

***Legislation (Deferral of Sunsetting—Agricultural Levies Instruments)
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—Agricultural Levies Instruments) 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. The Certificate will be subjected to the disallowance provisions of the Legislation Act as because 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration.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 The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day unless the instrument is repealed earlier (paragraph 51(1)(d) of the Legislation Act).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 sunseting day.

The Certificate defers the sunseting date of the following instruments by 24 months from 1 April 2023 to 1 April 2025 (together, the ‘Agricultural Levies Instruments’):

- a) the *Cotton Research and Development Corporation Regulations 1990*;
- b) the *Dairy Produce Regulations 1986*;
- c) the *Fisheries Research and Development Corporation Regulations 1991*;
- d) the *Forestry Marketing and Research and Development Services Regulations 2008*;
- e) the *Grains Research and Development Corporation Regulations 1990*;
- f) the *Horticulture Marketing and Research and Development Services Regulations 2001*;
- g) the *Primary Industries (Customs) Charges Regulations 2000*;
- h) the *Primary Industries (Excise) Levies (Forest Growers) Designated Bodies Declaration 2007*;
- i) the *Primary Industries (Excise) Levies (Pasture Seeds) Declaration 2012*;
- j) the *Primary Industries (Excise) Levies Regulations 1999*;
- k) the *Primary Industries Levies and Charges Collection Regulations 1991*;
- l) the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998*;
- m) the *Rural Industries Research and Development Corporation Regulations 2000*;
- n) the *Wool Services Privatisation (Miscellaneous Provisions) Regulations 2000*;
- o) the *Wool Services Privatisation (Research Body) Declaration 2008*; and
- p) the *Wool Services Privatisation (Wool Levy Poll) Regulations 2003*.

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, new instruments to replace the Agricultural Levies Instruments are expected to be developed and to commence within 24 months of the current sunseting days 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 sunseting 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 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 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 the proposed deferral of the Agricultural Levies Instruments. Continuing consultation with industry will ensure that stakeholders are informed of the approach going forward for these instruments.

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 instruments 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 24 month deferral of the Agricultural Levies Instruments will allow sufficient time for further consultation prior to the replacement instruments being made. The deferral will avoid the need to remake the Agricultural Levies 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 dates of the Agricultural Levies 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 Agricultural Levies Instruments, 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 16 Agricultural Levies Instruments.

On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the 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 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 Agricultural Levies Instruments are an essential part of the legislative framework for the levies system. They enable the imposition of levies and charges and their disbursement and provide for the administration of levy collection and establishment and operation of levy recipient bodies.

The instruments will likely cease to be in force in their current form within 24 months of their original sunseting days. The original sunseting days of the Agricultural Levies Instruments were aligned by the *Legislation (Agricultural Levies Instruments) Sunset-altering Declaration 2016*. Following this, 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 new responsible department, the Department of Agriculture, Fisheries and Forestry, 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 Agricultural Levies Instruments to remain in place until they are repealed as anticipated within the next 24 months. Deferral of the sunseting day will also avoid the need to remake the legislative instruments in their current form for the short period of time before they would cease to be in force.

More information

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

The Agricultural Levies 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 Agriculture, Fisheries and Forestry about the Agricultural Levies Instruments to which the Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—Agricultural Levies Instruments) Certificate 2023* (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 ‘Agricultural Levies Instruments’):

- a) the *Cotton Research and Development Corporation Regulations 1990*;
- b) the *Dairy Produce Regulations 1986*;
- c) the *Fisheries Research and Development Corporation Regulations 1991*;
- d) the *Forestry Marketing and Research and Development Services Regulations 2008*;
- e) the *Grains Research and Development Corporation Regulations 1990*;
- f) the *Horticulture Marketing and Research and Development Services Regulations 2001*;
- g) the *Primary Industries (Customs) Charges Regulations 2000*;
- h) the *Primary Industries (Excise) Levies (Forest Growers) Designated Bodies Declaration 2007*;
- i) the *Primary Industries (Excise) Levies (Pasture Seeds) Declaration 2012*;
- j) the *Primary Industries (Excise) Levies Regulations 1999*;
- k) the *Primary Industries Levies and Charges Collection Regulations 1991*;
- l) the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998*;
- m) the *Rural Industries Research and Development Corporation Regulations 2000*;
- n) the *Wool Services Privatisation (Miscellaneous Provisions) Regulations 2000*;
- o) the *Wool Services Privatisation (Research Body) Declaration 2008*; and
- p) the *Wool Services Privatisation (Wool Levy Poll) Regulations 2003*.

The Agricultural Levies Instruments are expected to be repealed and replaced within 24 months of their scheduled sunseting days as part of the reforms to modernise and streamline agricultural levies legislation. The Certificate allows the Agricultural Levies 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 Certificate does not engage, and therefore is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the Human Rights Act. It is notable that the Agricultural Levies Instruments, and subsequent amendments made to them, have been assessed as compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The *Primary Industries Levies and Charges Collection Amendment (Returns) Regulations 2018*, which previously amended the Primary Industries Levies and Charges Collection Regulations 1991, were assessed to engage the right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the International Covenant on Civil and Political Rights. Those regulations were compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Before issuing the Certificate, the Attorney-General was satisfied that the Agricultural Levies Instruments would, apart from the operation of the sunseting provisions, cease to be in force within 24 months of their sunseting date. Issuing a certificate of deferral therefore avoids the need to replace the Agricultural Levies 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 Agricultural Levies 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 SECTIONS

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Agricultural Levies Instruments) 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 following instruments, for which the sunsetting day is 1 April 2023, are repealed by section 51 of the *Legislation Act 2003* on 1 April 2025:

- the *Cotton Research and Development Corporation Regulations 1990*;
- the *Dairy Produce Regulations 1986*;
- the *Fisheries Research and Development Corporation Regulations 1991*;
- the *Forestry Marketing and Research and Development Services Regulations 2008*;
- the *Grains Research and Development Corporation Regulations 1990*;
- the *Horticulture Marketing and Research and Development Services Regulations 2001*;
- the *Primary Industries (Customs) Charges Regulations 2000*;

- the *Primary Industries (Excise) Levies (Forest Growers) Designated Bodies Declaration 2007*;
- the *Primary Industries (Excise) Levies (Pasture Seeds) Declaration 2012*;
- the *Primary Industries (Excise) Levies Regulations 1999*;
- the *Primary Industries Levies and Charges Collection Regulations 1991*;
- the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998*;
- the *Rural Industries Research and Development Corporation Regulations 2000*;
- the *Wool Services Privatisation (Miscellaneous Provisions) Regulations 2000*;
- the *Wool Services Privatisation (Research Body) Declaration 2008*;
- the *Wool Services Privatisation (Wool Levy Poll) Regulations 2003*.

The note provides that the *Legislation (Agricultural Levies Instruments) Sunset-altering Declaration 2016* declared the sunset day of 1 April 2023 for the above instruments.

Section 5 Repeal of the instrument

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