

Legislation (Occupational Health and Safety (Maritime Industry) Instruments) Sunset-altering Declaration 2018

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Occupational Health and Safety (Maritime Industry) Instruments) Sunset-altering Declaration 2018* (the 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

Sunsetting is the automatic repeal of legislative instruments after a fixed period. The Australian Government's sunsetting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunsetting framework is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005. Legislative instruments registered on 1 January 2005 are subject to the staggered sunsetting timetable set out in subsection 50(2) of the Legislation Act.

Under subsection 51A(1) the Attorney-General can issue a declaration aligning the sunsetting days of two or more instruments to the 1 April or 1 October of a year that is up to five years later of the earliest sunsetting day. The instruments will then be repealed on the day specified in the declaration instead of the scheduled sunsetting day of each instrument.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 sunsetting day. The objective of issuing this 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.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The 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).

*Legislation (Occupational Health and Safety (Maritime Industry) Instruments) Sunset-altering
Declaration 2018*

Explanatory Statement page 1 of 5

Overview of the Declaration

The Declaration is made under subsection 51A(1) of the Legislation Act. Under that subsection, the Attorney-General can align the sunseting 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 sunseting day. The instruments specified in the Declaration will then be repealed on the day specified in the Declaration instead of the scheduled sunseting day. The instruments specified in the Declaration are the *Occupational Health and Safety (Maritime Industry) Regulations 1995* (F2017C00695) and the *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* (F2010C00303) (together the OHS(MI) Regulations).

Sunset-altering declarations allow 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 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 the Declaration, the Attorney-General was satisfied that all instruments specified in the Declaration were or would be 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.

The review of aligned instruments can provide information on how the instruments operate in the existing legal environment, including the impact of the instruments on human rights and freedoms. To avoid pre-empting that review, and with the knowledge that any instruments remade as a consequence of the review will face future parliamentary scrutiny, the Statement of Compatibility for a sunset-altering declaration 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

The Declaration is compatible with the human rights and freedoms recognised or declared in the international instruments 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.

PROCESS BEFORE DECLARATION 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.

Consultation before making

Before the Declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. Consultation involved the then Minister for Small and Family Business, the Workplace and Deregulation, the Hon Craig Laundry MP advising the Attorney-General of the reasons in support of issuing the declaration. The now Minister for Jobs, Industrial Relations and Women, the Hon Kelly O'Dwyer MP, is responsible for administering the *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS(MI) Act), the enabling legislation under which the OHS(MI) Regulations were made. As such, the Minister for Jobs, Industrial Relations and Women is the relevant rule-maker for the purposes of section 6 of the Legislation Act. The Declaration 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 the 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 or 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.

The Declaration aligns the sunseting days of the OHS(MI) Regulations which were scheduled to sunset on 1 April 2019 and 1 April 2020 respectively, to 1 April 2024.

The then rule-maker for these instruments was the Minister for Small and Family Business, the Workplace and Deregulation, the Hon Craig Laundry 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.

Statement of Reasons for issuing of the Declaration

The OHS(MI) Act regulates work health and safety for a defined part of the Australian maritime industry. The OHS(MI) Regulations support its operation by prescribing further information and setting practical requirements to assist industry participants to adhere to their responsibilities.

The OHS(MI) Regulations have similar subject matter and purpose which means a thematic review will allow the review to be simpler, more cost effective and efficient for the Department of Jobs and Small Business. The new alignment date will also allow greater time to review the OHS(MI) Regulations and consult with stakeholders on the form and content of the proposed new regulations. The additional time will provide the opportunity to streamline the two instruments by replacing them with one regulation if this is the preferred outcome following the review.

The aligned sunset date of 1 April 2024 will facilitate the undertaking of the review and the implementation of its findings. The aligned sunset date will ensure there is sufficient time to assess if the OHS(MI) Regulations are fit-for-purpose and sufficiently support the operation of the OHS(MI) Act, meet the needs of stakeholders and promote modern work health and safety practices in the maritime industry, particularly in line with the model regulations developed by Safe Work Australia.

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 the Declaration are set out in [Attachment A](#).

A copy of each instrument which is the subject of the 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 the Declaration, and from the Department of Jobs and Small Business about the instruments to which the Declaration applies.

NOTES ON THE DECLARATION

Section 1 Name

This section provides for the declaration to be named the *Legislation (Occupational Health and Safety (Maritime Industry) 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 occupational health and safety instruments to facilitate review etc.

This section provides that the *Occupational Health and Safety (Maritime Industry) Regulations 1995* and *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* are repealed by section 51A of the *Legislation Act 2003* on 1 April 2024:

This is the aligned sunset day for those instruments, which would otherwise have sunset on 1 April 2019 and 1 April 2020.

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.