

***Legislation (Deferral of Sunsetting—National Measurement 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—National Measurement Instruments) Certificate 2023* (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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 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 sunseting date of the following instruments by 24 months from 1 April 2024 to 1 April 2026 (together, the ‘National Measurement Instruments’):

- a) *Determination by the National Standards Commission - Accuracy of reference standards of measurement - 14 June 2002;*
- b) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density Mercury;*
- c) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density - Standard Mean Ocean Water;*
- d) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density - Water;*
- e) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Velocity - Electromagnetic Waves in a Vacuum;*
- f) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Viscosity - Dynamic Viscosity of Water at a Temperature in the Range 19.98°C to 20.02°C;*
- g) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Viscosity - Dynamic Viscosity of Water at a Temperature of 20°C;*
- h) *National Measurement Act 1960 - para 8A(1)(a) and (b) - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Acceleration Due to Gravity;*
- i) *National Measurement Act 1960 - para 8A(1)(a) - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Acceleration Due to Gravity;*
- j) *National Measurement Guidelines 2016;*
- k) *National Measurement (Recognized-Value Standard of Measurement of Position) Determination 2017;*
- l) *National Measurement Regulations 1999;*
- m) *National Trade Measurement Regulations 2009.*

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 National Measurement Instruments are expected to be developed and to commence within 24 months of the current sunseting days to modernise and streamline the national measurement legislative framework. This follows a thematic review conducted by the Department of Industry, Science and Resources (the Department) following an alignment of the sunseting days of the National Measurement Instruments under the *Legislation (National Measurement Instruments) Sunset-altering Declaration 2018* to 1 April 2024.

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 National Measurement Instruments, alongside the *National Measurement Act 1960* (the Act), collectively form the legislative framework underpinning Australia's national measurement system. The framework establishes the legal units and standards of measurement to be used throughout Australia, provides confidence in measurements used for legal purposes and regulates measurements used in trade.

The *National Measurement Regulations 1999* and the *National Trade Measurement Regulations 2009* in particular form a critical part of this framework. The *National Measurement Regulations 1999* define the primary legal units of measure (e.g. the definition of a kilogram and length of a metre) which are used for legal purposes across Australia, including all real estate transactions and commercial contracts, and referred to in other legislation. The *National Trade Measurement Regulations 2009* establish core parts of the regulatory framework by supporting fair measures in over \$970 billion in annual trade transactions. This includes imposing substantive requirements and offence provisions regarding measuring instruments used in trade and public weighbridges, and setting the requirements for measurement markings on packaged products.

The other National Measurement Instruments are also integral to the framework. The *National Measurement Guidelines 2016* express and combine certain Australian legal units of measurements to support consistent use of the units across Australia. The *Determination by the National Standards Commission - Accuracy of reference standards of measurement - 14 June 2002* specifies how accurate the artefacts that embody a particular unit of measurement need to be in order to be verified under the *National Measurement Regulations 1999*.

Additionally, the determinations made under the Act provide for certain legally-recognised value standards of important, or frequently referred to, technical measurements. For example, mercury

density, which is used for blood pressure measurements, and measurement of land position, which is used for surveying.

The Department commenced a review of the national measurement legislative framework in 2017, to develop options to modernise, streamline and simplify the framework. To enable the completion of the review, the original sunseting days of the National Measurement Instruments were aligned by the *Legislation (National Measurement Instruments) Sunset-altering Declaration 2018* to 1 April 2024.

During the review, public consultations occurred between 2018 to 2020 with key stakeholders in government, industry and community. Proposed reform options were finalised in 2021 and were released for public comment through a consultation Regulation Impact Statement during April and May of 2021. As a result of the consultation, new legislation will reform the legislative framework to implement the recommendations of the review.

The need to seek a sunseting deferral has been raised with relevant Australian Government departments, and with peak consumer and industry groups as part of ongoing Consumer and Industry Liaison Committee meetings. The consulted stakeholders appreciate the need for the National Measurement Instruments to continue.

