

Legislation (Native Title Instruments) Sunset-altering Declaration 2017

EXPLANATORY STATEMENT

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

INTRODUCTION

The declaration was made under subsection 51A(1) of the *Legislation Act 2003* and is a legislative instrument for the purposes of the Legislation Act. The declaration is subject to the disallowance provisions of the Legislation Act.

OUTLINE

The purpose of the sunset provisions of the Legislation Act 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 sunset 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 sunset 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 sunset day. The purpose of such alignment is to facilitate more efficient and effective review processes by enabling a single thematic review into the fitness-for-purpose of all instruments relevant to a particular industry, enabling Act, or theme.

This reduces the administrative burden as well as legislative inconsistencies that can arise from reviewing and remaking 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 the 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 the declaration was made, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. The Native Title Unit of the Attorney-General's Department prepared the application for this declaration following consultation with the Land Branch

in the Department of the Prime Minister and Cabinet on the scope of the proposed review, and the Regulatory Reform Division in the Department of the Prime Minister and Cabinet was also provided with a copy of the application.

As the declaration does not itself significantly alter existing arrangements, further consultation at this stage of the review process 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 section 51A 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
- 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 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.

As the Attorney-General is the relevant rule-maker in this instance, there is no formal correspondence associated with the making of the declaration.

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

The four instruments aligned by the declaration support the operation of key mechanisms under the *Native Title Act 1993* (the NT Act) relating to native title applications and agreement-making. Due to the procedural function of the instruments and interrelated provisions they support, the instruments will be more efficiently and effectively reviewed together. This will also enhance the Attorney-General's Department's (AGD) ability to identify opportunities to streamline and simplify processes and will allow the AGD, as the administering department, to apply a consistent approach to assessing and potentially amending these instruments. Proceeding in this way is consistent with the Government's commitment to improve and streamline native title processes, outlined in the *White Paper on Developing Northern Australia* (2015).

The review into the fitness-for-purpose of the instruments in question will span a four year period (including a transitional period for stakeholders to adjust to any proposed changes). This period will provide adequate time for AGD to conduct analysis, stakeholder consultation, assess and recommend options, and develop a transitional plan for stakeholders to adjust to any proposed changes.

The aligned sunseting date of 1 October 2023 will facilitate the undertaking of the review and the implementation of its findings by allowing sufficient time for:

- the recommendations of the review to be fully considered
- the instruments to be amended or remade as necessary, and
- any required changes to administrative processes to be implemented by stakeholders.

More information

Further detail on the provisions of the declaration is provided in [Attachment A](#).

A copy of each instrument which is the subject of the declaration, and which will now sunset on 1 October 2023, is available on the Federal Register of Legislation.

Further operation about the operation of these instruments may also be requested from the Attorney-General's Department.

NOTES ON THE DECLARATION

Section 1 Name

This section provides for the declaration to be named the *Legislation (Native Title Instruments) Sunset-altering Declaration 2017*. 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 native title instruments to facilitate review etc.

This section lists the four instruments that are repealed on 1 October 2023.

This is the aligned sunset day for those instruments, which would otherwise have sunset between 1 October 2018 and 1 April 2021.

Section 5 Repeal of this instrument

This section provides that the declaration is repealed on 2 October 2023, which is the day after the aligned sunset day. This ensures that the declaration remains in force only as long as it is needed.