

***Legislation (Imported Food and Biosecurity Instruments) Sunset-altering  
Declaration 2025***

**EXPLANATORY STATEMENT**

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

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**INTRODUCTION**

The *Legislation (Imported Food and Biosecurity Instruments) Sunset-altering Declaration 2025* (the Declaration) is made under subsection 51A(1) of the *Legislation Act 2003* (Cth) (Legislation Act). It is a legislative instrument for the purposes of the Legislation Act. The Declaration is subject to the disallowance provisions of the Legislation Act.

**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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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 subsection 51A(1) of the Legislation Act, the Attorney-General may issue a declaration aligning the sunsetting days of two or more instruments, if satisfied on application by the rule-maker/s of the relevant instruments that:

- a) all the instruments to be reviewed:
  - i. would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
  - ii. are or will be the subject of a single review; and
- b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

The objective of issuing a sunset-altering declaration is to facilitate either:

- the undertaking of a single review into the fitness-for-purpose of two or more thematically related legislative instruments, or
- the implementation of such a review's findings.

The instruments will then be repealed on the day specified in the Declaration instead of the previously scheduled sunseting days. This allows instruments to continue to be in force for a further but limited period of time after the date on which they would otherwise sunset. This reduces administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and replacing related legislation at different times.

The Declaration aligns the sunseting dates of the following instruments to 1 April 2031 (together, the imported food and biosecurity instruments):

- a) *Imported Food Charges (Collection) Regulation 2015*
- b) *Imported Food Charges (Imposition—Customs) Regulation 2015*
- c) *Imported Food Charges (Imposition—General) Regulation 2015*
- d) *Biosecurity Charges Imposition (Customs) Regulation 2016*
- e) *Biosecurity Charges Imposition (General) Regulation 2016*

Without the Declaration, the imported food instruments would sunset on 1 April 2026, and the biosecurity instruments would sunset on 1 October 2026.

The ability to align 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. Aligning the sunseting dates of the imported food and biosecurity instruments will enable the Department of Agriculture, Fisheries and Forestry (DAFF) to conduct a thematic review of the instruments. The alignment of these sunseting dates would provide an opportunity to comprehensively review the imported food and biosecurity instruments and determine whether the development of new legislation is required.

## **PROCESS BEFORE DECLARATION WAS MADE**

### **Regulatory impact analysis**

Sunset-altering declarations 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 Declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The imported food and biosecurity instruments are made under the *Imported Food Charges (Imposition—Customs) Act 2015*, *Imported Food Charges (Collection) Act 2015*, *Imported Food Charges (Imposition—General) Act 2015*, *Biosecurity Charges Imposition (Customs) Act 2015*, and the *Biosecurity Charges Imposition (General) Act 2015*.

These Acts provide the statutory authority for the imposition of charges in regulations for regulatory activities related to imported food and biosecurity matters undertaken by DAFF through the Biosecurity Cost Recovery Arrangement. The Biosecurity Cost Recovery Arrangement involves charging for regulatory activity connected with the administration of the *Biosecurity Act 2015* and the *Imported Food Act 1992*.

The application for alignment did not require consultation with other agencies as the instruments are not jointly administered.

In conducting the thematic review, DAFF will consult with external agencies including the Department of Home Affairs, Department of Finance, Department of Foreign Affairs and Trade, and the Office of Impact Analysis.

Alignment declarations 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. 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. As such, given that alignment of the sunset date of the imported food and biosecurity instruments 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**

In order to align the sunset day of two or more instruments, the Attorney-General must be satisfied on written application from the relevant rule-maker/s that the statutory conditions in paragraphs 51A(1)(a) and (b) of the Legislation Act are met. The statutory conditions are that:

- (a) all the instruments to be reviewed:

- i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
  - ii) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

In terms of process, the Legislation Act requires:

- (a) the responsible rule-maker/s to apply to the Attorney-General;
- (b) the Attorney-General to be satisfied of the statutory conditions; and
- (c) the Attorney-General to make a declaration, which is a legislative instrument and subject to disallowance.

The rule-maker for the imported food and biosecurity instruments, the Minister for Agriculture, Fisheries and Forestry, the Hon Julie Collins MP, provided a written application to the Attorney-General seeking a declaration of alignment of the sunseting days for the Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the criteria in paragraphs 51A(1)(a) and (b) of the Legislation Act are met.

### **Statement of Reasons for issuing of the Certificate**

For the purposes of subsection 51A(4) of the Legislation Act, this section sets out the statement of reasons for the issue of the certificate.

