



Australian Government

Attorney-General's Department

Review of the Operation of the Sunsetting Provisions in the *Legislation Act 2003*

Consultation Paper

May 2017

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About the review

Background

Section 60 of the *Legislation Act 2003* requires:

- the Attorney-General to appoint persons to a body to review the operation of Part 4 of Chapter 3 (Sunsetting of legislative instruments) and any related matters that the Attorney-General specifies;
- the body to give the Attorney-General a written report on the review before 1 October 2017; and
- the Attorney-General to table the report within six sitting days of receipt.

The Attorney-General has appointed Iain Anderson, Peter Quiggin PSM and Alison Larkins to the review body, which will be known as the Sunsetting Review Committee (the Committee).

Terms of reference

The 2017 Review of Sunsetting (the 2017 Review) is to consider and report on all aspects of the operation of the sunsetting framework set out in Part 4 of Chapter 3 of the *Legislation Act 2003*, including:

- the extent to which the purpose of the sunsetting framework, as specified in section 49, has been realised
- factors, if any, that have limited the achievement of this purpose
- the extent to which the purpose of the sunsetting framework is still appropriate, and
- how performance against this purpose might be improved.

The 2017 Review should assess the implementation and continuing relevance of recommendations 37, 38, 39 and 40 of the report of the *2008 Review of the Legislative Instruments Act 2003*. This assessment should include consideration of:

- whether current practices satisfy recommendation 37, that the Attorney-General remind responsible Ministers:
 - of the principle that legislative instruments remain in force for only as long as they are needed
 - that all legislative instruments be subject to ongoing review and culling, and
 - of the need to put timely arrangements in place to manage the commencement and ongoing operation of the sunsetting provisions
- whether agencies are taking sufficient and appropriate action to satisfy recommendation 38, that they should cull spent legislative instruments as soon as practicable and identify instruments that will need to be continued beyond their sunsetting date
- whether the present sunsetting period of 10 years remains appropriate and should be maintained (as foreshadowed in recommendation 39)
- whether legislative instruments that are exempt from sunsetting are being periodically reviewed as proposed by recommendation 40.

The review should consider the effectiveness of the implementation of recommendations 4.1 and 4.2 of the Productivity Commission's 2011 report *Identifying and Evaluating Regulation Reforms*, which sought to stagger the sunsetting of pre-2005 instruments, enable the packaging of related regulations for review, and establish clear and transparent processes for implementation of the sunsetting regime. In particular, the review should

consider the implementation of those recommendations by the *Legislative Instruments Amendment (Sunsetting Measures) Act 2012* and other policy and procedural developments and guides.

Having regard to the first two years of the practical operation of the sunsetting framework, the Committee should give particular consideration to:

- the operation of Division 1 (Automatic repeal) of Part 3 of Chapter 3 of the Legislation Act, in particular the timing of the automatic repeal of provisions under that Division
- the extent of the Attorney-General's discretion to defer the sunsetting day of an instrument under section 51(1)(c) of the Legislation Act
- the purpose of section 53 of the Legislation Act (Parliament may resolve that an instrument should continue in force for another 10-year period) and the extent to which that provision is still appropriate
- the scope of the existing exemptions from sunsetting provided for under section 54(1) of the Legislation Act and sections 11 and 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (the Exemptions Regulation)
- whether additional exemptions should be provided for under section 54(1) of the Legislation Act and sections 11 and 12 of the Exemptions Regulation, and
- the appropriate breadth of the sunsetting regime in terms of its scope of application.

The Sunsetting Review Committee will report by 1 October 2017.

About the consultation paper

This paper has been prepared to inform discussion and invite feedback on a range of issues as part of the formal public consultation for the 2017 Review. The Committee invites Commonwealth entities, interested organisations and individuals to make submissions in response to the issues raised in this consultation paper.

Submissions should be sent by close of business on Friday 7 July 2017 to:

-  sunsetting@ag.gov.au
-  Sunsetting Review Secretariat
c/- Attorney-General's Department
4 National Circuit
Barton ACT 2600

The Committee intends to make submissions public unless requested otherwise.

Abbreviations used in the paper

For the purposes of this paper:

Legislation Act means the *Legislation Act 2003*

LEOMR means the *Legislation (Exemptions and Other Matters) Regulation 2015*

AGD means the Attorney-General's Department

agency means the government department or body responsible for advising a rule-maker on a particular area of law under the current Administrative Arrangements Order

FRL means the Federal Register of Legislation

instrument means a legislative instrument as defined by section 8 of the Legislation Act

rule-maker means any person who is authorised to make a certain type of instrument or, if the rule-maker is the Governor-General, the responsible minister (see subsection 6(1) of the Legislation Act)

sunset means to be repealed in accordance with Part 4 of Chapter 3 of the Legislation Act

About the Committee

Mr Iain Anderson (Chair)

Iain Anderson is the Chief Operating Officer and Deputy Secretary, Civil Justice and Corporate Group, in the Attorney-General's Department. Mr Anderson is responsible for civil justice policy and programmes, including administrative law, legislative frameworks and administration of the Legislation Act, and for the corporate affairs of the department.

Since joining AGD in 1990, Mr Anderson has worked in many areas of the department, including the Australian Government Solicitor, and has led divisions responsible for criminal justice; strategic policy; native title; territories; legal services and classification. He has also led the in-house legal area of the Australian Taxation Office.

Mr Anderson has degrees in Law and Economics from Sydney University.

Mr Peter Quiggin PSM

Peter Quiggin is the First Parliamentary Counsel of the Office of Parliamentary Counsel (OPC), which is responsible for drafting all principal legislation, all regulations and a range of legislative instruments for the Australian Government, including taxation legislation. OPC is also responsible for the publication of Commonwealth legislation through the Federal Register of Legislation.

Mr Quiggin's initial seven-year appointment as First Parliamentary Counsel started on 13 May 2004. He has since been reappointed for a further seven years, commencing on 14 May 2011. He has been a drafter with the Office of Parliamentary Counsel for over 25 years and has drafted legislation covering a wide range of topics including taxation, native title and immigration. Mr Quiggin was awarded a Public Service Medal in the Australia Day 2008 Honours.

Mr Quiggin is an ex officio member of the Board of Taxation. Prior to working at OPC, Mr Quiggin worked for a number of years with the Australian Taxation Office and the Administrative Appeals Tribunal.

Ms Alison Larkins

Alison Larkins is the Chief Operating Officer and Deputy Secretary in the Department of Health. Ms Larkins is responsible for the Department's corporate and enabling areas and the Department's state networks. Prior to joining the Department of Health, Ms Larkins worked in the Department of the Prime Minister and Cabinet (PM&C) as acting Deputy Secretary, Social Policy. While in PM&C she was responsible for the Social Policy Division, the National Ice Taskforce Secretariat and the Reform of the Federation Taskforce.

Ms Larkins previously led the Refugee, Humanitarian and International Policy, Compliance and Case Management, and People and Governance Divisions in the Department of Immigration and Border Protection.

Ms Larkins was also previously appointed as acting Commonwealth Ombudsman and Deputy Commonwealth Ombudsman.

