

Legislation (Deferral of Sunsetting—Bankruptcy Instruments) Certificate 2025

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Bankruptcy Instruments) Certificate 2025* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (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. The Certificate will be subjected to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the 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 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 following instruments by 24 months from 1 October 2025 to 1 October 2027 (together, the bankruptcy instruments):

- a) *Bankruptcy (Fees and Remuneration) Determination 2015*
- b) *Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2015*

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. In this case, the bankruptcy instruments are expected to be remade within 24 months of the sunseting date as a result of a review to be undertaken by the Department of the Treasury. If the Certificate were to be disallowed, there would not be enough time to conduct the review and replace the 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 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 bankruptcy instruments are made under the *Bankruptcy Act 1966* and the *Bankruptcy (Estate Charges) Act 1997*. They are the legal instruments underpinning the cost-recovery framework for the Australian Financial Security Authority's (AFSA) personal insolvency function.

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. The proposal for sunseting deferral was not subject to consultation as it is machinery in nature. However, any replacement instruments will be subject to public consultation, undertaken by the Department of the Treasury, and parliamentary oversight, including oversight of whether adequate consultation occurred with persons likely to be affected by the replacement instruments.

A 24-month deferral will allow sufficient time for the Department of the Treasury to conduct a review and will avoid the need to remake the Bankruptcy Instruments in their current form for the short period of time before they are repealed and replacement instruments are made. As such, given that deferral of the sunseting date of the bankruptcy instruments 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 issue of the certificate.

The rule-maker for the bankruptcy instruments, the Assistant Minister for Productivity, Competition, Charities and Treasury, the Hon Dr Andrew Leigh MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the bankruptcy instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the bankruptcy 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 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 bankruptcy instruments by 24 months to 1 October 2027 to enable sufficient time to for the Department of the Treasury to complete a review of the fees and charges for AFSA’s personal insolvency function.

AFSA joined the Treasury portfolio in May 2025 in line with machinery of government changes that transferred responsibility for bankruptcy and personal property securities to the Treasurer from the Attorney-General.

AFSA last developed and published a cost recovery impact statement for its personal insolvency and trustee services consistent with the Government’s charging framework in 2015, which informed the most recent increases to the fees and charges contained in the bankruptcy instruments. An evaluation of AFSA’s costs, fees and charging arrangements must be undertaken before the bankruptcy instruments can be replaced to ensure they remain fit-for-purpose and consistent with Government’s charging framework and associated cost recovery policies.

A 24-month deferral of the sunseting day for the bankruptcy instrument will allow sufficient time to review each of the fees and charges underpinning AFSA’s personal insolvency system. The bankruptcy instruments currently include 20 different fees, charges and levies – each of which need to be reviewed before the instruments can be remade. These have not been reviewed for at least 10 years, during which period there have been various changes have been made to the regulatory framework, practices and processes for personal insolvencies.

The deferral period will enable the Department of Treasury to review the fees in the context of the Government’s charging framework and AFSA’s cost recovery policies, consider whether changes are required, and draft and consult on any proposed changes or increases before they are remade. Accordingly, if reviewed and replaced ahead of the current sunseting dates, the bankruptcy instruments would likely cease to be in force in their 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 bankruptcy 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 the Treasury about the bankruptcy instruments to which the Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—Bankruptcy Instruments) Certificate 2025* (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

The 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. The instruments specified in the Certificate are (together, the bankruptcy instruments):

- a) *Bankruptcy (Fees and Remuneration) Determination 2015*
- b) *Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2015*

The bankruptcy instruments are expected to be repealed and replaced within 24 months of their scheduled sunseting day as part of a review of the cost-recovery framework for the Australian Financial Security Authority's personal insolvency function.

The Certificate allows the bankruptcy 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 the instruments which would have a limited duration prior to their expected repeal and replacement, or where circumstances prevent the making of a replacement instrument prior to the sunseting day.

Human Rights Implications

A 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 bankruptcy instruments do not engage any issues of human rights and freedoms recognised or declared by the international instruments in section 3 of the Human Rights Act. This is evidenced by the explanatory statements published when the instruments were made.

Before issuing the Certificate, the Attorney-General was satisfied that the bankruptcy instruments would, apart from the operation of the sunset provisions, cease to be in force within 24 months of their sunset date. Issuing a certificate of deferral therefore avoids the need to remake the instruments in their current form for a short period of time before they are 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 remade bankruptcy instruments will be assessed at the time they are made, including through the requirement to prepare a Statement 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, 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 CERTIFICATE

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Bankruptcy Instruments) 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 following instruments, for which the sunsetting day is 1 October 2025, are repealed by section 51 of the *Legislation Act 2003* on 1 October 2027:

- a) *Bankruptcy (Fees and Remuneration) Determination 2015*
- b) *Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2015*

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 October 2027, which is the day after the deferred sunsetting day. This ensures that the Certificate remains in force only as long as it is needed.