

Legislation (Air Navigation Instruments) Sunset-altering Declaration 2021

EXPLANATORY STATEMENT

Issued by the Assistant Minister to the Attorney General in compliance with section 15G of the *Legislation Act 2003*.

INTRODUCTION

The *Legislation (Air Navigation Instruments) Sunset-altering Declaration 2021* (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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.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 were 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, if satisfied on application by the rule-maker of the relevant instruments that:

- (a) all the instruments to be reviewed:
 - i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
 - ii) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

In this instance, the Assistant Minister to the Attorney-General is performing the functions of the Attorney-General under the Legislation Act.

The day specified in the sunset-altering instrument must be 1 April or 1 October of a year that is up to five years later than the earliest sunsetting day of the instruments. The instruments will then be repealed on the day specified in the declaration instead of the previously scheduled sunsetting day of each instrument.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 Declaration aligns the sunset dates of the following instruments (together, the Air Navigation Instruments) to 1 April 2024:

- (a) the *Air Navigation (Aircraft Engine Emissions) Regulations*; and
- (b) the *Air Navigation (Aircraft Noise) Regulations 2018*.

The Declaration aligns the sunset dates for the Air Navigation Instruments to enable the Department of Infrastructure, Transport, Regional Development and Communications to complete a thematic review, undertaking a holistic examination of the Air Navigation Instruments in the context of the current and emerging policy settings, to identify opportunities to streamline and simplify the legislative frameworks in a consistent manner to ensure appropriate and achievable aircraft environmental settings are reached across all areas.

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

The Hon Michael McCormack MP is the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development and is responsible for administering the *Air Navigation Act 1920*, under which the Air Navigation Instruments are made. Deputy Prime Minister McCormack is therefore the relevant rule-maker for the purposes of section 6 of the Legislation Act for the Air Navigation Instruments.

The Minister for Infrastructure, Transport and Regional Development applied to the Attorney-General setting out the reasons in support of issuing the certificate. In this instance, the application was considered by the Assistant Minister to the Attorney-General.

From 2018-2020, the Department of Infrastructure, Transport, Cities and Regional Development has undertaken various reviews seeking public, government and industry views around aircraft operational noise impacts and broader environmental impacts. Broader consultation with relevant or affected stakeholders will occur as part of the proposed thematic review.

Accordingly, further consultation in relation to the Declaration was considered unnecessary. Any replacement instruments will be subject to parliamentary scrutiny including whether adequate consultation occurred with persons likely to be affected by the replacement instruments.

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:
 - i) 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
 - ii) are or will be the subject of a single review; and
- (b) 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.

In this instance, the Assistant Minister to the Attorney-General is performing the functions of the Attorney-General under the Legislation Act.

The Declaration aligns the sunset dates for the Air Navigation Instruments to enable the Department of Infrastructure, Transport, Regional Development and Communications to complete a thematic review, undertaking a holistic examination of the Air Navigation instruments in the context of the current and emerging policy settings, to identify opportunities to streamline and simplify the legislative frameworks in a consistent manner to ensure appropriate and achievable aircraft environmental settings are reached across all areas.

As noted above, the relevant rule-maker for the Air Navigation Instruments applied to the Attorney-General seeking an alignment of the relevant sunset days. In this instance, the application was considered by the Assistant Minister to the Attorney-General.

On consideration of this application, the Assistant Minister to 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 Declaration aligns the sunset dates for the Air Navigation Instruments to enable the Department of Infrastructure, Transport, Regional Development and Communications to complete a thematic review, undertaking a holistic examination of the instruments in the context of the current and emerging policy settings, new technology and best practice to ensure a consistent approach. In addition to the Air Navigation Instruments, the *Air Navigation (Fuel Spillage) Regulations 1999*, which sunset without replacement on 1 April 2018, will also form part of the review of aircraft environmental settings.

Work has already commenced on reviewing the aircraft environmental settings. The initial review findings demonstrate that the noise, emissions and fuel spillage instruments share a common theme and should be subject to a single review as they are interrelated and crucial to ensuring aircraft meet safe, effective and efficient environmental standards.

Aligning the sunset dates of the Air Navigation Instruments will 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 Declaration 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 Air Navigation Instruments which are the subject of the Declaration, and which will now sunset on 1 April 2024 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 Infrastructure, Transport, Regional Development and Communications about the Air Navigation Instruments to which the Declaration applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Air Navigation Instruments) Sunset-altering Declaration 2021* (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* (the Human Rights Act).

Overview of the Declaration

The Declaration is made under subsection 51A(1) of the *Legislation Act 2003* (the Legislation Act). Under that subsection, the Attorney-General can align the sunseting days of two or more legislative instruments if satisfied that:

- (a) all the instruments to be reviewed:
 - i) 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
 - ii) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

In this instance, the Assistant Minister to the Attorney-General is performing the functions of the Attorney-General under the Legislation Act.

The day specified in the sunset-altering declaration must be 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 are:

- (a) the *Air Navigation (Aircraft Engine Emissions) Regulations*; and
- (b) the *Air Navigation (Aircraft Noise) Regulations 2018*.

The Declaration aligns the sunseting dates of these instruments (the Air Navigation Instruments) to 1 April 2024. The objective of issuing the Declaration is to facilitate the undertaking of a single thematic review into the fitness-for-purpose of the Air Navigation 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. The Declaration itself is machinery in nature. It does not alter the arrangements in place under the Air Navigation Instruments, but extends the operation of the Air Navigation Instruments to 1 April 2024.

Before issuing the Declaration, the Assistant Minister to 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 human rights impact of the Air Navigation Instruments will be considered during the proposed review, and addressed in the Statement of Compatibility of each replacement instrument.

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 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 (Air Navigation Instruments) Sunset-altering Declaration 2021*. 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 2024:

- (a) the *Air Navigation (Aircraft Engine Emissions) Regulations*; and
- (b) the *Air Navigation (Aircraft Noise) Regulations 2018*.

1 April 2024 is the aligned sunset day for those instruments, which would otherwise have sunset on 1 April 2021 and 1 April 2028, respectively.

Section 5 Repeal of this instrument

This section provides that the Declaration is repealed at the start of 2 April 2024.