Questions raised in the consultation paper

1. To what extent has the purpose of the sunseting framework been realised, and is that purpose still appropriate?
2. Do you have any other issues or concerns about the sunseting framework?
3. Is the current sunseting period of 10 years appropriate?
4. What effect has the sunseting framework had on departmental and agency processes for conducting fit for purpose reviews of legislative instruments?
5. Is there a need to develop whole-of-government policy guidance on processes for managing sunseting legislation? If so, what matters should be covered by such a policy?
6. Is there a need to clarify the roles and responsibilities of different Commonwealth departments and agencies in relation to the sunseting framework?
7. Is there a need to develop policy or legislative guidance on undertaking reviews of sunseting legislative instruments?
8. What (if anything) could and should be done to streamline the deferral process?
9. What (if any) changes should be made to the criteria in section 51 to provide greater clarity and ensure closer alignment with the purposes of the sunseting framework?
10. Should the Attorney-General have the power to defer the sunseting of an instrument for more than 12 months?
11. To what extent is the prorogation of Parliament an appropriate criterion to justify the deferral of the sunseting of an instrument?
12. Should section 51 be amended to replace all references to 'cease to have effect' with 'repealed'?
13. To what extent is the level of discretion available to the Attorney-General in granting deferrals of sunseting appropriate?
14. Should the power to grant deferrals of sunseting be delegable?
15. Is the tabling requirement for certificates of deferral appropriate?

16. Would it be appropriate for more than one deferral of sunseting to be granted for the same instrument?
17. To what extent has section 51A encouraged thematic reviews of related legislative instruments? What factors, if any, have limited the achievement of this purpose?
18. Is it appropriate for section 51A declarations to be subject to disallowance?
19. To what extent would including a requirement for a statement of reasons, similar to the requirement for certificates of deferral under paragraph 51(2)(a), better achieve the overarching purposes of the sunseting framework?
20. Should section 51A allow the Attorney-General to align the sunseting dates of instruments that have been the subject of a completed review, in order to facilitate the implementation of the findings of that review?
21. Is there a need for more policy guidance on the types of thematic review that may be appropriate for the purposes of section 51A?
22. Should the Attorney-General have the power to 'align', to a later date, the sunseting dates of instruments that already have the same scheduled sunseting date? To what extent would this support the purpose of section 51A?
23. How effectively does tabling of the sunseting lists support departments and agencies in managing the sunseting of the legislative instruments for which they are responsible?
24. To what extent is parliamentary roll over still a necessary and appropriate safeguard for preventing the sunseting of a legislative instrument?
25. Is it appropriate that the availability of parliamentary roll over of a legislative instrument relies upon that instrument's appearance in a sunseting list or a certificate of deferral, and that there is a 6-month time limit on moving such a resolution?
26. Should Parliament be able to roll over legislative instruments that have had their original sunseting dates changed by a declaration of alignment under section 51A?
27. To what extent does the scope of the current sunseting exemptions achieve the broader objectives of the sunseting framework?

- 28. Is there an appropriate balance between the operation of the exemptions provisions and the administrative burden for the responsible agency?**
- 29. To what extent is section 54 still appropriate, having regard to the broader objectives of the sunseting framework?**
- 30. Should subsection 54(1) be amended to include intergovernmental bodies or schemes involving the Territories, not just the States?**
- 31. Should subsection 54(1) be moved from the Legislation Act and inserted into LEOMR?**
- 32. Are the five policy criteria still appropriate and aligned to the overall objectives of the sunseting framework?**
- 33. Should the criteria for granting specific exemptions from sunseting be set out in legislation, rather than policy?**
- 34. To what extent are the classes of instruments set out in section 11 of the LEOMR still appropriate, having regard to the broader objectives of the sunseting framework?**
- 35. Should notifiable instruments be subject to the sunseting framework, or alternatively a modified automatic repeal or bulk repeal process?**
- 36. Is there a need for a formal, established mechanism by which notifiable instruments can be amended, replaced, repealed, superseded or simply removed from the Notifiable Instruments Register?**
- 37. How useful is the sunseting information provided on the FRL? What could be done to enhance this information?**
- 38. To what extent are the automatic repeal provisions appropriate?**
- 39. Should Division 1 of Part 3 of Chapter 3 be amended to increase the time between the making of a purely amending or commencement instrument and its automatic repeal?**

Introduction to sunseting

History of the sunseting framework

The *Legislative Instruments Act 2003*, as the Legislation Act was named before the commencement of the *Acts and Instruments (Framework Reform) Act 2015*, has a long history commencing in 1992 with the Administrative Review Council's report *Rule-making by Commonwealth Agencies*. That report laid the basis for many of the principles incorporated into the various iterations of the Legislative Instruments Bill, including the development of the sunseting framework.¹

On 30 June 1994, the Legislative Instruments Bill 1994 was introduced into the Senate; that Bill was awaiting passage when Parliament was prorogued prior to the 1996 election. The Legislative Instruments Bill 1996 was introduced into the House of Representatives on 24 June 1996, but was later laid aside by the House of Representatives following disagreement between the two Houses of Parliament on proposed amendments to the Bill. The Legislative Instruments Bill 1996 [No.2] was reintroduced into the House of Representatives on 5 March 1998 in the same form as the 1996 Bill and had passed the Senate with a raft of substantial amendments. However, the Senate's message had not been considered by the House of Representatives when Parliament was prorogued for the 1998 Federal election.²

The Legislative Instruments Bill 2003 was substantially revised, reorganised and simplified from the previous Legislative Instruments Bill 1996 [No.2].³ It passed both Houses of Parliament during the course of 2003 and received Royal Assent on 17 December 2003.

Sunseting of legislative instruments

Sunseting is an important mechanism for the Australian Government to implement policies to reduce red tape, deliver clearer laws and align existing legislation with current government policy. Part 4 of Chapter 3 of the Legislation Act provides that legislative instruments will be automatically repealed ('sunset') after a fixed period of time, unless further legislative action is taken to extend the operation of that legislative instrument (subject to some exceptions).

The purpose of the sunseting framework, as set out in section 49 of the Legislation Act, is that legislative instruments are kept up to date and only remain in force for so long as they are needed. As such, legislative instruments should be subject to ongoing review and actively repealed if it is determined that they are no longer required. The primary responsibility for managing the sunseting of a legislative instrument rests with the agency responsible for that instrument.

Unless otherwise provided by the enabling Act, an instrument registered on the FRL on or after 1 January 2005 will sunset on the first 1 April or 1 October falling on or after the 10th anniversary of that instrument's registration. As such, the sunseting regime did not come into full operation until 2015, when legislative instruments first began to sunset.

The Legislation Act sets out special sunset dates for the significant number of older instruments registered in bulk on 1 January 2005. Under section 50(2), those instruments sunset based on their year of making, with

¹ Recommendation 23 of that report proposed that all existing principal instruments of a legislative character and all instruments subject to the Legislative Instruments Act should be sunsetted ten years after making.

² Moira Coombs, *Legislative Instruments Bill 2003*, No 26 of 2003-04, 9 September 2003, 3-4.

³ *Ibid* 2.

older instruments sunset first. This was intended to reduce the administrative burden of having every instrument sunset on 1 April 2015. Since the sunset regime came into force, 413 instruments have sunset.⁴

The Legislation Act requires the Attorney-General to, 18 months before a given sunset date, table in the Parliament a list of the legislative instruments due to sunset on that date. The Parliament then has six months in which to pass a resolution to allow a legislative instrument or provisions of a legislative instrument on that list to continue in force as if remade.

The tabling of the sunset list also serves as a prompt for the rule-maker to determine, following an initial review, whether an instrument should be left to sunset, remade with amendment or remade without amendment (that is, remade in substantially the same form). If it is not appropriate for an instrument to sunset, a more comprehensive review should be undertaken to determine if the instrument is fit for purpose. This process of review ensures that only relevant and required instruments remain in force.

