

Legislation (Human Rights Instruments) Sunset-altering Declaration 2018

EXPLANATORY STATEMENT

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

INTRODUCTION

This 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 Part 4 of Chapter 3 of the Legislation Act, 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 this 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 this declaration was made, its impact on human rights was assessed using tools and guidance published by the Attorney-General's Department. It does not engage any 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 Legislation Act. In preparing the application for this declaration, the Attorney-General's Department consulted with the Australian Human Rights Commission (the Commission), the Department of Employment and the Regulatory Reform Division in the Department of the Prime Minister and Cabinet. The Attorney-General was satisfied that the consultation was appropriate and reasonably practicable to be undertaken.

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
- 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 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.

This declaration aligns the sunseting dates of the *Australian Human Rights Commission Regulations 1989* (AHRC Regulations) and the *Disability Discrimination Regulations 1996* (DD Regulations). As the Attorney-General is the rule-maker for these instruments, there was no formal ministerial correspondence in this instance.

The Convention concerning Discrimination in Respect of Employment and Occupation (the Convention) sets out a regime for protecting against workplace discrimination. The AHRC Regulations declare 10 grounds of 'discrimination' in addition to those set out in the Convention, which enables the Commission to undertake its equal opportunity in employment functions in relation to the additional declared grounds of discrimination.

The DD Regulations declare activities which are considered 'combat duties' for the purpose of the *Disability Discrimination Act 1992* (the DD Act), and prescribe a range of Commonwealth and State laws which, when a person acts in direct compliance with the prescribed law, are exempt from the protections against discrimination in Part 2 of the DD Act. The prescribed laws relate to a broad range of issues, including laws addressing industrial relations and mental health, which intersect with issues relevant to the scope of the Commission's equal opportunity in employment functions.

The AHRC Regulations are an important part of the legal framework supporting Australia's implementation of the Convention and are therefore required to remain in effect. However, as the AHRC Regulations were made prior to the introduction of key federal anti-discrimination legislation (including the DD Act and the DD Regulations), the references to 'impairment', 'mental, intellectual or psychiatric disability' and 'physical disability' do not align with key definitions and concepts in the DD Act and DD Regulations. As such, it is important that any re-make of the AHRC Regulations should

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consider aligning the treatment of disability discrimination issues with more contemporary concepts and terminology adopted in other discrimination legislation, and with community and stakeholder expectations that appropriate and inclusive disability related concepts are reflected in legislation.

The review will consider the disability discrimination issues arising in both the AHRC Regulations and the DD Regulations and ensure that disability-related concepts are treated consistently between the two Regulations as far as possible. It will be overseen by a panel comprising the Disability Discrimination Commissioner, Mr Alastair McEwin, a second representative from the Commission and a senior official from the Attorney-General's Department.

The aligned sunset date of 1 October 2019 will facilitate the undertaking of the review and the implementation of its findings by allowing sufficient time for:

- targeted consultation with disability sector bodies, representative employers' and workers' organisations and relevant government departments, in accordance with the consultation requirements in Article 1(1)(b) of the Convention
- the recommendations of the review to be fully considered
- the Regulations to be amended or remade as necessary, and
- any required changes to administrative processes to be implemented by stakeholders.

The 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 this declaration, and which will now sunset on 1 October 2019, is available on the Federal Register of Legislation. Enquiries about the operation of this declaration or the instruments to which it applies may be directed at the Attorney-General's Department.

NOTES ON THE DECLARATION

Section 1 Name

This section provides for the declaration to be named the *Legislation (Human Rights 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 anti-discrimination instruments to facilitate review etc.

This section provides that the *Australian Human Rights Commission Regulations 1989* and the *Disability Discrimination Regulations 1996* are repealed by section 51A of the *Legislation Act* on 1 October 2019.

This is the aligned sunset day for those instruments, which would otherwise have sunset on 1 April 2018 and 1 April 2019 respectively. The declaration will delay the sunset of both instruments.

Section 5 Repeal of this instrument

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 for only as long as it is needed.