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 will allow sufficient time for the Department to implement the recommendations of the review in new legislation, and will avoid the need to remake the National Measurement 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 National Measurement 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 sunset provisions) be likely to cease to be in force within 24 months after its sunset day
 - (ii) the proposed replacement instrument will not be able to be completed before the sunset 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 National Measurement Instruments, 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 sunset for the National Measurement Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that National Measurement 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 sunset 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 sunset date of the National Measurement Instruments to 1 April 2026 to enable the Department to implement the recommendations of the review of the national measurement legislative framework. The drafting project will be complex and will take time to convert over 400 pages of primary and delegated legislation from a prescriptive to a principles-based approach. These reforms will also need to compete alongside other government priorities for drafting resources and parliamentary time to pass the legislation.

A 24 month deferral will ensure that the legislation is not unnecessarily delayed or duplicated. If the current sunset dates are not deferred, the National Measurement Instruments will need to be remade and partially modernised to current drafting practices under the current Act to prevent expiry. The National Measurement Instruments would then need to be substantially modernised and remade

again in new legislation. This would delay when Australia would benefit from the reforms and would duplicate the drafting work required to implement the new legislation.

The preferred reform option for the new legislation was decided in December 2022 and policy authority given to commence drafting of the new legislation to implement the recommendations of the review, with likely commencement on or before 1 April 2026. Accordingly, the National Measurement Instruments will 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 National Measurement Instruments which are 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 National Measurement Instruments to which the Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—National Measurement 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 'National Measurement Instruments'):

- a) *Determination by the National Standards Commission - Accuracy of reference standards of measurement - 14 June 2002*;
- b) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density Mercury*;
- c) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density - Standard Mean Ocean Water*;

- d) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density - Water;*
- e) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Velocity - Electromagnetic Waves in a Vacuum;*
- f) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Viscosity - Dynamic Viscosity of Water at a Temperature in the Range 19.98°C to 20.02°C;*
- g) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Viscosity - Dynamic Viscosity of Water at a Temperature of 20°C;*
- h) *National Measurement Act 1960 - para 8A(1)(a) and (b) - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Acceleration Due to Gravity;*
- i) *National Measurement Act 1960 - para 8A(1)(a) - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Acceleration Due to Gravity;*
- j) *National Measurement Guidelines 2016;*
- k) *National Measurement (Recognized-Value Standard of Measurement of Position) Determination 2017;*
- l) *National Measurement Regulations 1999;*
- m) *National Trade Measurement Regulations 2009.*

The National Measurement Instruments are expected to be repealed and replaced within 24 months of their scheduled sunset day as part of the review of the national measurement legislative framework. The Certificate allows the National Measurement 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 sunset day.

Human Rights Implications

A certificate of deferral of sunset extends the operation of the instrument but does not change or affect the rights engaged under the original instrument. The *National Measurement Regulations 1999* and the *National Trade Measurement Regulations 2009* engage certain rights and freedoms declared by the international instruments set out in section 3 of the Human Rights Act, by providing confidence that buyers in Australia are receiving fair measure, which supports consistency and certainty in all retail and wholesale transactions where measurement determines price. This is compatible with, and supportive of, the economic right of self-determination provided under the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5). The remaining National Measurement Instruments do not otherwise engage, and therefore are to that extent compatible with, the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the Human Rights Act.

Before issuing the Certificate, the Attorney-General was satisfied that the National Measurement 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 replace the National Measurement 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 National Measurement 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—National Measurement 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 2024, are repealed by section 51 of the *Legislation Act 2003* on 1 April 2026:

- a) *Determination by the National Standards Commission - Accuracy of reference standards of measurement - 14 June 2002*;
- b) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density Mercury*;
- c) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density - Standard Mean Ocean Water*;
- d) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Density - Water*;
- e) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Velocity - Electromagnetic Waves in a Vacuum*;
- f) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Viscosity - Dynamic Viscosity of Water at a Temperature in the Range 19.98°C to 20.02°C*;
- g) *National Measurement Act 1960 - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Viscosity - Dynamic Viscosity of Water at a Temperature of 20°C*;
- h) *National Measurement Act 1960 - para 8A(1)(a) and (b) - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Acceleration Due to Gravity*;

- i) *National Measurement Act 1960 - para 8A(1)(a) - Determination by the National Standards Commission - Recognized-Value Standard of Measurement of Acceleration Due to Gravity;*
- j) *National Measurement Guidelines 2016;*
- k) *National Measurement (Recognized-Value Standard of Measurement of Position) Determination 2017;*
- l) *National Measurement Regulations 1999;*
- m) *National Trade Measurement Regulations 2009.*

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 April 2026.