All legislative instruments are subject to this process unless they are explicitly exempted from sunset. Exemptions are set out in section 54 of the Legislation Act, Part 5 of the LEOMR or, where applicable, the Act of Parliament that authorises the making of the instrument. Additional exemptions from sunset are granted only in exceptional circumstances and require the approval of the Attorney-General. Most exemptions are located in the LEOMR and most new exemptions are created by amendment of the LEOMR. As at the date of publication of this paper, there are nine class exemptions (these are open classes, defined by reference to the characteristics or purpose of an instrument) and more than 80 specific exemptions (generally defined by reference to particular enabling provisions) set out in sections 11 and 12 of the LEOMR.⁵

In some circumstances, the sunset date of an instrument may be delayed to ensure continuity of the law. If an instrument is expected to be repealed within 12 months after its scheduled sunset date, or cannot be remade before it sunsets, a rule-maker may apply to the Attorney-General for a deferral under section 51 of the Legislation Act. Under section 51A of the Legislation Act, the Attorney-General also has the power to align the sunset dates of a group of instruments in order to facilitate a review of those instruments and the implementation of the review's findings. As of the date of publication of this paper, the Attorney-General has granted 21 deferrals of sunset and seven declarations of alignment.⁶

Most jurisdictions in Australia have sunset regimes of ten years after making. These regimes apply to 'statutory rules' in Victoria,⁷ 'subordinate legislation' in Queensland,⁸ 'regulations' in South Australia,⁹ and 'subordinate legislation' in Tasmania.¹⁰ New South Wales is the only Australian jurisdiction with a five-year sunset period for 'statutory rules'.¹¹

⁴ For additional statistics about the operation of the sunset regime, see the Appendix.

⁵ Further details are available in the Appendix.

⁶ Further details are available in the Appendix.

⁷ Section 5 of the *Subordinate Legislation Act 1994* (Vic). Section 3 of that Act defines 'statutory rule' to mean a regulation. 'Legislative instrument' is defined as 'an instrument made under an Act or statutory rule that is of a legislative character' but specifically does not include statutory rules. As such, it appears that 'legislative instruments' are not subject to the sunset regime in Victoria.

⁸ Section 54 of the *Statutory Instruments Act 1992* (QLD). 'Subordinate legislation' is defined comprehensively under section 9 of that Act.

⁹ Section 16B of the *Subordinate Legislation Act 1978* (SA). Section 4 of that Act defines 'regulation' to mean 'any regulation, rule or by-law made under an Act'.

¹⁰ Section 11 of the *Subordinate Legislation Act 1992* (TAS). Section 3 of that Act defines 'subordinate legislation' to mean a regulation, rule or by-law made by the Governor, or any other instrument of a legislative character made under the authority of an Act or declared by the Treasurer.

¹¹ Section 10 of the *Subordinate Legislation Act 1989* (NSW). According to Chapter 14 (Delegated Legislation) of the New South Wales Legislative Council Practice:

It appears that there are few international jurisdictions with similar sunset regimes. Thailand has a sunset system, although it applies to primary as well as delegated legislation, imposes a five-yearly sunset requirement, and does not appear to have equivalent exemptions or exclusions. New Zealand does not have a general sunset regime for legislative instruments, although it has been the subject of considerable discussion over the years.¹² The United Kingdom does not have a sunset framework for either primary or secondary legislation. However, it has adopted other approaches aimed at reducing unnecessary or outdated regulation, such as requiring reviews of regulatory legislation to ensure that legislation stays fit for purpose, and encouraging government officials to consider the use of sunset provisions during policy development.¹³

Canada does not have a sunset regime. In contrast to those jurisdictions mentioned above, the Cabinet Directive on Making Federal Acts and Regulations¹⁴ recommends 'caution ... when considering whether to include a "sunset" or expiration provision in a bill', and suggests that '[a]lternatives to these provisions should be fully explored before proposing to include them in a bill'.

Question: To what extent has the purpose of the sunset framework been realised, and is that purpose still appropriate?

Question: Do you have any other issues or concerns about the sunset framework?

The 2008 Review of the *Legislative Instruments Act 2003* broadly considered the sunset provisions, including the possibility of amending that Act to provide for sunset after five years rather than 10 years. The 2008 Review recommended that the 10-year sunset period be maintained, pending the 2017 Review.

Question: Is the current sunset period of 10 years appropriate?

Productivity Commission Report: Identifying and Evaluating Regulation Reforms

In December 2011, the Productivity Commission published *Identifying and Evaluating Regulation Reforms – Research Report*. Recommendation 4.2 of that report recommended that the Government establish clear and transparent processes for the handling of sunset legislation, covering:

- prioritising sunset instruments against agreed criteria, to identify the appropriate level of review effort and consultation
- development of effective data management processes that allow affected parties ready access to information on sunset instruments, review and consultation processes
- testing the proposed review action with relevant interests

As the Act only applies to 'statutory rules' as defined, it fails to capture forms of delegated legislation made under more recent Acts, such as 'guidelines', which lie outside the scope of the definition. [...] At the Commonwealth level, by contrast, the problem of ensuring uniformity in the making of delegated legislation has been solved by defining delegated legislation by reference to what it does rather than what it is called.

¹² The Regulations Review Committee of the House of Representatives recommended in 2007 that New Zealand develop a sunset regime; however, the Government's response in 2008 stated that further work was required.

¹³ For example, section 14A of the *Interpretation Act 1978* includes a power to include sunset and review provisions in subordinate legislation, however this is optional.

¹⁴ <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/cabdir-dircab-eng.htm>

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- indicating the nature of reviews to be undertaken, including the proposed level of consultation, and
 - development of subsequent proposals to remake the regulation, including preparation of a regulation impact statement for regulation that has a material impact.

Agency processes for managing sunseting instruments

It is essential to the effective operation of the sunseting framework that agencies put in place timely arrangements to monitor and review instruments that are approaching their sunset date. Agencies should take appropriate and sufficient action to repeal spent legislative instruments and to ensure the continued operation of instruments that are still required beyond their sunseting date.

AGD is aware of a number of situations where agencies have been unaware of the imminent sunseting of an instrument until the sunseting date has passed, or have only taken action to ensure the continued operation of an instrument shortly before its sunseting date.

Question: What effect has the sunseting framework had on departmental and agency processes for conducting fit for purpose reviews of legislative instruments?

Question: Is there a need to develop whole-of-government policy guidance on processes for managing sunseting legislation? If so, what matters should be covered by such a policy?

Question: Is there a need to clarify the roles and responsibilities of different Commonwealth departments and agencies in relation to the sunseting framework?

Undertaking reviews is a key element of the sunseting framework. AGD has generally taken the view that it should be a matter for the responsible agency to determine the most appropriate model of legislative review for each instrument, taking into account factors such as the regulatory burden associated with the instrument, the likely amount of stakeholder interest, and the period of time since the last review if the instrument. As such, there is at present little guidance on the process of reviewing a sunseting instrument.

Question: Is there a need to develop policy or legislative guidance on undertaking reviews of sunseting legislative instruments?

Deferral of sunseting

Deferral is one of a number of mechanisms that provide the flexibility to ensure that the operation of the Commonwealth sunseting framework does not impose an unreasonable burden on Commonwealth agencies or result in unintended consequences. AGD is responsible for briefing and making recommendations to the Attorney-General on applications for deferral from rule-makers.

Question: What (if anything) could and should be done to streamline the deferral process?

