

# ***Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019***

## **EXPLANATORY STATEMENT**

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

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### **INTRODUCTION**

The *Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019* (the Migration Agents Declaration) was made under subsection 51A(1) of the *Legislation Act 2003* (Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Migration Agents 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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) of the Legislation Act, the Attorney-General can issue a declaration aligning the sunsetting days of two or more instruments to 1 April or 1 October of a year that is up to five years later than 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 The instruments will then be repealed on the day specified in the declaration instead of the scheduled sunsetting day of each instrument.

Such a declaration 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 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.

The Migration Agents Declaration aligns the sunsetting dates of the following four instruments to be 1 April 2024:

- *Migration Agents Regulations 1998* (the Migration Agents Regulations)
- *Migration Agents Registration Application Charge Regulations 1998* (the Charge Regulations)

- *Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017* (IMMI 17/047), and
- *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018* (IMMI 18/003).

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019* (the Migration Agents 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*

The Migration Agents 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 1 April or 1 October of a year that is up to five years later than 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 Migration Agents Declaration are:

- *Migration Agents Regulations 1998*
- *Migration Agents Registration Application Charge Regulations 1998*
- *Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017*, and
- *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018*.

The Migration Agents Declaration aligns the sunseting dates of the instruments to be 1 April 2024. The objective of issuing a declaration is to facilitate the undertaking of a single thematic review into the fitness-for-purpose of multiple instruments relevant to a particular industry, enabling Act or theme; or the implementation of the reviews findings. This will reduce 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 Migration Agents 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 focuses 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 Migration Agents 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 Migration Agents Declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. Consultation involved the Assistant Minister for Home Affairs, Senator the Hon Linda Reynolds CSC, advising the Attorney-General of the reasons in support of issuing the declaration. The Assistant Minister for Home Affairs has a role in administering the *Migration Act 1958* (the Migration Act), the enabling legislation under which the Migration Agents Regulations are made, and the *Migration Agents Registration Application Charge Act 1997* (the Migration Agents Charge Act), the enabling legislation under which the Charge Regulations are made. IMMI 17/047 and IMMI 18/003 are made under the Migration Agents Regulations. As such, the Assistant Minister for Home Affairs is the relevant rule-maker for the purposes of section 6 of the Legislation Act. The Migration Agents 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 paragraphs 51A(1)(a) and (b) 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 made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act,
- 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 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 Migration Agents Declaration aligns the sunseting days of the following instruments, which were scheduled to sunset between 1 April 2019 and 1 April 2028, to 1 April 2024:

- *Migration Agents Regulations 1998* (F1998B00050)
- *Migration Agents Registration Application Charge Regulations 1998* (F1998B00030)
- *Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017* (F2017L01236), and

- *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018 (F2017L01708).*

The rule-maker for these instruments is the Assistant Minister for Home Affairs, 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) of the Legislation Act were met.

### **Statement of Reasons for issuing of the declaration**

For the purposes of subsection 51A(4) of the Legislation Act, this section sets out the statement of reasons for the issue of the declaration.

The four instruments proposed to be covered by the Migration Agents Declaration deal with the governance of migration agents. They are integral to the regulation of the migration advice industry to protect consumers and the integrity of the Australian visa system.

The migration advice industry is currently the subject of an inquiry by the Joint Standing Committee on Migration (the JSCM Inquiry). In particular, the JSCM Inquiry is examining the registration and regulation of migration agents in Australia, considering evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia, and reviewing the appropriateness of migration agents providing other services to clients. A single thematic review of the four instruments will be conducted to consider the JSCM Inquiry, the Government's response to the JSCM Inquiry's findings, and the Department of Home Affairs' examination of the instruments to ensure they continue to be fit-for-purpose.

The alignment of the sunseting dates for the four instruments will facilitate this single thematic review. In particular, it will provide an opportunity to streamline the instruments to reduce their regulatory burden and ensure they work synergistically. Further, it would allow any changes resulting from the JSCM Inquiry to be implemented at the same time, therefore reducing the chances of the revised legislation resulting in unintended consequences.

### **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 Home Affairs 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 (Migration Agents Instruments) Sunset-altering Declaration 2019*. 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:

- *Migration Agents Regulations 1998*
- *Migration Agents Registration Application Charge Regulations 1998*
- *Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017*, and
- *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018*.

This is the aligned sunset day for those instruments, which would otherwise have sunset between 1 April 2019 and 1 April 2028.

**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.