the first anniversary of the originally scheduled sunsetting 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**

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 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 sunsetting day.

Through the operation of subsection 33(3) of the *Acts Interpretation Acts 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 sunsetting for the *National Land (Road Transport) Ordinance 2014* (the Ordinance) by an additional 12 months, resulting in a deferral of 24 months in total. The Ordinance, for which the original sunsetting date of 1 April 2024 was extended by 12 months to 1 April 2025, will now sunset on 1 April 2026.

The ability to defer sunsetting dates is an integral part of the sunsetting framework. It provides the necessary flexibility to ensure the standard 10-year sunsetting period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. In this case, the Ordinance is expected to be remade within 24 months of the original sunsetting date as a result of unanticipated and significant issues with the drafting of the Ordinance. If the Amendment Certificate were to be disallowed, there would not be enough time to remake the Instrument prior to the sunsetting day.

**PROCESS BEFORE CERTIFICATE WAS MADE**

**Regulatory impact analysis**

Certificates of deferral of sunsetting 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 Ordinance is made under the *Seat of Government (Administration) Act 1910*. The Ordinance establishes the legislative framework for the management of paid parking on National Land by empowering the National Capital Authority (NCA) Chief Executive to administer applied ACT road transport legislation on National Land. Paid parking on National Land is a revenue source for the Commonwealth and the legislative framework established by the Ordinance provides the NCA with the legislative authority for this revenue-raising activity.

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 NCA, in consultation with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department), to conduct public consultation on the replacement Ordinance before it is made. The Amendment Certificate will avoid the need to remake the Ordinance 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 sunsetting date of the Ordinance is consistent with the policy intent of the sunsetting 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 sunsetting 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:

1. the responsible rule-maker to apply to the Attorney-General in writing, and
2. the Attorney-General to be satisfied that:
3. the instrument would (apart from the operation of the sunsetting provisions) be likely to cease to be in force within 24 months after its sunsetting day
4. the proposed replacement instrument will not be able to be completed before the sunsetting day for reasons that the rule-maker could not have foreseen and avoided
5. 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
6. the Attorney-General has approved Part 4 of Chapter 3 of the Legislation Act (Sunsetting) not applying to that instrument, and
7. 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 Ordinance, the Minister for Regional Development, Local Government and Territories, the Hon Kristy McBain MP (the Minister), provided a written application to the Attorney‑General seeking an amendment of the previous deferral certificate to extend the deferral of sunsetting 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 Ordinance 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 sunsetting 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 21 March 2024, the Attorney‑General issued the Principal Certificate under section 51 of the Legislation Act, deferring the sunsetting of the Ordinance from 1 April 2024 to 1 April 2025. The Minister subsequently sought the Attorney‑General’s approval to further defer the sunsetting of the Instrument by a further 12 months through the issuing of an Amendment Certificate. The new sunsetting date for the Instrument is 1 April 2026.

Deferring the sunsetting date will allow additional time for the NCA, in consultation with the department, to conduct public consultation on the replacement Ordinance before it is made, while eliminating the risk that the current Ordinance will not be able to be remade before it sunsets for any reason, including because of a caretaker period.

The sunsetting date of the Ordinance was previously deferred to allow the NCA to progress the standardisation and modernisation of the administration framework, to be incorporated into a replacement instrument. The department and the NCA have been pursuing an alternative Ordinance construction that would vest certain responsibilities and powers under the Ordinance in the Minister, and enable the Minister to delegate those functions and powers to appropriate persons. When implemented, this design would make the re-made Ordinance consistent with other Ordinances applicable to National Land and administered by the NCA, whereby power and statutory functions are held by the Minister and delegated to officials of the NCA. The construction of the current Ordinance compared to other, more recently remade Ordinances, for example, the *Australian Capital Territory National Land (Lakes) Ordinance 2022*, has necessitated more time to develop and draft.

The drafting of the replacement Ordinance has encountered delays due to unexpected complexity in drafting that have required greater consideration to resolve, alongside limited drafting resources and prioritisation of competing legislation projects. This has meant that public consultation on the remake has been delayed. The department and the NCA are conducting public consultation on the replacement Ordinance from 5 December 2024 to 10 January 2025 and, subject to the consultation response, will remake the Ordinance soon after. However, a caretaker period in early 2025 could risk remaking the Ordinance before it lapses.

Accordingly, the Ordinance will likely cease to be in force in its current form within 24 months of its original sunsetting 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 Ordinance, 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 Infrastructure, Transport, Regional Development, Communications and the Arts about the Instrument to which the Amendment Certificate applies.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The *Legislation (Deferral of Sunsetting—National Land (Road Transport) Ordinance) 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 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 originally scheduled sunsetting 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 sunsetting for the *National Land (Road Transport) Ordinance 2014* (the Ordinance) by an additional 12 months, resulting in a deferral of 24 months in total. The Ordinance, for which the previous sunsetting day was 1 April 2025, will now sunset on 1 April 2026.

The Ordinance is expected to be repealed and replaced within 24 months of its original sunsetting day once the anticipated public consultation is conducted.

The Amendment Certificate allows the Ordinance 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 sunsetting day.

**Human Rights Implications**

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

The Ordinance 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 Ordinance is compatible with human rights because it does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act.

Before issuing the Amendment Certificate, the Attorney-General was satisfied that the Ordinance would, apart from the operation of the sunsetting provisions, cease to be in force within 24 months of their sunsetting date. Issuing a 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 the Ordinance 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.

**ATTACHMENT A**

**NOTES ON THE AMENDMENT CERTIFICATE**

**Section 1 Name**

This section provides that the Amendment Certificate is named the *Legislation (Deferral of Sunsetting—National Land (Road Transport) Ordinance) 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 the *National Land (Road Transport) Ordinance 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.