Section 51 of the Legislation Act provides for the Attorney-General to issue a certificate to defer the sunseting day for a legislative instrument for a period of six or 12 months. The Attorney-General must be satisfied that one or more of the following criteria is met:

- the instrument would be likely to cease to be in force within 12 months after the sunseting day
- an instrument proposed to be made in substitution for the instrument will not be able to be completed before the sunseting day for reasons that the rule-maker could not have foreseen and avoided, or
- an instrument proposed to be made in substitution for the instrument will not be able to be completed before the sunseting day because the dissolution or expiration of the House of Representatives or the prorogation of the Parliament renders it inappropriate to make a replacement instrument before a new government is formed.

Certificates of deferral must include a statement of reasons for the issue of the certificate.¹⁵ They are legislative instruments and must be registered on the FRL, but are not subject to disallowance.¹⁶

Deferral of sunseting allows instruments to continue to be in force for a further but limited period of time when they would otherwise sunset. This removes the administrative burden of remaking instruments which would have a limited duration of effect prior to their repeal and potential replacement.

Question: What (if any) changes should be made to the criteria in section 51 to provide greater clarity and ensure closer alignment with the purposes of the sunseting framework?

Question: Should the Attorney-General have the power to defer the sunseting of an instrument for more than 12 months?

To date, a deferral of sunseting has never been granted on the basis that a replacement instrument could not be completed because of the dissolution or expiration of the House of Representatives or because of the prorogation of Parliament. Nonetheless, there is a need to consider whether the prorogation of Parliament is an appropriate justification for the failure to make a replacement instrument before the sunseting date. The prorogation of Parliament essentially terminates the current session of Parliament; unlike the dissolution of Parliament, prorogation does not necessarily lead to an election, and Parliament can be called to sit again after a prorogation. As such, it is not clear why prorogation of Parliament would necessarily prevent a rule-maker from making a new instrument to replace an instrument that is about to sunset.

Question: To what extent is the prorogation of Parliament an appropriate criterion to justify the deferral of the sunseting of an instrument?

¹⁵ Paragraph 51(2)(a) of the *Legislation Act 2003*.

¹⁶ Item 19 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Subparagraph 51(1)(b)(i) requires the Attorney-General to be satisfied that an instrument would be likely to cease to be in force within 12 months. However, paragraphs 51(1)(a) and (d) both refer to a legislative instrument being 'repealed' (by virtue of sections 50 and 51A, or by virtue of a certificate issued under section 51). To ensure consistency in wording, and to encourage agencies to actively clean up the statute book by ensuring that redundant instruments are repealed rather than merely allowed to cease to have effect, it may be desirable to amend section 51 to ensure that all references to 'cease to have effect' are changed to 'repealed'.

Question: Should section 51 be amended to replace all references to 'cease to have effect' with 'repealed'?

Under the Legislation Act, only the Attorney-General may grant a deferral of sunseting, and only if the Attorney-General is satisfied that one of the criteria listed in that section applies to the instrument in question.

Question: To what extent is the level of discretion available to the Attorney-General in granting deferrals of sunseting appropriate?

Question: Should the power to grant deferrals of sunseting be delegable?

Paragraph 51(2)(b) of the Legislation Act requires certificates of deferral to be tabled no later than six sitting days after the certificate is issued. This is different from the tabling requirement for all other legislative instruments; under subsection 38(1), the Office of Parliamentary Counsel must arrange for legislative instruments to be tabled in Parliament within six sitting days after the instrument is registered on the FRL. As the issue of an instrument generally occurs at least a number of days prior to the registration of that instrument, this could potentially result in shorter tabling deadlines for certificates of deferral compared to other legislative instruments.

Question: Is the tabling requirement for certificates of deferral appropriate?

Subsection 51(1)(a) provides that the Attorney-General may only issue a certificate of deferral if the instrument would otherwise be repealed by section 50 or 51A. Section 51(1)(d) provides that the issuing of a deferral certificate would have the effect that the instrument is 'repealed by this section on the specified day instead of the sunseting day'. As such, an instrument that has been deferred will be repealed by section 51, and by virtue of section 51(1)(a), no further certificates of deferral may be issued in relation to that instrument.

Question: Would it be appropriate for more than one deferral of sunseting to be granted for the same instrument?

Alignment of sunseting to facilitate thematic review

The ability of the Attorney-General to align the sunseting dates of multiple instruments to facilitate a thematic review provides an additional mechanism for promoting flexibility in the sunseting regime. AGD is also responsible for briefing and making recommendations to the Attorney-General on applications for alignment.

Section 51A of the Legislation Act provides that the Attorney-General may, by declaration, align the sunseting dates of 2 or more legislative instruments to a single specified day no more than five years after the earliest sunseting date of the instruments in question, in order to facilitate a single thematic review of those instruments.

Section 51A(1) provides that, prior to making the declaration, the Attorney-General must be satisfied that:

- (a) all the instruments to be reviewed:
 - (i) would, apart from this section, be repealed by section 50 (Sunsetting) or 51 (Attorney-General may defer sunseting in certain circumstances); and
 - (i) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review and the implementation of its findings.

Section 51A was inserted into the *Legislative Instruments Act 2003* (as it was known prior to its name change to the *Legislation Act 2003*) by the *Legislative Instruments Amendment (Sunsetting Measures) Act 2012*. According to the Explanatory Memorandum, the introduction of section 51A was intended to encourage thematic reviews of related legislative instruments, thereby facilitating more efficient and effective review processes and enabling departments and agencies to comprehensively engage with stakeholders prior to the remaking of any instrument. This is consistent with recommendation 4.1 of the Productivity Commission's *Research Report – Identifying and Evaluating Regulation Reforms* (December 2011).

At the date of publication of this paper, the Attorney-General has issued seven declarations of alignment (see Appendix).

Question: To what extent has section 51A encouraged thematic reviews of related legislative instruments? What factors, if any, have limited the achievement of this purpose?

Unlike certificates of deferral, section 51A declarations are not exempt from disallowance. There is also no requirement under section 51A that a declaration must include a statement of reasons.

Question: Is it appropriate for section 51A declarations to be subject to disallowance?

Question: To what extent would including a requirement for a statement of reasons, similar to the requirement for certificates of deferral under paragraph 51(2)(a), better achieve the overarching purposes of the sunseting framework?

Nature of ‘single review’

It is clear that section 51A provides for alignment to facilitate the undertaking of a future review. However, it is less certain whether instruments that are subject of a review that has already been concluded, can still meet the criteria.

Subparagraph 51A(1)(a)(ii) requires that the instruments to be aligned ‘are or will be’ the subject of a single review. The phrase ‘are or will be’ suggests that the review should be, at the time of application, underway or intended to be undertaken in future. It is less arguable that the wording of this provision also includes instruments that have been the subject of a review that has already concluded.

Paragraph 51A(1)(b) requires the Attorney-General to be satisfied that aligning the instruments will facilitate the undertaking of the review *and* the implementation of its findings. Ostensibly, the use of ‘and’ is intended to exclude circumstances in which the single review has already been undertaken but more time is required for the findings of the review to be implemented. The effect is that section 51A could not apply to more complex reviews that have been concluded, but contain significant and far-reaching findings that require extended periods of consultation and consideration before the findings can be implemented.

This was the case with the Competition Policy Review, which was concluded in 2015. A number of legislative instruments made under the *Competition and Consumer Act 2010* would have been amended or repealed as a consequence of the Government’s implementation of that Review’s findings. Section 51A, as currently worded, would prevent the Attorney-General from aligning the sunseting dates of those instruments to a later date to allow sufficient time for the Government to implement the recommendations of the Competition Policy Review.

Question: Should section 51A allow the Attorney-General to align the sunseting dates of instruments that have been the subject of a completed review, in order to facilitate the implementation of the findings of that review?

