

Legislation (Deferral of Sunsetting—Marine Safety (Domestic Commercial Vessel) National Law Regulation) 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—Marine Safety (Domestic Commercial Vessel) National Law Regulation) 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 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day. 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 *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* ('the Marine Safety Instrument') by 24 months from 1 October 2023 to 1 October 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. In this case, the Marine Safety Instrument is expected to be reviewed and amended within 24 months of the current sunsetting date as a result of an independent review of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* ('the Marine Safety Act'), including the Marine Safety Instrument, that is currently underway to determine if the Act remains fit for purpose in achieving safety outcomes.

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 Marine Safety Act creates a law for regulation of domestic commercial vessel safety and establishes the Australian Maritime Safety Authority (AMSA) as the National Marine Safety Regulator. Certain matters under the Marine Safety Act are prescribed for in the Marine Safety Instrument, such as the definition of a domestic commercial vessel and the marine surveyor accreditation scheme.

The independent review of the Marine Safety Act, including the Marine Safety Instrument, is underway and involves consultation with relevant stakeholders and industry. Accordingly, the outcomes of the independent review and subsequent legislation amendments are expected to result in changes to the Marine Safety 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 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 further consultation prior to the replacement instrument being made. The deferral will avoid the need to remake the Marine Safety Instrument in its current form for the short period of time before it is repealed and the replacement instrument is made. As such, given that deferral of the sunseting date of the Marine Safety 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 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 Marine Safety Instrument, the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the Marine Safety Instrument. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Marine Safety 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 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 Marine Safety Act creates a law for regulation of domestic commercial vessel safety and establishes AMSA as the National Marine Safety Regulator. Certain matters under the Marine Safety Act are prescribed for in the Marine Safety Instrument.

The Marine Safety Instrument will likely cease to be in force in its current form within 24 months of its original sunseting day. The Department of Infrastructure, Transport, Regional Development,

Communications and the Arts is currently facilitating an independent review of the Marine Safety Act, including the Marine Safety Instrument, to determine if it remains fit for purpose in achieving safety outcomes.

The final report of the independent review into the Marine Safety Act is expected to be released in late 2023. Following this, the Government will develop a response which will include legislative amendments for consideration by the Parliament, expected to occur in 2024. Accordingly, to allow sufficient time for the Department of Infrastructure, Transport, Regional Development, Communications and the Arts to consider the final review report and progress reforms, it is practical and appropriate for the Marine Safety Instrument to remain in place until it is repealed as anticipated within the next 24 months.

More information

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

The Marine Safety Instrument 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 Infrastructure, Transport, Regional Development, Communications and the Arts about the Marine Safety Instrument to which the Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—Marine Safety (Domestic Commercial Vessel) National Law Regulation) 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 instrument specified in the Certificate is the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (the Marine Safety Instrument). The Marine Safety Instrument is expected to be repealed and replaced within 24 months of its scheduled sunseting date as part of an independent review into the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, which the Instrument is made under.

The Certificate allows the Marine Safety Instrument to continue to be in force for a further, but limited, period of time when it would otherwise sunset. This removes the administrative burden of remaking the instrument which would have a limited duration prior to its 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 Marine Safety Instrument does not engage in any issues of human rights and freedoms recognised or declared by the international instruments in section 3 of the Human Rights Act. This is evidenced by the explanatory statement published when the Marine Safety Instrument was made.

Before issuing the Certificate, the Attorney-General was satisfied that the Marine Safety Instrument would, apart from the operation of the sunseting provisions, cease to be in force within 24 months of its sunseting date. Issuing a certificate of deferral therefore avoids the need to replace the Marine Safety Instrument in its current form for a short period of time before it is 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 Marine Safety Instrument will be assessed at the time any replacement instrument is made, including through the requirement to prepare a further 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— Marine Safety (Domestic Commercial Vessel) National Law Regulation) 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 *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*, for which the sunseting day is 1 October 2023, is repealed by section 51 of the *Legislation Act 2003* on 1 October 2025.

Section 5 Repeal of the instrument

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