

***Legislation (Deferral of Sunsetting— Primary Industries (Excise) Levies
(Designated Bodies) Declaration) Certificate 2023***

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Deferral of Sunsetting— Primary Industries (Excise) Levies (Designated Bodies) Declaration) Certificate 2023* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (Cth) (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. 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration.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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day unless the instrument is repealed earlier (paragraph 51(1)(d) of the Legislation Act).

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 sunset day.

The Certificate defers the sunset date of the *Primary Industries (Excise) Levies (Designated Bodies) Declaration 2013* (the Primary Industries Levies Instrument) by 12 months from 1 April 2024 to 1 April 2025. The Primary Industries Levies Instrument is made under clause 13 of Schedule 2 to the *Primary Industries (Excise) Levies Act 1999*.

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, a new instrument to replace the Primary Industries Levies Instrument is expected to be developed and to commence within 12 months of the current sunset day as part of broader reforms to modernise and streamline agricultural levies legislation. This follows a thematic review conducted by the former Department of Agriculture and Water Resources (the former Department) following an alignment of the sunset days of the Agricultural Levies Instruments under the *Legislation (Agricultural Levies Instruments) Sunset-altering Declaration 2016*.

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

The Department of Agriculture, Fisheries and Forestry (the Department) has undertaken consultation with over 70 relevant industry stakeholders and all Research and Development Corporations as part of the reforms to agricultural levies legislation, including noting a number of underpinning legislative instruments were due to sunset. Continuing consultation with industry will ensure stakeholders are informed of the approach going forward for this instrument.

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.

A 12 month deferral of the Primary Industries Levies Instrument will allow sufficient time for further consultation prior to the replacement instrument being made. The deferral will avoid the need to remake the Primary Industries Levies Instrument 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 Primary Industries Levies 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 issue of the certificate.

The rule-maker for the Primary Industries Levies Instrument, the Minister for Agriculture, Fisheries and Forestry and Minister for Emergency Management Senator the Hon. Murray Watt, provided a

written application to the Attorney-General seeking a certificate of deferral of sunseting for the Primary Levies Instrument.

On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the instrument 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 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 agricultural levies and charges system was established in its current form around 30 years ago. The system is a partnership between government and industry to fund industry priorities. Levies or other taxes are collected from primary producers by government at industry's request. Industry decides whether to establish a levy, sets levy rates and exemptions, and decides whether to discontinue a levy. The Primary Industries Levies Instrument is an essential part of the legislative framework for the levies system as it designates bodies for particular levied commodities. It supports the imposition of levies and charges.

The instrument will likely cease to be in force in its current form within 24 months of its original sunseting day. The former Department undertook a thematic review of the agricultural levies legislation which led to the proposed reform of the primary and delegated legislation. Over time there has been an accumulation of amendments and additions which has resulted in levies legislation that is complex and inconsistent. There are also some redundant provisions. The Department has reviewed the levies legislative framework and is currently developing new levies legislation which is streamlined and modernised for proposed commencement before 1 April 2025 together with new instruments.

Accordingly, to allow sufficient time for the replacement legislation to be developed and to commence, it is practical and appropriate for the Primary Industries Levies Instrument to remain in place until it is repealed as anticipated within the 12 months of its original sunseting date. Deferral of the sunseting day will also avoid the need to remake the legislative instrument in its current form for the short period of time before it would cease to be in force.

More information

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

The Primary Industries Levies Instrument which is subject to the Certificate, will now sunset at a later day as specified in the Certificate. The 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 Certificate, and from the Department of Agriculture, Fisheries and Forestry about the Primary Industries Levies Instrument to which the Certificate applies.

NOTES ON SECTIONS

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting— Primary Industries (Excise) Levies (Designated Bodies) Declaration) Certificate 2023*. 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 *Primary Industries (Excise) Levies (Designated Bodies) Declaration 2013*, for which the sunseting day is 1 April 2024, is repealed by section 51 of the *Legislation Act 2003* on 1 April 2025.

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 April 2025.