Question: Is there a need for more policy guidance on the types of thematic review that may be appropriate for the purposes of section 51A?

Nature of ‘alignment’

The Macquarie Dictionary defines ‘align’ to mean ‘adjust to a line’ or ‘bring into line’. The Committee considers that the specific use of the word ‘align’ in section 51A suggests that it was not intended to apply to a group of instruments that already have the same scheduled sunseting date.

The purpose of section 51A is to facilitate the thematic review of a group of instruments that may not have otherwise been reviewed together because of their differing sunseting dates, rather than as a contingency measure for preserving multiple instruments that would otherwise sunset. The Committee considers that agencies should have in place timely arrangements to manage the sunseting of their legislative instruments, particularly those related by theme and sunseting on the same day.

Question: Should the Attorney-General have the power to ‘align’, to a later date, the sunseting dates of instruments that already have the same scheduled sunseting date? To what extent would this support the purpose of section 51A?

Tabling of sunseting lists

Section 52 of the Legislation Act requires the Attorney-General to table in both Houses of Parliament a list of instruments which are due to sunset ('sunseting list'). The purpose of the tabling of sunseting lists is to ensure that both Houses of Parliament, as well as government departments and agencies, are aware of instruments that are due to sunset.

The sunseting list is required to be tabled on the first sitting day within 18 months before the relevant sunseting date. Once a sunseting list is tabled, a record of its tabling is published online in accordance with current tabling guidelines and the list itself is published on the FRL.

The tabling of the sunseting list has no legal effect. The incorrect inclusion of an instrument on a sunseting list does not cause that instrument to sunset simply by virtue of the tabling of the list, and the omission of an instrument from a sunseting list does not of itself exempt that instrument from sunseting.

The FRL provides real-time lists of all of the instruments due to sunset within the next 18 months. These lists are updated automatically where, for example, an instrument is repealed, rolled over or has had its sunseting date altered.

Question: How effectively does tabling of the sunseting lists support departments and agencies in managing the sunseting of the legislative instruments for which they are responsible?

Parliamentary roll over

Parliamentary roll over recognises the ability of the Parliament to prevent the sunseting of a legislative instrument. Under section 53 of the Legislation Act, either House of Parliament can pass a resolution to defer the sunseting date of a legislative instrument for a further 10 years (a parliamentary rollover).

At the date of publication of this paper, parliamentary rollover has not been sought since the introduction of the sunseting regime.

Purpose and role of parliamentary roll over

It was during the debate on the Legislative Instruments Bill 1996 that Senator Andrew Murray, on behalf of the Australian Democrats, first raised concerns about the lack of a mechanism for preventing ‘the government of the day turfing out a series of regulations which were very helpful on social and employment matters, for instance, or community or environment matters, which the community as a whole valued and the government of the day might not’.¹⁷ During the debate on the Legislative Instruments Bill 1996 [No.2], Senator Murray again sought an amendment to the Bill to prescribe a parliamentary roll over-type provision (which was supported by the Opposition and rejected by the government of the day), stating that ‘it is the place of parliament to have the opportunity to reject the intention of government to sunset a particular regulation’.¹⁸ When a parliamentary roll over provision was finally introduced in the Legislative Instruments Bill 2003, it was done to ‘[address] a concern previously expressed by the Opposition’.¹⁹

AGD’s view is that, consistent with the original purpose of the provision, parliamentary roll over should not be used by the government of the day and should be reserved for private members only. The purpose of the sunseting framework is that legislative instruments are kept up to date and only remain in force for so long as they are needed. As such, AGD’s also considers that this mechanism should not be used for legislative instruments that have not been reviewed, or that are likely to require revision in either substance or drafting.

Question: To what extent is parliamentary roll over still a necessary and appropriate safeguard for preventing the sunseting of a legislative instrument?

Availability of parliamentary roll over

A resolution under section 53 must be passed within 6 months of the instrument being mentioned in either:

- a certificate of deferral of sunseting laid before that House, or
- a sunseting list laid before that House (under section 52 of the Legislation Act, this must occur approximately 18 months before the instruments on that list will sunset).

¹⁷ Commonwealth, *Parliamentary Debates*, Senate, 3 December 1997, 10295 (Andrew Murray).

¹⁸ Commonwealth, *Parliamentary Debates*, Senate, 14 May 1998, 2826 (Andrew Murray).

¹⁹ Commonwealth, *Parliamentary Debates*, Senate, 9 September 2003, 14640 (Ian Campbell). See also Commonwealth, *Parliamentary Debates*, Senate, 2 December 2003, 18628 (Brian Greig) and Commonwealth, *Parliamentary Debates*, Senate, 2 December 2003, 18625 (Joseph Ludwig).

As such, Parliament may only pass a resolution to defer the sunseting date of a legislative instrument if that instrument appears in a sunseting list or in a certificate of deferral, and there is no express provision about instruments that have had their sunseting dates aligned under section 51A.

Question: Is it appropriate that the availability of parliamentary roll over of a legislative instrument relies upon that instrument's appearance in a sunseting list or a certificate of deferral, and that there is a 6-month time limit on moving such a resolution?

Question: Should Parliament be able to roll over legislative instruments that have had their original sunseting dates changed by a declaration of alignment under section 51A?

Exemptions from sunseting

It is possible for some legislative instruments to be exempted from the operation of the sunseting framework. This is another mechanism for ensuring that the sunseting framework remains flexible and responsive to government needs.

Under section 50 of the Legislation Act, all instruments in force are subject to sunseting unless they are explicitly exempted from sunseting. Exemptions are set out in:

- section 54 of the Legislation Act
- Part 5 of the LEOMR, and
- in limited circumstances, the Act of Parliament that authorises the making of the instrument.

Most exemptions provide that instruments made under specific enabling provisions are exempt from sunseting, and the exempted instruments are therefore relatively easy to identify.

Other types of exemptions, particularly where classes of instruments are exempted, may be more difficult to apply. For example, item 1 of the table in section 11 of the LEOMR prescribes an exemption from sunseting for 'instruments the sole purpose of which, or a primary purpose of which, is to give effect to an international obligation of Australia'. It is often advisable to seek legal advice where there is any doubt as to whether a legislative instrument meets the sole or primary purpose test, given the significant legal and other consequences if, contrary to an agency's assessment, a court later found that an instrument was not subject to an exemption and had sunset. The applicability of the exemption may also change over time if the instrument is amended. Thus, any purported reliance on a category exemption may create additional administrative burden for the responsible agency and ongoing uncertainty for individuals affected by the instrument in question.

Question: To what extent does the scope of the current sunseting exemptions achieve the broader objectives of the sunseting framework?

Question: Is there an appropriate balance between the operation of the exemptions provisions and the administrative burden for the responsible agency?

Class exemptions

Subsection 54(1) of the Legislation Act prescribes exemptions from sunseting for all legislative instruments where the enabling legislation for the instrument (with the exception of the *Corporations Act 2001*):

- (a) facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States; and
- (b) authorises the instrument to be made by the body or for the purposes of the body or scheme.

Subsection 54(1) recognises that such instruments are part of a multilateral agreement and, as such, should not be subject to a unilateral sunseting process that would cause them to be repealed in only one of the jurisdictions that are party to the agreement. It does not, however, exempt instruments that facilitate an intergovernmental scheme that does not involve a State but involves one or more of the Territories of the Commonwealth.

Subsection 54(2) prescribes exemptions from sunseting for legislative instruments where:

- (a) an Act provides that the instrument is exemption from sunseting
- (b) the instrument is prescribed by the LEOMR, or
- (c) the instrument is the LEOMR.

