

***Legislation (Broadcasting Services Instruments)
Sunset-altering Declaration 2019***

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Broadcasting Services Instruments) Sunset-altering Declaration 2019* (the Broadcasting Services Instruments Declaration) is made under subsection 51A(1) of the *Legislation Act 2003*. It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Broadcasting Services Instruments 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instruments will then be repealed on the day specified in the declaration instead of the previously scheduled sunsetting day of each instrument.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 a sunset-altering declaration is to facilitate either: the undertaking of a single review into the fitness-for-purpose of two or more thematically related legislative instruments; or the implementation of such a review's findings. This reduces administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and replacing related legislation at different times.

The Broadcasting Services Instruments Declaration aligns the sunsetting dates of the following two instruments (together, the Broadcasting Services Instruments) to be 1 October 2021:

- (a) the *Broadcasting Services (Australian Content) Standard 2016*, and
- (b) the *Children's Television Standards 2009*.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Broadcasting Services Instruments) Sunset-altering Declaration 2019* (the Broadcasting Services Instruments 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* (the Human Rights Act).

Overview of the Declaration

The Broadcasting Services Instruments Declaration is made under subsection 51A(1) of the Legislation Act. Under that subsection, the Attorney-General can align the sunset 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 sunset day. The instruments specified in the declaration will then be repealed on the day specified in the declaration instead of the previously scheduled sunset day. The instruments specified in the Broadcasting Services Instruments Declaration are:

- (a) the *Broadcasting Services (Australian Content) Standard 2016*, and
- (b) the *Children's Television Standards 2009*.

The Broadcasting Services Instruments Declaration aligns the sunset dates of these instruments to be 1 October 2021. The objective of issuing the declaration is to facilitate the undertaking of a single thematic review into the fitness-for-purpose of the Broadcasting Services Instruments. This will reduce administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and replacing the related legislation at different times.

Human Rights Implications

The Statement of Compatibility with Human Rights 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.

Before issuing the Broadcasting Services Instruments Declaration, the Attorney-General was satisfied that all instruments specified in the declaration 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 objectives of the *Children's Television Standards 2009* are to ensure that children have access to a variety of quality television programs made specifically for them, including Australian drama and non-drama programs, and to provide for the protection of children from possible harmful effects of television. The objective of the *Broadcasting Services (Australian Content) Standard 2016* is to promote the role of commercial television broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity, by supporting the community's continued access to television programs produced under Australian creative control.

The Broadcasting Services instruments that are repealed and replaced subsequent to the proposed review are not subject to disallowance, but may be amended by either House of the Parliament in accordance with section 128 of the *Broadcasting Services Act 1992*.

Conclusion

The Broadcasting Services Instruments 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, as it does not raise any human rights issues.

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 certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

Under section 122 of the *Broadcasting Services Act 1992* (the enabling legislation under which the Broadcasting Services Instruments are made), the Australian Communications and Media Authority (ACMA) is responsible for determining standards for children's programs, and the Australian content of programs, by legislative instrument. The ACMA is therefore the relevant rule-maker for the purposes of section 6 of the Legislation Act. The Chair of the ACMA advised the Attorney-General of the reasons in support of issuing the certificate.

The ACMA consulted the Department of Communications and the Arts, which has responsibility for communications policy and legislation including the *Broadcasting Services Act 1992*. The declaration is consistent with the policy intent of the sunset arrangements. Accordingly, further consultation was unnecessary.

Statutory preconditions relevant to the certificate

In order to align the sunset day of two or more instruments, the Attorney-General must be satisfied on written application from the relevant rule-maker that the statutory conditions in paragraphs 51A(1)(a) and (b) of the Legislation Act are met. The statutory conditions are that:

- (a) 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, and
- (b) all the instruments to be reviewed are or will be the subject of a single review, and
- (c) 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:

- (a) the responsible rule-maker to apply to the Attorney-General,
- (b) the Attorney-General to be satisfied of the statutory conditions, and
- (c) the Attorney-General to make a declaration, which is a legislative instrument and subject to disallowance.

The Broadcasting Services Instruments Declaration aligns the sunset dates of the Broadcasting Services Instruments to enable the ACMA to more efficiently undertake a thematic review of the Standards. The rule-maker for the Broadcasting Services Instruments is the Chair of the ACMA, who provided a written application to the Attorney-General seeking an alignment of the instruments' sunset 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 Certificate

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

The Broadcasting Services Instruments are made under subsection 122(1) of the *Broadcasting Services Act 1992*. Subsection 122(2) requires the ACMA to determine standards for children's programs, and the Australian content of programs. The *Children's Television Standards 2009* contain the majority of children's program quotas as well as requirements related to the protection of children from harmful content. The *Broadcasting Services (Australian Content) Standard 2016*, as far as it relates to children's television programming mandates minimum annual amounts of first release Australian children's programs, including children's drama programs and requires that all preschool programs must be Australian.

The Chair of the ACMA sought a sunset-altering instrument for the Broadcasting Services Instruments. Aligning the sunset dates of the Broadcasting Services Instruments to be 1 October 2021 will enable the ACMA to undertake a thematic review of the Broadcasting Services Instruments to determine updated children's program standards that reflect the needs of contemporary audiences and broadcasters. The Broadcasting Services Instruments share a common theme, in establishing quotas to ensure that children's programming, including Australian children's programming, is provided by all commercial television broadcasting licensees. The Broadcasting Services Instruments are also explicitly inter-related, and share key definitions.

As such, the sunset-altering instrument is consistent with the policy intent of the sunset regime that legislative instruments should be kept up to date and only remain in force so long as they are needed.

More information

Further details on the provisions of the declaration are provided in [Attachment A](#).

The Broadcasting Services Instruments which are the subject of the declaration, one of which will now sunset at a later day as specified in the declaration, are 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 ACMA about the Broadcasting Services Instruments to which the declaration applies.

ATTACHMENT A

NOTES ON THE DECLARATION

Section 1 Name

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

This section provides that the following instruments are repealed by section 51A of the *Legislation Act* on 1 October 2021:

- (a) the *Broadcasting Services (Australian Content) Standard 2016*, and
- (b) the *Children's Television Standards 2009*.

This is the aligned sunset day for those instruments, which would otherwise have sunset on 1 October 2019 and 1 April 2026, respectively.

Section 5 Repeal of this instrument

This section provides that the certificate is repealed at the start of 2 October 2021.