

Legislative Instruments (Fuel Standards Instruments) Sunset-altering Declaration 2016

EXPLANATORY STATEMENT

Issued by the Attorney-General
in compliance with section 26 of the *Legislative Instruments Act 2003*

INTRODUCTION

This declaration was made under subsection 51A of the *Legislative Instruments Act 2003* (the LIA) and is a legislative instrument for the purposes of the LIA. The declaration is subject to the disallowance provisions of the LIA.

OUTLINE

The purpose of Part 6 of the LIA, which provides for the sunseting of legislative instruments, is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Section 51A enables the Attorney-General to align the sunseting dates of two or more instruments by declaration. The instruments will then all cease to be in force on the day specified in the declaration instead of the scheduled sunseting day of each instrument.

This 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 sunseting day. The purpose of such alignment is to enable all relevant instruments to be included in a single review of their fitness for purpose and continued relevance.

This removes the administrative burden as well as legislative inconsistencies which arise from remaking instruments of related legislation independently at different times.

PROCESS BEFORE CERTIFICATE 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.

Statement of compatibility with human rights obligations

Before this declaration was made, its impact on human rights was assessed using tools and guidance published by the Attorney-General's Department. It is fully compatible with human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Consultation before making

Before this declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the LIA, and the specific circumstances where consultation may be unnecessary or inappropriate set out in section 18. In preparing the application for this declaration, the relevant line area of the Department of the Environment consulted with that Department's Deregulation Unit and General Counsel, and with the Attorney-General's Department. The Regulatory Reform Division in the Department of the Prime Minister and Cabinet was also provided with a copy of the application.

As part of its review into the fitness for purpose of the instruments in question, the Department of the Environment will consult with key stakeholders, including those who have relevant knowledge of the fuel refining process and environmental standards, through an open submission process on that Department's website. The Department of the Environment will consult with other agencies as appropriate at the time that the instruments in question are reviewed.

However this declaration does not itself significantly alter existing arrangements and further consultation at this stage of the review process was unnecessary.

Statutory preconditions relevant to this declaration

If the Attorney-General is satisfied that the statutory conditions in section 51A of the LIA are met, the sunset 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 sunset
- are or will be the subject of a single review, and

that the making of the declaration will facilitate the undertaking of the review and the implementation of its findings.

In terms of process, the LIA 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.

More information

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

A copy of each instrument which is the subject of this declaration, and which will now sunset on 1 October 2019, is available on the whole-of-government ComLaw website.

NOTES ON THE DECLARATION**Section 1 Name of declaration**

This section provides for the declaration to be named the *Legislative Instruments (Fuel Standards Instruments) Sunset-altering Declaration 2016*. 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 of the *Legislative Instruments Act 2003*.

Section 4 Repeal of fuel standards instruments to facilitate review etc.

This section lists the instruments that are repealed on 1 October 2019.

This is the aligned sunset day for those instruments, which would otherwise have sunset between 1 October 2016 and 1 October 2022. Six of the instruments have had their sunset deferred, while two will sunset earlier than they would otherwise have done.

For the purpose of clarity, the section includes a statement that the legal requirements are met, i.e. that these instruments would otherwise be repealed by section 50 of the *Legislative Instruments Act 2003*, that they are or will be the subject of a single review and that the declaration facilitates the undertaking of the review.

Section 5 Repeal of this declaration

This section provides that the declaration is repealed on 2 October 2019, which is the day after the aligned sunset day. This ensures that the declaration remains in force only as long as it is needed.