Question: To what extent is section 54 still appropriate, having regard to the broader objectives of the sunseting framework?

Question: Should subsection 54(1) be amended to include intergovernmental bodies or schemes involving the Territories, not just the States?

Question: Should subsection 54(1) be moved from the Legislation Act and inserted into LEOMR?

Specific exemptions

Section 12 of the LEOMR sets out the specific legislative instruments that are exempt from sunseting. New specific exemptions are sought through application by the rule-maker to the Attorney-General and are only granted if exceptional policy circumstances exist.

There are five long-standing criteria that can justify granting an exemption.

- The rule-maker has been given a statutory role independent of government, or is operating in competition with the private sector.
- The instrument is designed to be enduring and not subject to regular review.
- Commercial certainty would be undermined by sunseting.
- The instrument is part of an intergovernmental scheme.
- The instrument is subject to a more stringent statutory review process than is set out in the Legislation Act, and preserving that process is important.

An instrument that meets one or more of these criteria may qualify for an exemption from sunseting.

Question: Are the five policy criteria still appropriate and aligned to the overall objectives of the sunseting framework?

Question: Should the criteria for granting specific exemptions from sunseting be set out in legislation, rather than policy?

Section 11 of the LEOMR also prescribes a number of classes of legislative instruments that are not subject to sunseting. It has been suggested that it would be appropriate to prescribe a new class of exemption from sunseting for instruments of the type that are effectively frozen 'closed class' schemes.

For example, a number of instruments administered by the Department of Veterans' Affairs govern schemes that have closed to new members but that remain in place to provide benefits to existing recipients. Such schemes pay benefits for the life of both the primary beneficiary and their spouse, and sometimes also their children, and as such can continue in existence for up to 140 years from the time of the relevant conflict.

Question: To what extent are the classes of instruments set out in section 11 of the LEOMR still appropriate, having regard to the broader objectives of the sunseting framework?

Notifiable instruments

The Acts and Instruments (Framework Reform) Act 2015 incorporated a new category of ‘notifiable instruments’ into the Legislation Act. The notifiable instruments regime is relatively new; beginning in March 2016 with the commencement of the *Acts and Instruments (Framework Reform) Act 2015*. Since then less than 100 notifiable instruments have been registered on the FRL. The new category of notifiable instruments is designed to cover instruments that are not appropriate to register as legislative instruments, but for which public accessibility and centralised management is desirable.

Notifiable instruments can be registered on the FRL but are not subject to sunseting or disallowance. Nor are they subject to any particular review requirements. As such, there is a potential for the accumulation of spent, redundant or superseded notifiable instruments on the Notifiable Instruments Register over time.

Question: Should notifiable instruments be subject to the sunseting framework, or alternatively a modified automatic repeal or bulk repeal process?

Question: Is there a need for a formal, established mechanism by which notifiable instruments can be amended, replaced, repealed, superseded or simply removed from the Notifiable Instruments Register?

The Federal Register of Legislation (FRL)

Division 1 of Part 1 of Chapter 2 of the Legislation Act requires the First Parliamentary Counsel to establish and maintain a register of Acts, legislative instruments and notifiable instruments, compilations of Acts, legislative instruments and notifiable instruments, and other relevant documents and information (this is the FRL).

The First Parliamentary Counsel may include in the FRL any information that he or she considers likely to be useful to users of the FRL, and may do anything he or she considers necessary or desirable to ensure that the FRL is accurate and up-to-date and contains material likely to be useful to users of the FRL.

The FRL provides metadata for each legislative instrument, including information about the sunseting date of that instrument, whether the instrument has had its original sunseting date changed, or whether it is exempt from sunseting. The FRL also provides information about the dates of making, tabling and registration of each legislative instrument.

In addition to the Attorney-General’s obligations to table sunseting lists under section 52, the FRL also provides real-time lists of all the instruments due to sunset within the next 18 months. These lists are updated automatically.

Question: How useful is the sunseting information provided on the FRL? What could be done to enhance this information?

Division 1 of Part 3 of Chapter 3 (Automatic repeal)

Division 1 of Part 3 of Chapter 3 of the Legislation Act provides that if an instrument:

- solely amends or repeals another legislative instrument or notifiable instrument; or
- is a commencement instrument,

then that instrument is automatically repealed after it has achieved its effect.

Additionally, an individual provision of a legislative instrument will automatically be repealed if the sole effect of the provision is to amend or repeal the instrument, or another legislative instrument or notifiable instrument.

Question: To what extent are the automatic repeal provisions appropriate?

Question: Should Division 1 of Part 3 of Chapter 3 be amended to increase the time between the making of a purely amending or commencement instrument and its automatic repeal?

APPENDIX

Statistics on the repeal and sunseting of legislative instruments

This report is based on data from the FRL at 15 May 2017.

The following statistics relate to the operation of Parts 3 and 4 of Chapter 3 of the [Legislation Act](#), which provide for the repeal of legislative instruments through sunseting and other means.

All legislative references are to the Legislation Act unless indicated otherwise. All statistics relate to the repeal of whole instruments (not provisions within an instrument).

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1. Bulk repeal under section 48E

In 2011, it became obvious that initial sunset lists were likely to be very large. There were over 40,000 legislative instruments classed as ‘current’ (not repealed) on the FRL at that time, and as many as 40% of these were thought to be spent or redundant. Section 48E was enacted to ‘clear the decks’ and commenced on 22 September 2012. It empowers the Governor-General to make regulations to repeal a legislative instrument or notifiable instrument in whole or in part. Bulk repeal regulations made under section 48E account for almost one half of all legislative instrument repeals since 2005.

| Table 1: Bulk repeal regulations made under section 48E | | | --- Instruments repealed --- | | | | | | |
|---|--|----------------|------------------------------|-------------------------------|---|----------------------------------|-------|-----------------------------|--|
| Item | Portfolio / theme | Date of making | *Solely commencing | *Solely amending or repealing | Amending or repealing with other matter | Other e.g. principal instruments | TOTAL | More information | |
| 1 | Agriculture, Fisheries and Forestry | 11 July 2013 | 5 | 785 | 44 | 115 | 949 | F2013L01404 | |
| 2 | Attorney-General’s | 28 Mar 2013 | 28 | 932 | 29 | 16 | 1,005 | F2013L00604 | |
| 3 | Broadband, Communications and the Digital Economy | 5 Aug 2013 | 6 | 533 | 7 | 202 | 748 | F2013L01530 | |
| 4 | Civil Aviation | 13 Mar 2014 | 2 | 431 | 50 | 2,844 | 3,327 | F2014L00279 | |
| 5 | Customs and Border Protection | 11 Jul 2013 | 5 | 1,221 | 40 | 895 | 2,161 | F2013L01401 | |
| 6 | Defence (not including Veterans’ Affairs) | 13 Mar 2014 | 1 | 898 | 200 | 4 | 1,103 | F2014L00273 | |
| 7 | Education | 13 Mar 2014 | 3 | 45 | 9 | 4 | 61 | F2014L00276 | |
| 8 | Employment | 13 Mar 2014 | 12 | 91 | 8 | 7 | 118 | F2014L00271 | |
| 9 | Environment | 13 Mar 2014 | 6 | 836 | 8 | 16 | 866 | F2014L00275 | |
| 10 | Finance | 13 Mar 2014 | 13 | 647 | 21 | 487 | 1,168 | F2014L00278 | |
| 11 | Foreign Affairs and Trade | 13 Mar 2014 | 4 | 148 | 2 | 2 | 156 | F2014L00266 | |
| 12 | Health | 13 Mar 2014 | 17 | 1,098 | 33 | 44 | 1,192 | F2014L00277 | |
| 13 | Human Services | 11 Jul 2013 | 1 | 48 | 3 | 1 | 53 | F2013L01402 | |
| 14 | Immigration and Border Protection | 13 Mar 2014 | 15 | 106 | 130 | 19 | 270 | F2014L00267 | |
| 15 | Industry, Innovation, Climate Change, Science, Research and Tertiary Education | 5 Aug 2013 | 11 | 207 | 41 | 23 | 282 | F2013L01531 | |
| 16 | Infrastructure and Regional Development | 13 Mar 2014 | 11 | 689 | 30 | 44 | 774 | F2014L00268 | |
| 17 | Prime Minister and Cabinet | 5 Aug 2013 | 1 | 210 | 11 | 5 | 227 | F2013L01528 | |
| 18 | Resources, Energy and Tourism | 11 July 2013 | 6 | 27 | 3 | 1 | 37 | F2013L01403 | |
| 19 | Social Services | 13 Mar 2014 | 11 | 231 | 10 | 35 | 287 | F2014L00269 | |
| 20 | Treasury | 5 Aug 2013 | 24 | 1,511 | 140 | 591 | 2,266 | F2013L01535 | |
| 21 | Veterans’ Affairs | 13 Mar 2014 | - | 141 | 153 | 42 | 336 | F2014L00270 | |
| 22 | Omnibus repeal 2014 No. 1 | 13 Mar 2014 | 8 | 124 | 8 | 80 | 220 | F2014L00274 | |

