

# ***Legislation (Environment Protection Instruments) Sunset-altering Declaration 2018***

## **EXPLANATORY STATEMENT**

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

---

### **INTRODUCTION**

The *Legislation (Environment Protection Instruments) Sunset-altering Declaration 2018* (the EPI declaration) was made under subsection 51A(1) 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. The EPI 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005. Legislative instruments registered on 1 January 2005 are subject to the staggered sunsetting timetable set out in subsection 50(2) of the Legislation Act.

Under subsection 51A(1) the Attorney-General can issue a declaration aligning the sunsetting days of two or more instruments to 1 April or 1 October of a year that is up to five years later than the earliest sunsetting day. The instruments will then be repealed on the day specified in the declaration instead of the scheduled sunsetting day of each instrument. Such a declaration allows instruments to continue to be in force for a further but limited period of time when they would otherwise sunset, or to sunset earlier than the originally scheduled sunsetting day.

The objective of issuing a sunset altering-declaration is to facilitate either: the undertaking of a single thematic review into the fitness-for-purpose of two or more instruments relevant to a particular industry, enabling Act or theme; or the implementation of the review's findings. This reduces the administrative burden as well as legislative inconsistencies that can arise from reviewing and remaking related legislation independently at different times.

The EPI declaration aligns the sunsetting dates of the *Environment Protection and Biodiversity Conservation Regulations 2000* and the *Environment Protection (Impact of Proposals) Act 1974 - Order under section 6* to 1 April 2024.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The EPI 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* (Human Rights Act).

### *Overview of the Declaration*

The EPI declaration is made under subsection 51A(1) of the Legislation Act. Under that subsection, the Attorney-General can align the sunset 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 sunset day. The instruments specified in the declaration will then be repealed on the day specified in the declaration instead of the scheduled sunset day. The instruments specified in the EPI declaration are:

- *Environment Protection and Biodiversity Conservation Regulations 2000* (the EPBC Regulations), and
- *Environment Protection (Impact of Proposals) Act 1974 - Order under section 6* (the EPIP Order).

The EPI declaration allows these instruments to be in force for a further, but limited, period of time when they would otherwise sunset. The objective of issuing the declaration is to facilitate the undertaking of a single thematic review into the fitness-for-purpose of these two instruments, as well as the implementation of the review's findings. This will reduce the administrative burden as well as legislative inconsistencies that can arise from reviewing and remaking related legislation independently at different times.

### *Human Rights Implications*

Before issuing the EPI declaration, the Attorney-General was satisfied that all instruments specified in the declaration were or 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.

The review of aligned instruments can provide information on how the instruments operate in the existing legal environment, including the impact of the instruments on human rights and freedoms. To avoid pre-empting that review, and with the knowledge that any instruments remade as a consequence of the review will face future parliamentary scrutiny, the Statement of Compatibility for a sunset-altering declaration focuses on the effect of the aligning instrument, rather than the substantive effect of continuing the instruments that have been aligned.

Instruments that are remade subsequent to that review will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the instruments will be individually assessed at that time, including through the requirement to prepare the Statements of Compatibility with Human Rights.

### *Conclusion*

The EPI 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 by ensuring that any proposal to remake instruments that unduly limit human rights and freedoms will be subject to parliamentary oversight and scrutiny.

## 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 Best Practice Regulation (OBPR). The OBPR reference for this standing exemption is ID 19486.

### Consultation before making

Before the EPI declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. Consultation involved the then Assistant Minister for the Environment, the Hon Melissa Price MP, informing the Attorney-General of the reasons in support of issuing the declaration. The Minister for the Environment is responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), under which the EPBC Regulations are currently in force. The Minister for the Environment is also responsible for administering the *Environmental Reform (Consequential Provisions) Act 1999* (the Consequential Provisions Act), under which the EPIP Order is currently in force. As such, the Minister is the relevant rule-maker for the purposes of section 6 of the Legislation Act. The declaration is consistent with the policy intent of the sunseting arrangements and does not significantly alter existing arrangements. Accordingly, further consultation was unnecessary.

