

# ***Legislation (Deferral of Sunsetting—Dental Benefits Rules) Certificate 2025***

## **EXPLANATORY STATEMENT**

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

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### **INTRODUCTION**

The *Legislation (Deferral of Sunsetting—Dental Benefits Rules) Certificate 2025* (the Certificate) is 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. 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 sunsetting day specified in the Certificate is on or before the first anniversary of the originally scheduled sunsetting day. Subsection 51(4) of the Legislation Act provides that a certificate of deferral is exempt from disallowance if it defers the sunsetting day of an instrument by up to 12 months.

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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

The Certificate defers the sunseting date of the Dental Benefits Rules 2014 (the Rules) by 12 months from 1 April 2025 to 1 April 2026.

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 disallowance and 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 Rules are expected to be remade within 12 months of the sunseting date following further consideration of matters which have arisen relating to the drafting of the replacement instrument.

## **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 Impact Analysis (OIA). The OIA 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 Rules are made under the *Dental Benefits Act 2008*.

The Rules provide up to \$1,132 in benefits to eligible children over a two-calendar year period for basic dental services under the Child Dental Benefits Schedule (CDBS). It sets out items specifying dental services, the amount of dental benefit payable, and the method for determining the amount. The Rules also set out a monetary limit on the amount of dental benefit payable in respect of dental services provided to dental patients during specified periods.

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 an instrument 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.

A 12 month deferral will allow sufficient time for the Department of Health and Aged Care (the department) to appropriately address matters that have arisen relating to the drafting of the replacement instrument that require further consideration and will avoid the need to remake the Rules in their 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 instrument 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 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 issuing of the certificate.

The rule-maker for the Rules, the Minister for Health and Aged Care, the Hon Mark Butler MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the instrument. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Rules 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 Certificate**

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

The Certificate defers the sunseting date of the Rules by 12 months to 1 April 2026 to enable the department to further consider matters relating to the drafting of the replacement instrument and complete the remaking of the Rules.

If the Rules are allowed to be sunset before a replacement instrument is in place, funding available through the CDBS would cease, placing healthcare and financial burden on families and the public health system across Australia.

The department has progressed the draft remaking of the Rules with the Office of Parliamentary Counsel, and a significant portion has been completed. However, further work is required to ensure the replacement instrument reflects the contemporary operating environment of the CDBS and to address current ambiguity in the Rules. The department expects to remake the Rules by early next year.

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

### **More information**

Further details on the provisions of the Certificate are provided in Attachment A.

The Rules 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 Health and Aged Care about the Instrument to which the Certificate applies.

## NOTES ON THE CERTIFICATE

### **Section 1      Name**

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Dental Benefits Rules) Certificate 2025*. 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 Dental Benefits Rules 2014, for which the sunsetting day is 1 April 2025, is repealed by section 51 of the *Legislation Act 2003* on 1 April 2026.

### **Section 5      Repeal of the instrument**

This section provides that the Certificate is repealed at the start of 2 April 2026.