| Table 1: Bulk repeal regulations made under section 48E | | | --- Instruments repealed --- | | | | | |
|--|---------------------------|-----------------------|-------------------------------------|--------------------------------------|--|---|---------------|-----------------------------|
| Item | Portfolio / theme | Date of making | *Solely commencing | *Solely amending or repealing | Amending or repealing with other matter | Other e.g. principal instruments | TOTAL | More information |
| 23 | Omnibus repeal 2014 No. 2 | 16 Oct 2014 | - | 46 | 24 | 209 | 279 | F2014L01358 |
| 24 | Omnibus repeal 2015 | 12 Mar 2015 | - | 26 | 2 | 132 | 160 | F2015L00297 |
| ALL PORTFOLIOS | | ALL DATES | 190 | 11,031 | 1,006 | 5,818 | 18,045 | n/a |

* These instruments would be subject to automatic repeal if made today

2. Automatic repeal under sections 48A or 48B

When sections 48A and 48B commenced on 22 September 2012, they provided for the automatic repeal of solely commencing, amending or repealing instruments made after that date. Their scope was later expanded to older instruments and to notifiable instruments on 5 March 2016. Automatic repeal applies to all registered instruments that serve no ongoing purpose, including instruments that are exempt from sunseting. The automatic repeal provisions operate independently of the disallowance process.

Table 2: Effect of automatic repeal under sections 48A or 48B

| | “Ons” | | --- “Offs” --- | | | Total repeals |
|---|----------------------------|--|----------------------------------|--------------------------------|------------------------|---------------|
| | New instruments registered | Automatic repeal (s 48A or 48B) ^A | Bulk repeal (s 48E) ^B | Sunsetting (s 50) ^C | Another form of repeal | |
| Before 2005 ^D | 22,337 | n/a | n/a | n/a | 284 | 284 |
| 2005 | 3,353 | n/a | n/a | - | 449 | 449 |
| 2006 | 4,523 | n/a | n/a | - | 960 | 960 |
| 2007 | 4,642 | n/a | n/a | - | 1,241 | 1,241 |
| 2008 | 4,510 | n/a | n/a | - | 2,049 | 2,049 |
| 2009 | 4,368 | n/a | n/a | - | 1,945 | 1,945 |
| 2010 | 3,182 | n/a | n/a | - | 1,227 | 1,227 |
| 2011 | 2,784 | n/a | n/a | - | 970 | 970 |
| 2012 (year s 48A, 48B and 48E enacted) ^E | 2,591 | 199 | - | 1 | 929 | 1,129 |
| 2013 | 2,198 | 852 | 7,722 | - | 1,355 | 9,929 |
| 2014 ^E | 1,851 | 734 | 10,151 | 1 | 1,053 | 11,939 |
| 2015 | 2,139 | 782 | 157 | 130 | 1,186 | 2,255 |
| 2016 | 2,037 | 832 | 0 | 190 | 988 | 2,010 |
| 2017 (part year up to and including 15 May) | 531 | 264 | 0 | 121 | 227 | 612 |
| TOTAL INSTRUMENTS REPEALED | 61,046 | 3,663 | 18,030 | 443 | 14,863 | 36,999 |

Notes to table above

A. Automatic repeal data for 2015 includes seven pre-2012 legislative instruments that were repealed when the scope of key provisions were expanded to older instruments.

B. Bulk repeal outcomes shown here take into account subsequent digitisation work and research, which established that 15 instruments had been repealed at an earlier date.

C. Sunsetting outcomes shown here include instruments that were not listed for sunseting because of changes in their status advised after list preparation, and may include some instruments that were repealed and replaced on their sunset day.

D. Data for instruments registered before 2005 refers to legislative instruments that were made before 2005 and then registered under the “backcapture” provisions of the *Legislation Act 2003*. Some of these instruments were subsequently found to have been repealed before 2005.

E. Instruments that sunset in these years did so because of historic or special sunseting provisions.

3. Sunsetting lists under section 52

- 1 The Attorney-General is required to table a list of all the legislative instruments due to sunset on each sunset date. The list is to be tabled on the first sitting day of each House within 18 months of the sunset date.
- 2 To ensure that lists are accurate and that nothing sunsets 'without knowing', lists are prepared in consultation with portfolios and once a list is tabled, a copy of the list is sent to each portfolio Secretary by OPC for distribution to rule-makers (and administering line areas) in accordance with subsection 52(3).
- 3 Lists are subject to change and an up-to-date list of all instruments due to sunset soon is available on the FRL website. There is no requirement to table updates and it would be onerous to table updates each time an instrument's status changes.
- 4 For sunset dates that are in the past, the outcomes for listed instruments have been as follows:
 - (a) 33% of listed instruments were explicitly repealed and replaced by another principal instrument before their sunset date;
 - (b) 25% were repealed before their sunset date without an obvious replacement;
 - (c) 29% were allowed to sunset (the default outcome if no action is taken to preserve an instrument);
 - (d) 6% had their sunset date deferred after listing;
 - (e) 7% were 'other' which generally means that an exemption from sunsetting was created or claimed after an instrument has been listed for sunsetting.
- 5 For sunset dates that are in the future, the outcome of listing is not yet known for:
 - (a) 75% of the instruments listed for 1 October 2017; and
 - (b) 90% of the instruments listed for 1 April 2018; and
 - (c) 97% of the instruments listed for 1 October 2018.

