

Legislation (Telecommunications 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 (Telecommunications Instruments) Sunset-altering Declaration 2018* (the Telecommunications 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 Telecommunications 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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) of the Legislation Act 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 The instruments will then be repealed on the day specified in the declaration instead of the scheduled sunsetting day of each instrument.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.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Telecommunications 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 Telecommunications Declaration is made under subsection 51A(1) of 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 scheduled sunseting day. The instruments specified in the Telecommunications Declaration are:

- *Telecommunications (Equipment for the Disabled) Regulations 1998* (the 1998 Regulations), and
- *Telecommunications (Consumer Protection and Service Standards) (Characteristics for Standard Telephone Service) Regulation 2012* (the 2012 Regulation).

The Telecommunications Declaration allows the instruments to continue to be in force for a further but limited period of time when they would otherwise sunset. The objective of issuing a declaration is to facilitate the undertaking of a single thematic review into the fitness-for-purpose of two instruments relevant to a particular industry, enabling Act or theme; or the implementation of the reviews 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 Telecommunications 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 Telecommunications 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 Telecommunications Declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. Consultation involved the Minister for Communications and the Arts, Senator the Hon Mitch Fifield, advising the Attorney-General of the reasons in support of issuing the declaration. The Minister for Communications and the Arts is responsible for administering the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the enabling legislation under which the 1998 Regulations and the 2012 Regulation respectively were made. As such, the Minister for Communications and the Arts is the relevant rule-maker for the purposes of section 6 of the Legislation Act. The Telecommunications 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 the 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 of the Legislation Act) be subject to the sunseting regime,
- 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 Telecommunications Declaration aligns the sunseting days of the following instruments, which were scheduled to sunset between 1 April 2019 and 1 October 2022 respectively, to 1 April 2024:

- *Telecommunications (Equipment for the Disabled) Regulations 1998* (F1998B00123), and
- *Telecommunications (Consumer Protection and Service Standards) (Characteristics for Standard Telephone Service) Regulation 2012* (F2012L01222).

The rule-maker for these instruments is the Senator the Hon Mitch Fifield, who 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) of the Legislation Act were met.

Statement of Reasons for issuing of the declaration

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

The 1998 Regulations, made under the *Telecommunications Act 1997*, specifies the types of equipment that may be used to deliver the Standard Telephone Services (STS) supplied under the Universal Service Obligation (USO) to people with disabilities. The USO ensures all Australians have access to an STS on request. The 1998 Regulations applies to Telstra only, the current Universal Service Provider.

The 2012 Regulation, made under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Service Standards Act), declares designated characteristics for an STS which apply to the provision of pre-selection functionality when supplying an STS in accordance with section 349 of the Service Standards Act. Preselection is the ability of a consumer to take their line rental from one provider, typically Telstra, and choose another provider for their calls (e.g. Optus) on a call-by-call or bundled basis. Pre-selection is little used in the today's marketplace and the 2012 Regulation works to save carriers having to provide a costly but obsolete functionality. It applies to all telecommunications carriers and retail service providers who supply the STS.

Aligning the sunseting dates of the 1998 Regulations and the 2012 Regulation would provide an opportunity to review the instruments holistically to identify opportunities to streamline and simplify the legislative frameworks in a consistent manner. It will also enable efficient consultation with stakeholders following the outcomes of broader processes examining the provision of the STS (the development of the Universal Service Guarantee and the Telecommunications Consumer Safeguards Review).

More information

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

A copy of each instrument which is the subject of the 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 the declaration, and from the Department of Communications and the Arts about the instruments to which the declaration applies.

NOTES ON THE DECLARATION

Section 1 Name

This section provides for the declaration to be named the *Legislation (Telecommunications 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:

- *Telecommunications (Equipment for the Disabled) Regulations 1998* (F1998B00123), and
- *Telecommunications (Consumer Protection and Service Standards) (Characteristics for Standard Telephone Service) Regulation 2012* (F2012L01222).

This is the aligned sunset day for those instruments, which would otherwise have sunset on 1 April 2019 and 1 April 2022 respectively.

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.