The Declaration aligns the sunseting dates for the imported food and biosecurity instruments to enable DAFF to conduct a single thematic review.

The instruments support imported food and biosecurity cost recovery matters. The Biosecurity Cost Recovery Arrangement involves recovering the cost of regulatory activity associated with the importation of goods, conveyances entering Australian territory, and the regulation of food, from taxpayers to the importing industry. The instruments collectively prescribe charges for biosecurity and imported food regulatory activities that are necessary to manage biosecurity risk and ensure Australian food safety standards are met.

In 2023, a comprehensive review of the biosecurity and imported food cost recovery instruments was undertaken; however, technology, operational practices, policies and industry business models have continued to change and areas for further investigation have been identified.

Aligning the sunseting dates to enable thematic review will ensure that any proposed changes to the imported food and biosecurity instruments are considered holistically.

A thematic review will facilitate an efficient and effective review process and enable consistent implementation of review findings. As such, the Declaration is consistent with the policy intent of the sunseting regime that legislative instruments should be kept up to date and only remain in force so long as they are needed.

### **More information**

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

The imported food and biosecurity instruments, which will now sunset on 1 April 2031 as specified in the Declaration, are available on the Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of the Declaration, and from DAFF about the instruments to which the Declaration applies.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Imported Food and Biosecurity Instruments) Sunset-altering Declaration 2025* (the Declaration) 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 Declaration

The Declaration is made under subsection 51A(1) of the *Legislation Act 2003* (the Legislation Act). Under that subsection, the Attorney-General can align the sunseting days of two or more legislative instruments to 1 April or 1 October of a year that is up to five years later than the earliest sunseting day. The instruments specified in the declaration will then be repealed on the day specified in the declaration instead of the previously scheduled sunseting day. The instruments specified in the Declaration are (together, the imported food and biosecurity instruments):

- a) *Imported Food Charges (Collection) Regulation 2015*
- b) *Imported Food Charges (Imposition—Customs) Regulation 2015*
- c) *Imported Food Charges (Imposition—General) Regulation 2015*
- d) *Biosecurity Charges Imposition (Customs) Regulation 2016*
- e) *Biosecurity Charges Imposition (General) Regulation 2016*

The Declaration aligns the sunseting dates of the imported food and biosecurity instruments to 1 April 2031. Prior to the making of the Declaration, the imported food instruments were due to sunset on 1 April 2026 and the biosecurity instruments were due to sunset on 1 October 2026. The objective of issuing the Declaration is to facilitate the undertaking of a single thematic review.

### Human Rights Implications

The imported food and biosecurity instruments do not engage any human rights and freedoms recognised or declared by the international instruments in section 3 of the Human Rights Act. This is explained by the explanatory statements published when these instruments were made.

Before issuing the Declaration, the Attorney-General was satisfied that all Instruments specified in the Declaration would be subject to a single thematic review. A thematic review is an effective mechanism for determining whether the Instruments are fit for purpose, identifying opportunities to update, streamline and clarify the operation of the instruments and, where appropriate, reducing unnecessary regulation. 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 imported food and biosecurity instruments will be assessed at the time any replacement

instruments are made, including through the requirement to prepare a Statement of Compatibility with Human Rights.

### **Conclusion**

The Declaration 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. Any proposal to make a replacement instrument will be subject to parliamentary oversight and scrutiny.

## NOTES ON THE DECLARATION

### Section 1      Name

This section provides for the declaration to be named the *Legislation (Imported Food and Biosecurity Instruments) Sunset-altering Declaration 2025*. The declaration may be cited by that name.

### Section 2      Commencement

This section provides for the declaration to commence on the day after it is registered.

### Section 3      Authority

This section provides that the declaration is made under subsection 51A(1) of the *Legislation Act 2003*.

### Section 4      Aligning of sunseting

This section provides that the following instruments are repealed by section 51A of the *Legislation Act 2003* on 1 April 2031:

- *Imported Food Charges (Collection) Regulation 2015*;
- *Imported Food Charges (Imposition—Customs) Regulation 2015*;
- *Imported Food Charges (Imposition-General) Regulation 2015*;
- *Biosecurity Charges Imposition (Customs) Regulation 2016*;
- *Biosecurity Charges Imposition (General) Regulation 2016*.

1 April 2031 is the aligned sunseting day for those instruments, which would otherwise have sunset on 1 April 2026 (for the first three instruments) and 1 October 2026 (for the last two instruments).

### Section 5      Repeal of this instrument

This section provides that the Declaration is repealed at the start of 2 April 2031, which is the day after the aligned sunseting day. This ensures that the Declaration remains in force only as long as it is needed.