

# *Legislation (Deferral of Sunsetting—Management Plan) Certificate 2023*

## **EXPLANATORY STATEMENT**

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

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### **INTRODUCTION**

The *Legislation (Deferral of Sunsetting—Management Plan) 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration.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The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.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 sunseting date of the *Instrument revoking and replacing Management Plan (made on 25 June 2013)* ('the Mawson's Huts Instrument') by 24 months from 1 October 2023 to 1 October 2025.

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, the Mawson's Huts Instrument is expected to be repealed and replaced within 24 months of the current sunseting day as there is now sufficient access to the Mawson's Huts Historic Site, enabling expert conservators and other relevant expeditioner staff to enter the site to undertake conservation works and assessments that will inform the contents of a replacement instrument.

## **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 Climate Change, Energy, the Environment and Water (DCCEEW) will engage specialist heritage and site experts to ensure that the contemporary objectives are reflected appropriately in a future Mawson's Huts Instrument. Consultation with stakeholder groups will also be undertaken. DCCEEW will inform relevant stakeholders to ensure that they are aware of this Certificate to extend the operation of the current Mawson's Huts Instrument for a further 24 months past the original sunset date.

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 24-month deferral of the Mawson's Huts Instrument will allow sufficient time for further consultation prior to the replacement instrument being made. The deferral will avoid the need to remake the Mawson's Huts 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 Mawson's Huts 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 Mawson's Huts Instrument, the Secretary of DCCEEW, Mr David Fredericks PSM, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the Mawson's Huts Instrument. Mr Fredericks meets the definition of a rule-maker pursuant to subparagraph 6(1)(c) of the Legislation Act as a person currently authorised to make the instrument as a delegate for the Minister for the Environment and Water, the Hon Tanya Plibersek MP.

On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the instrument proposed to be made in substitution for the Mawson's Huts Instrument will not be able to be completed before the sunseting day for reasons that could not have foreseen and avoided. As such, the criterion in subparagraph 51(1)(b)(ii) 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 Mawson's Huts Instrument is a legislative instrument which makes a heritage management plan for the Mawson's Huts Historic Site, a heritage place on the Commonwealth and National Heritage Lists. The instrument was made under sections 324S(2) and 341S(2) of the *Environment Protection and Biodiversity Conservation Act 1999* by Mr. Paul Grimes, who at the time of making the instrument was Secretary of the then-Department of Sustainability, Environment, Water, Population

and Communities acting as delegate of the then-Minister for Sustainability, Environment, Water, Population and Communities.

The Mawson's Huts Historic Site is located at Cape Denison, George V Land, in the Australian Antarctic Territory. Cape Denison is a 1.5 kilometre wide peninsula projecting into Commonwealth Bay, around 3000 kilometres south of Hobart.

For several years, the iceberg 'B09B' (with associated sea ice extending up to 60 kilometres) blocked the entrance to Commonwealth Bay, which impeded access to the Mawson's Huts Historic Site. This prevented expert conservators and other relevant expeditioner staff from entering the site, significantly delaying conservation works and assessments required to develop a new management plan. The Mawson's Huts Historic Site was successfully accessed for the first time in six years in early 2022. The success of this expedition will allow a shift in focus for future management activities from conservation of the heritage values at the site, to that of maintenance.

Specialist heritage and site experts will need to be engaged to ensure that the contemporary objectives are reflected appropriately in future management arrangements. Consultation with stakeholder groups will also need to be undertaken. The development of a new management plan is likely to be further delayed due to there being a limited number of heritage experts who have knowledge of Mawson's Huts Historic Site and Antarctic heritage, that are available to assist with developing the new Mawson's Huts Instrument.

The geographic remoteness and harsh conditions, as well as limited access to the site, present additional challenges to developing a replacement legislative instrument.

On the basis of these unforeseen and unavoidable circumstances, it will not be possible for a replacement Mawson's Huts Instrument to be completed prior to the original sunseting day.

Accordingly, to allow sufficient time to develop a new management plan for the now-accessible Mawson's Huts Historic Site, it is practical and appropriate for the Mawson's Huts Instrument to remain in place until it is repealed as anticipated within the next 24 months. 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 Mawson’s Huts 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 DCCEEW about the Mawson’s Huts Instrument to which the Certificate applies.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The *Legislation (Deferral of Sunsetting—Management Plan) 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 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 originally scheduled sunsetting day. The instrument specified in the Certificate is the *Instrument revoking and replacing Management Plan (made on 25 June 2013)* (Mawson’s Huts Instrument).

The Mawson’s Huts Instrument is expected to be repealed and replaced within 24 months of its scheduled sunsetting dates once a new management plan can be developed for the Mawson’s Huts Historic Site, which was inaccessible until 2022 due to obstruction by the iceberg ‘B09B’. The Certificate allows the Mawson’s Huts 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 sunsetting 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 Mawson's Huts Instrument does not engage any human rights or freedoms in the Human Rights Act. This is evidenced by the explanatory statement published when the Mawson Hut's Instrument was made.

Before issuing the Certificate, the Attorney-General was satisfied that the instrument proposed to be made in substitution for the Mawson's Huts Instrument will not be able to be completed before the sunseting day for reasons that could not have been foreseen and avoided. Issuing a certificate of deferral therefore avoids the need to replace the Mawson's Huts 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 Mawson's Huts 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—Management Plan) 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 *Instrument revoking and replacing Management Plan (made on 25 June 2013)*, for which the sunsetting 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.