

Legislation (Airport Curfew Instruments) Sunset-altering Declaration 2023

EXPLANATORY STATEMENT

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

INTRODUCTION

The *Legislation (Airport Curfew Instruments) Sunset-altering Declaration 2023* (the Declaration) is made under subsection 51A(1) of the *Legislation Act 2003* (Cth) (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 sunseting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunseting 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Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration.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 sunseting 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 - i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and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.

The instruments will then be repealed on the day specified in the Declaration instead of the previously scheduled sunseting days. This allows instruments to continue to be in force for a further but limited period of time when they would otherwise sunset. 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 sunseting dates of the following instruments to 1 April 2029 (together, the Airport Curfew Instruments):

- (a) the *Adelaide Airport Curfew Regulations 2018* (Cth)
- (b) the *Air Navigation (Essendon Fields Airport) Regulations 2018* (Cth)
- (c) the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* (Cth)
- (d) the *Sydney Airport Curfew (Curfew Aircraft) Instrument 2015* (Cth); and
- (e) the *Sydney Airport Curfew (Dispensation) Guideline 2016* (Cth).

Without the Declaration, the *Sydney Airport Curfew (Curfew Aircraft) Instrument 2015* and the *Sydney Airport Curfew (Dispensation) Guideline 2016* would sunset on 1 April 2025 and 1 April 2026, respectively. The *Adelaide Airport Curfew Regulations 2018*, the *Air Navigation (Essendon Fields Airport) Regulations 2018* and the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* would sunset on 1 April 2029.

The ability to align sunseting dates is an integral part of the sunseting framework. It provides the necessary flexibility to ensure the standard 10 year sunseting period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. Aligning the sunseting dates of the Airport Curfew Instruments will enable the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) to conduct a thematic review of the legislative instruments relating to curfews at Adelaide, Essendon Fields, Gold Coast and Sydney airports. The Airport Curfew Instruments are critical to the administration of the curfew at their respective airports. The alignment of these sunseting dates would provide an opportunity to review the instruments holistically to identify opportunities to streamline and simplify the legislative frameworks in a consistent manner. A thematic review commencing in June 2028 would enable the Department to examine the instruments following the opening of Western Sydney Airport in 2026, which will require changes to operations at Sydney Airport during the curfew.

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 Impact Analysis (OIA). The OIA reference for this standing exemption is ID19486.

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 Airport Curfew Instruments are made under the *Airport Adelaide Curfew Act 2000* (Cth), *Air Navigation Act 1920* (Cth) and *Sydney Airport Curfew Act 1995* (Cth) and contain essential provisions for the administration of the curfew at their respective Australian airports.

Stakeholder views have been considered in making the application for alignment. Key stakeholders are aware of the sunseting instruments and associated process and will continue to be kept updated through the available consultation mechanism, for instance airport consultation forums, as well as the Department's website. The Department aims to commence initial stakeholder engagement for the thematic review in early 2028.

Alignment declarations are machinery in nature, and enable legislative instruments that would otherwise sunset to remain in force for a further, but strictly limited, period of time. This will minimise the administrative burden on stakeholders associated with consultation on an alignment that will only have effect for a limited amount of time. Any replacement instruments will be subject to further consultation and parliamentary oversight, including oversight of whether adequate consultation occurred with persons likely to be affected by the replacement instruments. As such, given that alignment of the sunseting date of the Airport Curfew Instruments is consistent with the policy intent of the sunseting regime and does not significantly alter existing arrangements, appropriate consultation has occurred for the purposes of section 17 of the Legislation Act.

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 rule-maker for the Airport Curfew Instruments, the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP, provided a written application to the Attorney-General seeking a declaration of alignment of sunseting for the Airport Curfew Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the criteria in paragraphs 51A(1)(a) and (b) of the Legislation Act are 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 Airport Curfew Instruments to enable the Department to conduct a thematic review of the instruments. The *Sydney Airport (Curfew Aircraft) Instrument 2015* and the *Sydney Airport Curfew (Dispensation) Guideline 2016* are due to sunset on 1 April 2025 and 1 April 2026, while the *Adelaide Airport Curfew Regulations 2018*, *Air Navigation (Essendon Fields Airport) Regulations 2018* and *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* are due to sunset on 1 April 2029. These instruments share a common theme and should be subject to a single review as they are related and crucial to the operation of the curfews at Australian airports. Aligning the sunseting dates and conducting a thematic review would provide an opportunity to review the instruments holistically to identify opportunities to streamline and simplify the legislative frameworks in a consistent manner.

The objective of the review is to undertake a holistic examination of the instruments relating to curfewed airports in Australia in the context of the current and emerging policy settings and best practice. This will ensure the legislative framework governing curfew arrangements remains fit for

purpose, particularly in Sydney Airport following the commencement of operations at Western Sydney Airport in 2026, which will require changes to operations at Sydney Airport during the curfew period. Reviewing the legislative instruments relating to the curfew in Sydney Airport in 2028 will allow the Department to align this process with its consideration of other aviation regulations which are already due to sunset on 1 April 2029, namely the *Adelaide Airport Curfew Regulations 2018*, the *Air Navigation (Essendon Fields Airport) Regulations 2018*, and the *Air Navigation (Gold Coast Airport Curfew) Regulations 2019*.

