

# ***Legislation (Insurance Instruments) Sunset-altering Declaration 2018***

## **EXPLANATORY STATEMENT**

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

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### **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,

the Department of the Treasury consulted with the Attorney-General's Department, and the Deregulation Team in the Department of Jobs and Small Business was given the opportunity to comment on the application. 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 days of the following instruments, which were scheduled to sunset between 1 October 2018 and 1 October 2019, to 1 October 2023:

- the *Insurance Acquisitions and Takeovers (Notices) Regulations* and the *Insurance Acquisitions and Takeovers Act 1991 - Decision-Making Principles IDM 1/1992*, which are made under the *Insurance Acquisitions and Takeovers Act 1991*
- the *Life Insurance Regulations 1995*, which are made under the *Life Insurance Act 1995*, and
- the *Insurance Regulations 2002*, which are made under the *Insurance Act 1973*.

The rule-maker for these instruments is the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, who provided a written application to the Attorney-General seeking an alignment of the instruments' sunseting days. On consideration of this application, the Attorney-General was satisfied that the criteria in paragraphs 51A(1)(a) and (b) were met.

The purpose of the three enabling Acts is to protect policyholders by regulating the types of persons that may carry on insurance businesses and prescribing standards to ensure the prudent management of the insurance industry. Consistent with this purpose, the instruments prescribe, at a more detailed level, matters relating to the regulation of the insurance industry, including the information required to ensure that prudential supervisory activities can be conducted.

Other issues relevant to the regulation of the insurance industry dealt with by the instruments include the following:

- the *Insurance Acquisitions and Takeovers (Notices) Regulations* prescribe the information required of persons wishing to acquire a significant level of interest in, or control over, an Australian insurer
- the *Insurance Acquisitions and Takeovers Act 1991 - Decision-Making Principles IDM 1/1992* set out the principles that the Minister must consider when making certain decisions relating to the general and life insurance industries

- the *Life Insurance Regulations 1995* prescribe various eligibility conditions and other requirements relating to the carrying out of life insurance businesses, and
- the *Insurance Regulations 2002* set out various exclusions for general insurance businesses from the regulatory schemes set out in the principal Acts.

It is appropriate that all of these instruments are reviewed together to ensure a more comprehensive and efficient review of the regulation imposed on the insurance industry. A thematic review is a more effective mechanism for determining whether the instruments are fit for purpose, identifying opportunities to update, streamline and clarify the operation of the instruments and, where appropriate, reducing unnecessary regulation.

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

- consultation with relevant stakeholders, including the Australian Prudential Regulation Authority, to be undertaken
- the recommendations of the review to be fully considered
- amendments to the enabling Acts to be pursued, should the review find that it is necessary
- the instruments to be remade in accordance with the findings of the review, 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 2023, 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 the Treasury 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 (Insurance 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 insurance instruments to facilitate review etc.**

This section provides that the following instruments are repealed by section 51A of the *Legislation Act* on 1 October 2023:

- *Insurance Acquisitions and Takeovers Act 1991 - Decision-Making Principles IDM 1/1992*  
*Insurance Acquisitions and Takeovers (Notices) Regulations*
- *Insurance Regulations 2002, and*
- *Life Insurance Regulations 1995.*

This is the aligned sunset day for those instruments, which would otherwise have sunset between 1 October 2018 and 1 October 2019.

**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 for only as long as it is needed.