

***Legislation (Offshore Petroleum and Greenhouse Gas Storage 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 (Offshore Petroleum and Greenhouse Gas Storage Instruments) Sunset-altering Declaration 2019* (the 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 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instruments will then be repealed on the day specified in the declaration instead of the previously scheduled sunsetting day of each instrument.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 the administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and remaking related legislation at different times.

The Declaration aligns the sunsetting dates of the following five instruments (together, the OPGGS Regulations) to be 1 April 2024:

- (a) *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*,
- (b) *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*

- (c) *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*
- (d) *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011, and*
- (e) *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Offshore Petroleum and Greenhouse Gas Storage Instruments) Sunset-altering Declaration 2019* (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).

### *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 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 Declaration (together, the OPGGS Regulations) are the:

- (a) *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*
- (b) *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*
- (c) *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*
- (d) *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011, and*
- (e) *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004.*

The Declaration aligns the sunseting dates of the OPGGS Regulations to be 1 April 2024. The objective of issuing the declaration is to facilitate the undertaking of a single thematic review into their fitness-for-purpose. This will reduce the administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and remaking the related legislation independently at different times.

### *Human Rights Implications*

Before issuing the Declaration, the Attorney-General was satisfied that all of the OPGGS Regulations would be subject to a single thematic review. A thematic review is an effective mechanism for determining whether instruments are fit for purpose, identifying opportunities to update, streamline and clarify the operation of instruments and, where appropriate, reducing unnecessary regulation.

The review of aligned instruments can provide information on how those 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 expectation that any instruments remade as a consequence of the review will face future parliamentary scrutiny, 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.

New instruments that are made subsequent to the proposed 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 further 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 as it is expected that any replacement 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 *Legislation (Offshore Petroleum and Greenhouse Gas Storage Instruments) Sunset-altering Declaration 2019* (the Declaration) was made, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. Consultation involved the Minister for Resources and Northern Australia, Senator the Hon Matthew Canavan, advising the Attorney-General of the reasons in support of issuing the declaration. The Minister for Resources and Northern Australia is responsible for administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (Levies Act), the enabling legislation under which the aligned instruments are made. As such, for the purposes of section 6 of the Legislation Act, the Minister for Resources and Northern Australia is the relevant rule-maker for the instruments in question (together, the OPGGS Regulations):

- (a) *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*
- (b) *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*
- (c) *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*
- (d) *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011, and*
- (e) *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004.*

A copy of the application was also provided to the Whole of Government Deregulation Team area of the Department of Jobs and Small Business.

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 relevant 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:

- (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
- (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 Declaration aligns the sunseting days of the OPGGS Regulations to be 1 April 2024.

The rule-maker for the OPGGS Regulations is the Minister for Resources and Northern Australia, 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 OPGGS Regulations form the regulatory framework underpinning the OPGGS Act and the Levies Act. The Minister for Resources and Northern Australia has stated that the OPGGS Regulations will be subject to a single thematic review (the review) which will consider their structure and content, with a view to clarifying and simplifying the regulatory framework. Reviewing the OPGGS Regulations together will enable a comprehensive structural review of the framework, consistent with Australian Government policy and regulatory best practice.

Aligning the sunseting dates of the OPGGS Regulations to be 1 April 2024 will allow sufficient time to undertake the review and implement the findings of the review. Each set of regulations will be replaced pursuant to the findings of the review. This would happen on a staggered basis to allow for further policy reviews, engagement with stakeholders and implementation of the new structure to take place.

As such, the alignment of the sunseting dates of the OPGGS Regulations would facilitate the implementation of the findings of the review and be 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 of the provisions 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 Industry, Innovation and Science about the 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 (Offshore Petroleum and Greenhouse Gas Storage 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      Aligning of sunseting**

This section provides that the following instruments are repealed by section 51A of the Legislation Act on 1 April 2024:

- (a) *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*
- (b) *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*
- (c) *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*
- (d) *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011*, and
- (e) *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*.

This is the aligned sunseting day for those instruments.

#### **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 sunseting day. This ensures that the declaration remains in force for only as long as it is needed.