The thematic review has the potential to streamline the separate instruments, reducing the complexity of the regulatory regimes and aligning with government objectives to reduce regulatory burden on industry and pursue clearer laws. In particular, the review will include targeted stakeholder engagement to identify deficiencies in regulatory rule making practices across the instruments and identify policy and legal alignment and opportunities to streamline, simplify or reduce regulatory burden at Sydney Airport.

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 Airport Curfew Instruments which are subject to the Declaration, and which will now sunset at a later day 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 Department of Infrastructure, Transport, Regional Development, Communications and the Arts about the Instruments to which the Declaration applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Airport Curfew Instruments) Sunset-altering Declaration 2023* (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 Certificate

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 ‘Airport Curfew Instruments’):

- (a) the *Adelaide Airport Curfew Regulations 2018*;
- (b) the *Air Navigation (Essendon Fields Airport) Regulations 2018*;
- (c) the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*;
- (d) the *Sydney Airport Curfew (Curfew Aircraft) Instrument 2015*; and
- (e) the *Sydney Airport Curfew (Dispensation) Guideline 2016*.

The Declaration aligns the sunseting dates of the Airport Curfew Instruments to 1 April 2019. Prior to the making of the Declaration, the *Sydney Airport Curfew (Curfew Aircraft) Instrument 2015* and the *Sydney Airport Curfew (Dispensation) Guideline 2016* were due to sunset on 1 April 2025 and 1 April 2026, respectively. The *Adelaide Airport Curfew Regulations 2018*, the *Air Navigation (Essendon Fields Airport) Regulations 2018* and the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* were due to sunset on 1 April 2029. The objective of issuing the Declaration is to facilitate the undertaking of a single thematic review of the Airport Curfew Instruments and the implementation of its findings.

Human Rights Implications

A declaration of alignment of sunseting extends the operation of particular instruments but does not change or affect the rights engaged under the original instrument. The *Sydney Airport Curfew (Curfew Aircraft) Instrument 2015*, *Sydney Airport Curfew (Dispensation) Guideline 2016* and *Adelaide Airport Curfew Regulations 2018* do not engage any of the applicable rights or freedoms recognised or declared by the international instruments in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). This is evidenced by the explanatory statements published when these instruments were made.

The *Air Navigation (Essendon Fields Airport) Regulations 2018* and *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* engage the criminal process rights in Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR). Article 14(2) of the ICCPR provides that anyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. It imposes on the prosecution the burden of proving a criminal charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.

The *Air Navigation (Essendon Fields Airport) Regulations 2018* and *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* limit the right to the presumption of innocence under article 14(2) of the ICCPR by:

- including a strict liability offence, and
- placing a reversed evidential burden of proof on defendants with respect to certain offences in the legislative instruments.

However, both legislative instruments are compatible with human rights because, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate to achieve a legitimate objective, as evidenced by the explanatory statements published when these instruments were made and explained below.

The limitations on the right to the presumption of innocence under article 14(2) of the ICCPR in the *Air Navigation (Essendon Fields Airport) Regulations 2018* and *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* aim to achieve the legitimate objective of protecting the community surrounding the Essendon Fields Airport and Gold Coast Airport.

Furthermore, conduct in contravention of the applicable Regulations is entirely within the control of the defendant and the reversal of the evidential burden of proof relates to evidential matters likely to be peculiarly within the knowledge of the defendant. These offences are considered appropriate to provide protection to the community through applying a deterrent effect to operators at Essendon Fields Airport and Gold Coast Airport. The offence provisions are also designed in manner consistent with the *Attorney-General's Department Guide to Framing Commonwealth Offence, Infringement Notices and Enforcement Powers*.

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.

Instruments that are replaced will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the Airport Curfew Instruments will be assessed at the time any replacement instrument is made, including through the requirement to prepare a further Statement of Compatibility with Human Rights.

Conclusion

This 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.

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the Certificate is named the *Legislation (Airport Curfew Instruments) Sunset-altering Declaration 2023*. The Certificate may be cited by this name.

Section 2 Commencement

This section provides for the Certificate 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 Deferral of sunsetting

This section provides that the following instruments are repealed by section 51A of the *Legislation Act 2003* on 1 April 2029:

- the *Adelaide Airport Curfew Regulations 2018*
- the *Air Navigation (Essendon Fields Airport) Regulations 2018*
- the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*
- the *Sydney Airport Curfew (Curfew Aircraft) Instrument 2015*; and
- the *Sydney Airport Curfew (Dispensation) Guideline 2016*.

1 April 2029 is the aligned sunsetting day for those instruments. Without the Declaration, the *Sydney Airport Curfew (Curfew Aircraft) Instrument 2015* and the *Sydney Airport Curfew (Dispensation) Guideline 2016* would sunset on 1 April 2025 and 1 April 2026, respectively. The *Adelaide Airport Curfew Regulations 2018*, the *Air Navigation (Essendon Fields Airport) Regulations 2018* and the *Air Navigation (Gold Coast Airport) Regulations 2018* would sunset on 1 April 2029.

Section 5 Repeal of the instrument

This section provides that the Declaration is repealed at the start of 2 April 2029.