

Legislation (Tobacco 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 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,

Legislation (Tobacco Instruments) Sunset-altering Declaration 2018
Explanatory Statement page 1 of 4

the Attorney-General's Department consulted with the Department of Health and with the Deregulation Team in the Department of Jobs and Small Business. 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 dates 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 *Tobacco Advertising Prohibition Regulation 1993* and the *Tobacco Plain Packaging Regulations 2011*, which were scheduled to sunset between 1 October 2018 and 1 April 2022. The rule-maker for these instruments is the Minister for Rural Health, Senator the Hon Bridget McKenzie, who provided a written application to the Attorney-General seeking alignment of the two instruments.

On consideration of this application, the Attorney-General was satisfied that the criteria in paragraphs 51A(1)(a) and (b) were met, and made the declaration.

The *Tobacco Advertising Prohibition Regulation 1993* prescribes the requirements that must be met if a tobacco advertisement is permitted, and the *Tobacco Plain Packaging Regulations 2011* prescribe requirements for the appearance and retail packaging of tobacco products. The instruments are made under the *Tobacco Advertising Prohibition Act 1992* and the *Tobacco Plain Packaging Act 2011* respectively, and the objective of both Acts is to reduce the use of tobacco products and smoking prevalence. Rather than separately analysing the Acts and instruments, it is timely and appropriate that all tobacco control legislation is reviewed together to ensure a more effective, efficient and comprehensive consideration of this area of regulation.

A thematic review presents opportunities to improve consistency, ensure the legislation and instruments are contemporary and reduce unnecessary regulation. The alignment of the sunseting dates of the instruments will facilitate the conduct of a comprehensive and thorough review and the implementation of its findings.

The aligned sunseting date of 1 April 2022 will facilitate the undertaking of the review and the implementation of its findings by allowing sufficient time to thoroughly review the legislation, undertake consultation with stakeholders as required, and identify improvements and make appropriate amendments to the legislation.

More information

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

Legislation (Tobacco Instruments) Sunset-altering Declaration 2018
Explanatory Statement page 2 of 4

A copy of each instrument which is the subject of this declaration, and which will now sunset on 1 April 2022, is available on the Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of this declaration, and from the Department of Health about the instruments to which this declaration applies.

NOTES ON THE DECLARATION

Section 1 Name

This section provides for the declaration to be named the *Legislation (Tobacco 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 tobacco instruments to facilitate review etc.

This section provides that the *Tobacco Advertising Prohibition Regulation 1993* and the *Tobacco Plain Packaging Regulations 2011* are repealed by section 51A of the *Legislation Act* on 1 April 2022.

This is the aligned sunset day for those instruments, which would otherwise have sunset between 1 October 2018 and 1 April 2022.

Section 5 Repeal of this instrument

This section provides that the declaration is repealed on 2 April 2022, 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.