

Legislation (Deferral of Sunsetting—Product Stewardship (Oil) Instruments) Certificate 2021

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Product Stewardship (Oil) Instruments) Certificate 2021* (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. The Certificate will not be subject to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the certificate is on or before the first anniversary of the originally scheduled sunsetting day, pursuant to subsection 51(4) of that Act (which provides an exemption from disallowance for deferrals of 12 months or less).

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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005. Legislative instruments registered on 1 January 2005 are subject to the staggered sunsetting timetable set out in subsection 50(2) of the Legislation Act.

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 six, 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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 sunsetting date of the following instruments by 12 months from 1 October 2021 to 1 October 2022:

- a) the *Product Stewardship (Oil) Declaration 2003*; and
- b) the *Product Stewardship (Oil) Regulations 2000*

(together, the 'Product Stewardship Instruments').

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 Minister for the Environment, the Hon Sussan Ley MP, advised the Attorney-General of the reasons in support of issuing the certificate. The Minister is the relevant rule-maker for the Product Stewardship Instruments for the purposes of section 6 of the Legislation Act.

A thematic review of the *Product Stewardship (Oil) Act 2000* (PSO Act), including the Product Stewardship Instruments, was undertaken by Deloitte Access Economics through the Fourth Product Stewardship (Oil) Act 2000 Review (the Review), dated 11 December 2020. The Review included extensive stakeholder engagement, and the Department of Agriculture, Water and the Environment is undertaking further policy work to assess the PSO Act and the Product Stewardship Instruments in light of the recommendations made in the Review. The Product Stewardship Instruments will cease to be in force prior to 1 October 2022 due to their repeal and replacement with new instruments as part of this policy work.

As 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, further consultation in relation to the deferral was considered unnecessary. This will minimise the administrative burden on stakeholders associated with consultation on the deferral. Any replacement instruments will be subject to further consultation and parliamentary oversight, including oversight on 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 the replacement instruments to be made. The deferral will avoid the need to remake the Product Stewardship 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 Product Stewardship 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 six, 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; or

- (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; or
 - (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 Product Stewardship Instruments, the Minister for the Environment, the Hon Sussan Ley MP, provided a written application to the Attorney-General seeking a deferral of sunseting for the Product Stewardship Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Product Stewardship 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 the reasons for issuing the Certificate.

The Product Stewardship Instruments are made pursuant to PSO Act, which together with the *Excise Tariff Act 1921* and *Customs Tariff Act 1995*, provides the legislative framework for the Product Stewardship for Oil Scheme (the Scheme). The Scheme encourages the environmentally sustainable management of used lubricant base oils, fluid based oils and greases by providing an incentive for recyclers to collect and recycle such oils and greases in Australia.

Broadly, the *Product Stewardship (Oil) Declaration 2003* prescribes the gazetted oils and gazetted uses for which product stewardship (oil) benefits are available under the Scheme, and the *Product Stewardship (Oil) Regulations 2000* detail the claim periods and benefit amounts of product stewardship (oil) benefits. Without the Product Stewardship Instruments being in place, industry stakeholders would not be able to appropriately claim benefits from the Scheme, and the incentive to recycle used oils and greases would be removed.

Following the alignment of the sunseting date of the Product Stewardship Instruments through the *Legislation (Product Stewardship (Oil) Instruments) Sunset-altering Declaration 2017*, a thematic review of the PSO Act, including the Product Stewardship Instruments, was undertaken by Deloitte Access Economics through the Fourth Product Stewardship (Oil) Act 2000 Review (the Review), dated 11 December 2020.

The Department of Agriculture, Water and the Environment (DAWE) is undertaking further policy work to assess the PSO Act and the Product Stewardship Instruments in light of the recommendations made in the Review. The further policy work will include consultation with other Australian Government Departments as well as industry and other key stakeholders. Following this work the PSO Act may need to be amended to formalise any changes to the Scheme; in addition to the Product Stewardship Instruments. DAWE anticipates that it will take at least 12 months to complete this work, and therefore it cannot be completed before the current sunseting day of 1 October 2021.

Undertaking an intensive process over a shorter period could result in poor policy and legislative outcomes.

A 12 month deferral will allow sufficient time for further industry consultation and the replacement instruments to be made. The deferral will avoid the need to remake the Product Stewardship Instruments in their current form for the short period of time before they are repealed and replacement instruments made. As such, deferral of the sunset date of the instruments is consistent with the policy intent of the sunset regime, that legislative instruments should be kept up to date and only remain in force so long as they are needed.

More information

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

The Product Stewardship 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 DAWE about the Product Stewardship Instruments.

ATTACHMENT A

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Product Stewardship (Oil) Instruments) Certificate 2021*. 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.

Section 4 Deferral of sunseting

This section provides that the following instruments, for which the sunseting day is 1 October 2021, are repealed by section 51 of the Legislation Act on 1 October 2022:

- the *Product Stewardship (Oil) Declaration 2003*; and
- the *Product Stewardship (Oil) Regulations 2000*.

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 October 2022.