

Legislation (Deferral of Sunsetting—Australian Jobs (Australian Industry Participation) Rule) 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—Australian Jobs (Australian Industry Participation) Rule) Certificate 2023* (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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 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 *Australian Jobs (Australian Industry Participation) Rule 2014* (the Rule) by 12 months from 1 April 2024 to 1 April 2025.

The ability to defer sunsetting dates is an integral part of the sunsetting framework. It provides the necessary flexibility to ensure the standard 10 year sunsetting 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 sunset. In this case, the Rule is expected to be remade within 12 months of the sunset date as a result of a review by the Department of Industry, Science and Resources (the Department) into Australian Industry Participation (AIP). If the Certificate were to be disallowed, there would not be enough time to thoroughly review and remake the Rule prior to the sunset day.

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 Rule is made under section 128 of the *Australian Jobs Act 2013* (the Act). The Act requires proponents of eligible major projects to develop and implement an Australian Industry Participation (AIP) plan, which includes six monthly compliance reporting by proponents. The Rule sets out the content of the compliance reports, the requirements for gaining an exception from submitting an AIP plan and sets out the functions of the AIP Authority.

The Department is currently undertaking a review of AIP which may see legislative changes required to be made to the Act and the Rule. Redundant information in the Rule will also require updating. The Department consulted with stakeholders including state and territory governments, project proponents, unions and suppliers during the review and will continue to consult as required.

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 instrument.

A 12 month deferral will allow sufficient time for the review of AIP to be conducted and completed, and will avoid the need to remake the Rule 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 sunset date of the Rule is consistent with the policy intent of the sunset 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 of 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 Rule, the Minister for Industry and Science, the Hon Ed Husic MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the Rule. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Rule 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 reasons for issuing the Certificate.

The Certificate defers the sunseting date of the Rule by 12 months to 1 April 2025 to enable the Department to complete a review and make any changes to AIP, which may see legislative changes required to both the Act and the Rule.

The review into AIP has commenced and may lead to consideration of any legislative amendments in 2024 and 2025 to support government priorities. It is expected that the Rule will be replaced by a new instrument as part of the reforms. A 12 month deferral will allow sufficient time for the new instrument to be made, alongside amendments made to the Act, avoiding the need to remake the Rule in its current form for a short period of time before it would need to be amended again to reflect the anticipated reforms. Accordingly, the Rule will likely cease to be in force in its current form within 24 months of its original sunseting date.

More information

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

The Rule which is subject to the Certificate, and which will now sunset at a later day as specified in

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 Industry, Science and Resources about the Rule 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—Australian Jobs (Australian Industry Participation) Rule) 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 sunseting

This section provides that the *Australian Jobs (Australian Industry Participation) Rule 2014*, 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.