

***Legislation (Building Energy Efficiency Disclosure Instruments)
Sunset-altering Declaration 2020***

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Building Energy Efficiency Disclosure Instruments) Sunset-altering Declaration 2020* (the BEED 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 BEED 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 Subsection 50(1) of the *Legislation Act* provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 The instruments will then be repealed on the day specified in the declaration instead of the previously scheduled sunsetting day of each instrument.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 BEED Instruments Declaration aligns the sunsetting dates of the following three instruments (together, the BEED instruments) to 1 October 2025:

- (a) the *Building Energy Efficiency Disclosure Regulations 2010*;
- (b) the *Building Energy Efficiency Disclosure Determination 2016*; and
- (c) the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016*.

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

The Minister for Energy and Emissions Reduction, Hon Angus Taylor MP, is responsible for administering the *Building Energy Efficiency Disclosure Act 2010*, under which the BEED instruments are made. Minister Taylor is therefore the relevant rule-maker for the purposes of section 6 of the Legislation Act for the *Building Energy Efficiency Disclosure Regulations 2010*, the *Building Energy Efficiency Disclosure Determination 2016* and the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016*.

Minister Taylor applied to the Attorney-General setting out the reasons in support of issuing the certificate.

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

Statutory preconditions relevant to the Declaration

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 BEED Instruments Declaration aligns the sunseting dates for the BEED Instruments to 1 October 2025 to enable the Department of Agriculture, Water and the Environment to complete a thematic review taking into account the outcomes of the Commercial Building Disclosure (CBD) Program review, currently being conducted by the Centre for International Economics.

As noted above, the relevant rule-maker for the BEED instruments applied 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 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 certificate.

As outlined above, the BEED Instruments Declaration aligns the sunseting dates for the BEED instruments to 1 October 2025 to enable the Department of Agriculture, Water and the Environment to complete a thematic review taking into account the outcomes of CBD Program review.

Aligning the sunseting dates of the BEED instruments would allow sufficient time for the CBD Program 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 of the provisions of the BEED Instruments Declaration are provided in [Attachment A](#).

The BEED instruments which are the subject of the Declaration, which will now all sunset on 1 October 2025 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 the BEED Instruments Declaration, and from the Department of Agriculture, Water and the Environment about the BEED instruments to which the Declaration applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Building Energy Efficiency Disclosure Instruments) Sunset-altering Declaration 2020* (the BEED 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 BEED 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 BEED Instruments Declaration are:

- (a) the *Building Energy Efficiency Disclosure Regulations 2010*;
- (b) the *Building Energy Efficiency Disclosure Determination 2016*; and
- (c) the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016*.

The BEED Instruments Declaration aligns the sunseting dates of these instruments (the BEED instruments) to 1 October 2025. The objective of issuing the declaration is to facilitate the undertaking of a single thematic review into the fitness-for-purpose of the BEED 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 BEED 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 BEED 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.

NOTES ON THE DECLARATION

Section 1 Name

This section provides for the Declaration to be named the *Legislation (Building Efficiency Disclosure Regulations) Sunset-altering Declaration 2020*. 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 October 2025:

- (a) the *Building Energy Efficiency Disclosure Regulations 2010*;
- (b) the *Building Energy Efficiency Disclosure Determination 2016*; and
- (c) the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016*.

1 October 2025 is the aligned sunseting day for those instruments, which would otherwise have sunset on 1 October 2020 (the Regulations) and 1 October 2026 (the Determinations).

Section 5 Repeal of this instrument

This section provides that the declaration is repealed at the start of 2 October 2025.