

# *Legislation (Telecommunications 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 (Telecommunications Instruments) Sunset-altering Declaration 2019* (the Telecommunications 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 Telecommunications 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instruments will then be repealed on the day specified in the declaration instead of the previously scheduled sunsetting day of each instrument.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 Telecommunications Instruments Declaration aligns the sunsetting dates of the following five instruments (together, the Telecommunications Instruments) to be 1 April 2021:

- (a) the *Premium Service Determination 2004 (No. 1)*;
- (b) the *Spam Regulations 2004*;

- (c) the *Telecommunications Regulations 2001*;
- (d) the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1)*; and
- (e) the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)*.

## **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 Telecommunications Instruments Declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Hon Paul Fletcher MP is the Minister for Communications, Cyber Safety and the Arts, and is responsible for administering the *Telecommunications Act 1997* and the *Spam Act 2003*, under which the Telecommunications Instruments are made. Minister Fletcher is therefore the relevant rule-maker for the purposes of section 6 of the Legislation Act for the *Premium Service Determination 2004 (No. 1)*; the *Spam Regulations 2004*; and the *Telecommunications Regulations 2001*.

The Australian Communications and Media Authority (ACMA) is the relevant rule maker for the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1)*; and the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)*.

The Minister for Communications, Cyber Safety and the Arts approved the application to the Attorney-General setting out the reasons in support of issuing the certificate.

The declaration is consistent with the policy intent of the sunseting arrangements. Accordingly, further consultation was unnecessary.

### **Statutory preconditions relevant to the certificate**

In order to align the sunseting 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 Telecommunications Instruments Declaration aligns the sunseting dates for the Telecommunications Instruments to enable the Department of Communications and the Arts to complete a thematic review taking into account the outcomes of related streams of work in progress about consumer safeguards, telemarketing, spam and scam communications.

As noted above, the relevant rule-makers for the Telecommunications Instruments approved an application to the Attorney-General seeking an alignment of the relevant 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 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.

As outlined above, the Telecommunications Instruments Declaration aligns the sunseting dates for the Telecommunications Instruments to enable the Department of Communications and the Arts to complete a thematic review taking into account the outcomes of related streams of work in progress about consumer safeguards, telemarketing, spam and scam communications.

Aligning the sunseting dates of the Telecommunications Instruments would allow sufficient time for the review to be undertaken and for any resulting legislative package to be developed to implement the outcomes of the review.

As such, the sunset-altering instrument is consistent with the policy intent of the sunseting 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 Telecommunications Instruments subject to the declaration, which will now all sunset on 1 April 2021 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 Department of Communications and the Arts about the Telecommunications Instruments to which the declaration applies.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

The *Legislation (Telecommunications Instruments) Sunset-altering Declaration 2019* (the Telecommunications 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 Telecommunications Instruments 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 previously scheduled sunseting day. The instruments specified in the Telecommunications Instruments Declaration are:

- (a) the *Premium Service Determination 2004 (No. 1)*;
- (b) the *Spam Regulations 2004*;
- (c) the *Telecommunications Regulations 2001*;
- (d) the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1)*; and
- (e) the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)*.

The Telecommunications Instruments Declaration aligns the sunseting dates of these instruments (the Telecommunications Instruments) to 1 April 2021. The objective of issuing the declaration is to facilitate the undertaking of a single thematic review into the fitness-for-purpose of the Telecommunications 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 Telecommunications 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.

### *Conclusion*

The Telecommunications 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.

## ATTACHMENT A

### NOTES ON THE DECLARATION

#### **Section 1      Name**

This section provides for the declaration to be named the *Legislation (Telecommunications 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 2003* on 1 April 2021:

- a) *Premium Service Determination 2004 (No. 1)*;
- b) *Spam Regulations 2004*;
- c) *Telecommunications Regulations 2001*;
- d) *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)*;
- e) *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)*.

1 April 2021 is the aligned sunset day for those instruments, which would otherwise have sunset on 1 October 2019, 1 April 2020 and 1 October 2020, variously.

#### **Section 5      Repeal of this instrument**

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