

Legislation (Family Law 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 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 and legislative inconsistencies that can arise from reviewing and remaking related legislative instruments at different times.

PROCESS BEFORE CERTIFICATE WAS MADE

Regulatory impact analysis

Sunset-altering declarations are machinery of government instruments, and 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 Legislation Act. In preparing the application for this declaration, the Family Court and Federal Circuit Court were consulted, as well as the Courts, Tribunals and Administrative Law Branch and the Family Law Branch of 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.

This declaration does not itself significantly alter the existing arrangements of any other agency and further consultation at this stage of the review process was unnecessary. The Attorney-General was satisfied that this consultation met the section 17 criteria of having been appropriate and reasonably practicable to be undertaken.

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Statutory preconditions relevant to this declaration

If the Attorney-General is satisfied on written application from the relevant rule-maker(s) that the statutory conditions in section 51A of the Legislation Act are met, the sunsetting 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 sunsetting
- all the instruments to be reviewed 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 the declaration, which is a legislative instrument and subject to disallowance.

This declaration aligns the sunsetting dates of the following Rules and Regulations (collectively, the Family Law Instruments):

- the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*;
- the *Federal Circuit Court Rules 2001*;
- the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*;
- the *Family Law Regulations 1984*;
- the *Family Law Rules 2004*;
- the *Family Law (Superannuation) Regulations 2001*.

Written applications were received from the Chief Judge of the Federal Circuit Court and the Chief Justice of the Family Court in their capacity as rule-makers for the *Federal Circuit Court Rules 2001* and the *Family Law Rules 2004* respectively.

There was no formal ministerial correspondence in relation to the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*, the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*, the *Family Law Regulations 1984* or the *Family Law (Superannuation) Regulations 2001*, as the Attorney-General is the rule-maker for these instruments.

The Family Law Instruments will be reviewed as part of the Australian Law Reform Commission's (ALRC's) major review of the family law system, which commenced on 1 October 2017, and will report by 31 March 2019. The ALRC review is intended to be a comprehensive examination of the family law framework. It will consider the *Family Law Act 1975* and the associated legal framework, including family law regulations, the Family Law Rules and the relevant parts of the Federal Circuit Court Rules, which are inherently relevant to the broad and far reaching terms of reference for the review. The review will focus on key areas of importance for Australian families. These include ensuring the family law system prioritises the best interests of children; addresses family violence and child abuse; and supports families, including those with complex needs, to resolve their family law issues quickly and safely while minimising financial burden.

Aligning the sunsetting day of the Family Law Instruments to be 1 April 2023 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,
- the recommendations of the review to be fully considered
- the Family Law Instruments and other affected instruments to be amended or remade as necessary, and
- any required changes to administrative processes to be implemented by stakeholders.

The ALRC will consult directly with the relevant stakeholders. How the consultation process will occur is a matter for the ALRC.

This declaration is a legislative instrument and as such it 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 regarding 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 April 2023, is available on the Federal Register of Legislation.

Further information about the operation of this instrument may also be requested from the Attorney-General's Department.

NOTES ON THE DECLARATION

Section 1 Name

This section provides the declaration to be named the *Legislation (Family Law Instruments) Sunset-altering Declaration 2018*. The declaration may be cited by that name.

Section 2 Commencement

This section outlines that the whole of the *Legislation (Family Law Instruments) Sunset-altering Declaration 2018* commences or is taken to have commenced on the day after this instrument was registered.

Section 3 Authority

This section provides that the *Legislation (Family Law Instruments) Sunset-altering Declaration 2018* is made under subsection 51A(1) of the *Legislation Act 2003*.

Section 4 Repeal of family law instruments to facilitate review etc.

This section provides that the following instruments are repealed on 1 April 2023:

- the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*;
- the *Federal Circuit Court Rules 2001*;
- the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*;
- the *Family Law Regulations 1984*;
- the *Family Law Rules 2004*;
- the *Family Law (Superannuation) Regulations 2001*.

These instruments would otherwise have sunset between 1 April 2018 and 1 April 2020.

Section 5 Repeal of this instrument

This section provides that the *Legislation (Family Law Instruments) Sunset-altering declaration 2018* be repealed at the start of 2 April 2023. This ensures that the declaration remains in force only for as long as it is needed.