

# ***Legislation (Airport 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* (Legislation Act) and is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. 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 to either 1 April or 1 October of a year that is up to five years later than the earliest sunseting day of any of the specified instruments. The instruments will then be repealed on the day specified in the declaration instead of the scheduled sunseting day of each instrument.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 objective of issuing this sunset altering-declaration 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 and the implementation of the review's findings.

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**

This Declaration is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Human Rights Act).

## *Overview of the Declaration*

This sunset-altering declaration is made under subsection 51A(1) of the Legislation Act which enables the Attorney-General to align the sunset days of two or more legislative instruments to the 1 April or 1 October of a year that is up to five years later of the earliest sunset day. The instruments specified in this declaration will then be repealed on the day specified in the declaration instead of the scheduled sunset day. The instruments specified in this declaration are:

- *Airports (Building Control) Regulations 1996*
- *Airports (Control of On-Airport Activities) Regulations 1997*
- *Airports (Environment Protection) Regulations 1997*
- *Airports (Ownership—Interests in Shares) Regulations 1996*
- *Airports (Protection of Airspace) Regulations 1996*
- *Airports Regulations 1997*
- *Sydney Airport Compliance Scheme 2012*
- *Sydney Airport Curfew Regulations 1995*
- *Sydney Airport Demand Management Regulations 1998*, and
- *Sydney Airport Slot Management Scheme 2013*.

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 objective of issuing a sunset-altering declaration is to facilitate either: the undertaking of a single thematic review into the fitness-for-purpose of two or more instruments relevant to a particular industry, enabling Act or theme; or the implementation of the review's findings. This reduces the administrative burden as well as legislative inconsistencies that can arise from reviewing and remaking related legislation independently at different times.

## *Human Rights Implications*

Before issuing this declaration, the Attorney-General was satisfied that all instruments specified in this declaration were subject to a single thematic review. A thematic review is an 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. As such, the statement of compatibility will often focus on the effect of the aligning instrument, rather than the substantive effect of continuing the instruments that have been aligned.

Instruments that are remade subsequent to that review will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the instruments will be individually assessed at that time, including through the requirement to prepare the Statements of Compatibility with Human Rights.

## *Conclusion*

This Declaration is compatible with the human rights and freedoms listed in section 3 of the Human Rights Act by ensuring that any proposal to remake instruments that unduly limit human rights and freedoms will be subject to parliamentary oversight and scrutiny.

## 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. Consultation involved the Minister of Infrastructure, Regional Development and Cities (the Minister) advising the Attorney-General of the reasons in support of issuing the certificate. The Minister is responsible for administering the *Airport Act 1996*, *Sydney Airport Curfew Act 1995* and *Sydney Airport Demand Management Act 1997*, the enabling legislation under which the instruments subject to this declaration were made. As such, the Minister is the relevant rule-maker for the purposes of section 6 of the Legislation Act. The certificate is consistent with the policy intent of the sunseting arrangements and does not significantly alter existing arrangements. Accordingly, further consultation 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
- 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 on 1 April 2019 and 1 October 2022, to 1 April 2024:

- *Airports (Building Control) Regulations 1996*
- *Airports (Control of On-Airport Activities) Regulations 1997*
- *Airports (Environment Protection) Regulations 1997*
- *Airports (Ownership—Interests in Shares) Regulations 1996*
- *Airports (Protection of Airspace) Regulations 1996*
- *Airports Regulations 1997*
- *Sydney Airport Compliance Scheme 2012*
- *Sydney Airport Curfew Regulations 1995*
- *Sydney Airport Demand Management Regulations 1998*, and
- *Sydney Airport Slot Management Scheme 2013*.

The rule-maker for these instruments is the Minister for Infrastructure and Transport, who provided a written application to the Attorney-General seeking a sunset-altering declaration 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 instruments proposed to be covered by the declaration are made under the *Airport Act 1996*, *Sydney Airport Curfew Act 1995* and *Sydney Airport Demand Management Act 1997* and are critical to the administration of the federally leased airports.

The Department of Infrastructure, Regional Development and Cities (the Department) has commenced a review of the instruments made under the *Airport Act 1996* that are due to sunset on 1 April 2019. A thematic review of the instruments related to the administration of the federally leased airports is planned to begin in September 2018 which will expand the current review to include instruments made under the *Sydney Airport Curfew Act 1995* and *Sydney Airport Demand Management Act 1997*.

Aligning the sunset dates to 1 April 2024 would provide an opportunity to review the instruments holistically to identify opportunities to streamline and simplify the legislative frameworks in a consistent manner. This will enable the review to be structured around the subject area and policies for all of the federally leased airports.

Amendments to the *Airports Act 1996*, *Sydney Airport Curfew Act 1995*, *Sydney Airport Demand Management Act 1997* are likely and a thematic review will enable the entire legislative framework for airport operation and demand management to be reviewed at the same time, facilitating best practice policy development. The new alignment date will also allow sufficient time to review the instruments, to consult with stakeholders and for drafting by the Office of Parliamentary Counsel, resulting in best quality instruments.

### **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 April 2024, 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 Infrastructure, Regional Development and Cities 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 (Airport 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 April 2024:

- *Airports (Building Control) Regulations 1996*
- *Airports (Control of On-Airport Activities) Regulations 1997*
- *Airports (Environment Protection) Regulations 1997*
- *Airports (Ownership—Interests in Shares) Regulations 1996*
- *Airports (Protection of Airspace) Regulations 1996*
- *Airports Regulations 1997*
- *Sydney Airport Compliance Scheme 2012*
- *Sydney Airport Curfew Regulations 1995*
- *Sydney Airport Demand Management Regulations 1998*, and
- *Sydney Airport Slot Management Scheme 2013*.

This is the aligned sunset day for those instruments, which would all otherwise have sunset on 1 April 2019, other than the Sydney Airport Compliance Scheme 2012 which is scheduled to sunset on 1 October 2022.

**Section 5 Repeal of this instrument**

This section provides that the declaration is repealed on 2 April 2024, 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.