### Statutory preconditions relevant to this declaration

If the Attorney-General is satisfied on written application from the rule-maker that the statutory conditions in the paragraphs to subsection 51A(1) of the Legislation Act are met, the sunseting day of two or more legislative instruments can be aligned by means of a declaration made under that section. The statutory conditions are that:

- all the instruments to be reviewed would (in the absence of a declaration under section 51A) be subject to sunseting
- the instruments are or will be the subject of a single review, and
- 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:

- the responsible rule-maker to apply to the Attorney-General
- the Attorney-General to be satisfied of the statutory conditions, and
- the Attorney-General to make a declaration, which is a legislative instrument and subject to disallowance.

The EPI declaration aligns the sunseting days of the following instruments, which were scheduled to sunset 1 April 2019 and 1 October 2019 respectively, to 1 April 2024.

- *Environment Protection (Impact of Proposals) Act 1974 - Order under section 6*
- *Environment Protection and Biodiversity Conservation Regulations 2000*

The rule-maker for these instruments is the Minister for the Environment, the Hon Melissa Price MP, who, in her previous role as the Assistant Minister for the Environment, provided a written application to the Attorney-General seeking an alignment of the instruments' sunseting days. On consideration of

this application, the Attorney-General was satisfied that the criteria in paragraphs 51A(1)(a) and (b) were met.

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

The EPBC Regulations and the EPIP Order both support the implementation of the EPBC Act and underpin Australia's national environmental protection framework. The EPBC Regulations give effect to provisions of the EPBC Act dealing with environmental assessment and approvals, conservation of biodiversity, world and natural heritage protection and management, and includes various conservation principles, enforcement, and administrative matters. The EPIP Order sets out administrative arrangements for the purpose of achieving the object of the *Environment Protection (Impact of Proposals) Act 1974* (EPIP Act). The EPIP Order was originally made under section 6 of the EPIP Act. The EPIP Act was repealed by Consequential Provisions Act. However, Schedule 3 of the Consequential Provisions Act provides that both the EPIP Act and the EPIP Order continue to apply in relation to certain activities. Both the EPBC Regulations and the EPIP Order provide for detailed administrative arrangements and requirements for actions subject to environmental approval.

The EPBC Act is subject to a statutory review process as required by section 522A of the Act. The next independent statutory review of the EPBC Act (EPBC statutory review) is due to commence by October 2019. Section 522A of the EPBC Act requires the EPBC statutory review to assess the operation of the EPBC Act, and the extent to which the objects of the EPBC Act have been achieved. The outcomes of the EPBC statutory review may have implications for the direction and necessity of the EPBC Regulations, and may also have a bearing on the continued necessity and operation of the EPIP Order.

The aligned sunseting date of 1 April 2024 will allow sufficient time for the completion of the EPBC statutory review, and facilitate consideration of any recommendations arising out of the review. The current sunseting dates of the EPBC Regulations, 1 October 2019, and the EPIP Order, 1 April 2019, do not provide enough time to complete and adequately consider the recommendations of the EPBC statutory review. Furthermore, the current sunseting dates would provide insufficient time for the EPBC Act and legislative instruments to be amended or re-made if necessary, for stakeholders to be consulted on proposed changes, and for any required changes to business processes to be implemented by stakeholders.

The EPI declaration is a legislative instrument and as such must be registered on the Federal Register of Legislation and laid before each House of Parliament no later than six sitting days after that registration. It is subject to the disallowance provisions of the Legislation Act.

### **More information**

Further details of this declaration are set out in [Attachment A](#).

A copy of each instrument which is the subject of the EPI declaration, and which will now sunset on 1 April 2024, is available on the Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of this declaration, and from the Department of the Environment and Energy about the instruments to which this declaration applies.

# ATTACHMENT A

## NOTES ON THE DECLARATION

### **Section 1      Name**

This section provides for the declaration to be named the *Legislation (Environment Protection Instruments) Sunset-altering Declaration 2018*. 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      Repeal of insurance instruments to facilitate review etc.**

This section provides that the following instruments are repealed by section 51A of the *Legislation Act* on 1 April 2024:

- the *Environment Protection and Biodiversity Conservation Regulations 2000*
- the *Environment Protection (Impact of Proposals) Act 1974 - Order under section 6*

This is the aligned sunset day for those instruments, which would otherwise have sunset on 1 April 2019 and 1 October 2019.

### **Section 5      Repeal of this instrument**

This section provides that the declaration is repealed on 2 April 2024, which is the day after the aligned sunset day. This ensures that the declaration remains in force for only as long as it is needed.