

Legislation (Lightstation Heritage Management Instruments) Sunset-altering Declaration 2022

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Lightstation Heritage Management Instruments) Sunset-altering Declaration 2022* (the Declaration) is made under subsection 51A(1) of the *Legislation Act 2003* (Cth) (the Legislation Act). 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration.

Under subsection 51A(1) of the Legislation Act, the Attorney-General may issue a declaration aligning the sunsetting days of two or more instruments, if satisfied on application by the rule-maker/s 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 - i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and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.

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 sunsetting dates of the following instruments to 1 April 2024 (together, the 'Lightstation Heritage Management Instruments'):

- (a) the *Lady Elliot Island Lightstation Heritage Management Plan* (Cth); and
- (b) the *Dent Island Lightstation Heritage Management Plan* (Cth).

Prior to the commencement of the Declaration, the *Lady Elliot Island Lightstation Heritage Management Plan* was scheduled to sunset on 1 October 2022 and the *Dent Island Lightstation Heritage Management Plan* on 1 April 2024.

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

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), being the legislation under which the Lightstation Heritage Management Instruments were made, is administered by the Department of Climate Change, Energy, the Environment and Water (the Department). Staff in the Department were consulted on the proposal to align the sunseting dates of the Lightstation Heritage Management Instruments to 1 April 2024. The Department indicated support for the realignment.

Any replacement Lightstation Heritage Management Instruments will be subject to further consultation and parliamentary oversight, including oversight on whether adequate consultation occurred with persons likely to be affected by the replacement instruments. As such, the Declaration is consistent with the policy intent of the sunseting regime.

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/s 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/s 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 Lightstation Heritage Management Instruments are made under s 341S(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). EPBC Act subsection 341S(1)

requires a Commonwealth Agency to make a written plan (a heritage management plan) to protect and manage the Commonwealth Heritage values of a Commonwealth Heritage place it owns or controls.

For the purposes of section 6 of the Legislation Act:

- (a) the Chief Executive Officer of the Great Barrier Reef Marine Park Authority (Reef Authority), Mr Josh Thomas, is the rule maker of the *Lady Elliot Island Lightstation Heritage Management Plan*; and
- (b) Mr Thomas is co-rule-maker of the *Dent Island Lightstation Heritage Management Plan* along with the Chief Executive Officer of the Australian Maritime Safety Authority (AMSA), Mr Mick Kinley.

Mr Thomas provided an application to the Attorney-General seeking an alignment of the relevant sunseting days for both Lightstation Heritage Management Instruments, as one of the relevant rule-makers for those instruments for the purposes of section 6 of the Legislation Act. Mr Kinley provided a letter in support of Mr Thomas's application in relation to the *Dent Island Lightstation Heritage Management Plan* as the other rule-maker for that instrument for the purposes of section 6 of the Legislation Act. On consideration of these applications, 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 Declaration aligns the sunseting dates for the Lightstation Heritage Management Instruments to enable the Reef Authority to conduct a thematic review of the instruments. The Lightstation Heritage Management Instruments are made under the EPBC Act. Subsection 341S(1) of the EPBC Act requires a Commonwealth agency to make a written plan (a heritage management plan) to protect and manage the Commonwealth Heritage values of a Commonwealth Heritage place it owns or controls. The heritage management plans that the Reef Authority, and AMSA, have responsibility for relate to lightstations on Commonwealth-owned islands within the Great Barrier Reef Marine Park. The Lightstation Heritage Management Instruments define the designated authorities and plans for the management of Lady Elliot Island Lightstation and Dent Island Lightstation, respectively.

As the Lightstation Heritage Management Instruments are interrelated and share a common theme, subjecting them to a single review will allow the rule-maker/s to consider aligning language, drafting and policy changes consistently. Their review will be similar in scope and stakeholders will only need to be consulted once, thus reducing the burden on their time. Administratively it would be more efficient and effective to review the two instruments at the same time.

It is further intended that the Low Isles Lightstation Heritage Management Plan, which is being developed by the Reef Authority, would be considered in tandem with the thematic review and drafted to commence on 1 April 2024 (or in the preceding six months). This would align the sunseting dates of this instrument and any replacement Lightstation Heritage Management Instruments to 1 April 2034.

This will be the first review of the Lightstation Heritage Management Instruments under the

Legislation Act. A thematic review will broaden the scope of the review as it allows for stakeholders to be consulted on more than one legislative instrument under the Legislation Act at the same time. The review will consider if the Lightstation Heritage Management Instruments are to be repealed, allowed to sunset or replaced (with or without changes).

The Reef Authority has notified the leaseholders of the islands about the review and that approval is being sought for it to be a thematic review.

The objective of the review is to undertake a single examination of two interrelated instruments to identify potential efficiencies and ensure a consistent approach. A thematic review will facilitate an efficient and effective review process and enable consistent implementation of review findings. As such, the Declaration 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 Lightstation Heritage Management Instruments, 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 the Declaration, and from the Reef Authority and AMSA about the Lightstation Heritage Management Instruments to which the Declaration applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Lightstation Heritage Management Instruments) Sunset-altering Declaration 2022* (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 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 are (together, the 'Lightstation Heritage Management Instruments'):

- (a) the *Lady Elliot Island Lightstation Heritage Management Plan* (Cth); and
- (b) the *Dent Island Lightstation Heritage Management Plan* (Cth).

The Declaration aligns the sunseting dates of the Lightstation Heritage Management Instruments to 1 April 2024. Prior to the making of the Declaration, the instruments were due to sunset on 1 October 2022 and 1 April 2024 respectively. The objective of issuing the Declaration is to facilitate the undertaking of a single thematic review of the Lightstation Heritage Management Instruments and the implementation of its findings.

Human Rights Implications

The Lightstation Heritage Management Instruments do not engage any applicable rights or freedoms as they are of a minor or machinery nature and include largely operational content for the management of the lightstations. As a result, they raise no human rights issues and are compatible with human rights.

A sunset-altering declaration may extend the operation of an instrument but does not change or affect the rights engaged under the original instrument, which has previously been subject to a Statement of Compatibility. As such, the postponement of the sunset date of the *Lady Elliot Island Lightstation Heritage Management Plan (Cth)* by issuing the Declaration under section 51A of the Legislation Act does not affect its operation as the Declaration is itself machinery in nature. Therefore the Declaration does not change the instruments' effect, or lack thereof, on rights and freedoms.

Before issuing the 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 human rights impact of the Lightstation Heritage Management 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, and ensures that any proposal to make a replacement instrument will be subject to parliamentary oversight and scrutiny.

ATTACHMENT A

NOTES ON THE DECLARATION

Section 1 Name

This section provides for the Declaration to be named the *Legislation (Lightstation Heritage Management Instruments) Sunset-altering Declaration 2022*. 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 2003* on 1 April 2024:

- the *Lady Elliot Island Lightstation Heritage Management Plan (Cth)*; and
- the *Dent Island Lightstation Heritage Management Plan (Cth)*.

1 April 2024 is the aligned sunseting day for those instruments, which would otherwise have sunset on 1 October 2022 and 1 April 2024 respectively.

Section 5 Repeal of this instrument

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