Table 3: Sunsetting lists under section 52

| List | List for sunset date | --- Listed tabled date --- | | Instruments listed | --- Outcome of listing --- | | | | | | | |
|------------------|-------------------------|----------------------------|-------------|--------------------|----------------------------|------------------------------|-------------------------------|------------------|------------------|-----------------------|--------------------|------------|
| | | House of Reps | Senate | | Rollover (s 53) | Deferral (s 51) ^A | Deferral (s 51A) ^A | Sunsetted (s 50) | Repealed earlier | Replaced ^B | Other ^C | Pending |
| 1 | 1 Apr 2012 ^D | 18 Oct 2010 | 18 Oct 2010 | 4 | - | - | - | - | 3 | - | 1 | - |
| 2 | 1 Oct 2012 ^D | 10 May 2011 | 10 May 2011 | 1 | - | - | - | 1 | - | - | - | - |
| 3 | 1 Apr 2014 ^E | 9 Oct 2012 | 9 Oct 2012 | 1 | - | - | - | 1 | - | - | - | - |
| 4 | 1 Apr 2015 | 12 Nov 2013 | 12 Nov 2013 | 156 | - | 6 | 3 | 15 | 63 | 61 | 8 | - |
| 5 | 1 Oct 2015 | 13 May 2014 | 14 May 2014 | 358 | - | 3 | 5 | 107 | 77 | 152 | 14 | - |
| 6 | 1 Apr 2016 | 1 Oct 2014 | 1 Oct 2014 | 352 | - | 3 | 3 | 118 | 44 | 108 | 76 | - |
| 7 | 1 Oct 2016 | 12 May 2015 | 11 May 2015 | 214 | - | 13 | 10 | 61 | 71 | 56 | 3 | - |
| 8 | 1 Apr 2017 | 12 Oct 2015 | 13 Oct 2015 | 324 | - | 17 | 25 | 110 | 82 | 85 | 5 | - |
| 9 | 1 Oct 2017 | 18 Apr 2016 | 19 Apr 2016 | 207 | - | - | - | - | 35 | 14 | 2 | 156 |
| 10 | 1 Apr 2018 | 10 Oct 2016 | 10 Oct 2016 | 215 | - | - | - | - | 12 | 6 | 3 | 194 |
| 11 | 1 Oct 2018 | 9 May 2017 | 9 May 2017 | 199 | - | - | 3 | - | 2 | 1 | - | 193 |
| ALL LISTS | | | | 2,024 | - | 42 | 49 | 413 | 340 | 462 | 107 | 543 |

Notes to table above

This data focuses on the immediate action taken once an instrument is listed for sunsetting. Data in shaded cells is subject to change as the sunset date has not occurred.

A. Data on deferrals is does not include instruments that were not listed for sunsetting e.g. because they were deferred before the list for a particular sunset date was prepared.

B. Data on replacements relies on rule-makers expressly repealing an instrument that would otherwise sunset.

C. The outcome 'other' generally means that an exemption from sunsetting has been created or claimed after an instrument has been listed for sunsetting.

D. These lists were accurate when published but do not reflect current rules for calculating sunset dates as amended in 2011 and 2012.

E. This list reflects s 103 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, which requires 2-yearly rather than 10-yearly sunsetting of certain instruments.

4. Deferral of sunseting under section 51

The Attorney-General may defer an instrument's sunset date by either six or 12 months if certain statutory conditions are met.

| Item | Scope of deferral (Instrument title, or description if >1) | Date of making | Existing sunset date/s | New sunset date/s | Reason for deferral including changes to related Acts | More information |
|-------------|---|-----------------------|--|--|---|-----------------------------|
| 1 | ACMA instruments made under the <i>Radiocommunications Act 1992</i> ^A : - group 1 (2 instruments) - group 2 (8 instruments) ^B | 15 Jan 2014 | Group 1: 1 Apr 2015 Group 2: 1 Oct 2015 | Both groups: 1 Apr 2016 | Not required beyond 12 months (not to be replaced) | F2014L00080 |
| 2 | <i>Legislative Instruments Regulations 2004</i> | 4 Feb 2015 | 1 Apr 2015 | 1 Apr 2016 | To be replaced within 6/12 months, related Bill before the Parliament | F2015L00151 |
| 3 | Biosecurity instruments made under the <i>Quarantine Act 1908</i> ^A : - group 1 (2 instruments) - group 2 (1 instrument) | 4 Feb 2015 | Group 1: 1 Apr 2015 Group 2: 1 Oct 2015 | Group 1: 1 Apr 2016 Group 2: 1 Oct 2016 | To be replaced within 6/12 months, related Bill before the Parliament | F2015L00157 |
| 4 | Dispensation Guidelines (No. M35/96) made under the <i>Sydney Airport Curfew Act 1995</i> | 26 Mar 2015 | 1 Apr 2015 | 1 Apr 2016 | To be replaced within 12 months | F2015L00380 |
| 5 | Instruments made under the <i>Public Lending Right Act 1985</i> (2 instruments) ^A | 30 Sep 2015 | 1 Oct 2015 | 1 Oct 2016 | To be replaced within 12 months, related Bill to be introduced soon | F2015L01598 |
| 6 | <i>Legal Services Directions 2005</i> | 11 Feb 2016 | 1 Apr 2016 | 1 Apr 2017 | To be replaced within 12 months | F2016L00124 |
| 7 | Instruments made under the <i>Motor Vehicle Standards Act 1989</i> (5 instruments) ^A | 23 Feb 2016 | 1 Oct 2016 | 1 Oct 2017 | To be replaced within 12 months, related Bill to be introduced soon | F2016L00194 |
| 8 | <i>Commerce (Imports) Regulations 1940</i> | 16 Mar 2016 | 1 Apr 2016 | 1 Apr 2017 | To be replaced within 12 months, affected by change in deadline for other legislative reforms | F2016L00359 |
| 9 | <i>Residential Tenancies Regulations 1989 (WA) (CKI) Amendment Regulations 2003 (No. 1)</i> | 23 Mar 2016 | 1 Apr 2016 | 1 Apr 2017 | If required—to be replaced within 12 months (review underway) | F2016L00437 |
| 10 | <i>Health Insurance (Accredited Pathology Laboratories — Approval) Principles 2002</i> | 31 Aug 2016 | 1 Oct 2016 | 1 Oct 2017 | To be replaced with in 12 months | F2016L01401 |
| 11 | Child care benefit instruments made under various Acts ^A : - group 1 (7 instruments) - group 2 (8 instruments) | 14 Sep 2016 | Group 1: 1 Oct 2016 Group 2: 1 Apr 2017 | Both groups: 1 Oct 2017 | To be replaced within 6/12 months, related Bill before the Parliament | F2016L01467 |
| 12 | <i>Marriage Regulations 1963</i> | 15 Sep 2016 | 1 Apr 2017 | 1 Apr 2018 | To be replaced within 12 months | F2016L01465 |

Table 4: Sunset date changes under section 51 (exceptional circumstances)

| Item | Scope of deferral (Instrument title, or description if >1) | Date of making | Existing sunset date/s | New sunset date/s | Reason for deferral including changes to related Acts | More information |
|---|---|----------------|---------------------------|----------------------|--|-----------------------------|
| 13 | <i>Approved Occupational Clothing Guidelines 2006</i> | 8 Feb 2017 | 1 Apr 2017 | 1 Oct 2017 | If required—to be replaced within 6 months (review underway) | F2017L00119 |
| 14 | Code of Practice for Notification of Reviewable Decisions and Rights of Review, determined under subsection 27B(1) of the <i>Administrative Appeals Tribunal Act 1975</i> | 14 Feb 2017 | 1 Apr 2017 | 1 Apr 2018 | To be replaced within 12 months | F2017L00133 |
| 15 | <i>Honey Levy (No. 1) (Certificate of Intention to Export) Regulations</i> | 1 Mar 2017 | 1 Apr 2017 | 1 Apr 2018 | If required—to be replaced within 12 months (review underway) | F2017L00195 |
| 16 | Threat Abatement Plans made under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (2 instruments) ^{A, C} | 20 Mar 2017 | 1 Apr 2017 | 1 Apr 2018 | To be replaced within 12 months | F2017L00293 |
| 17 | Regulations made under the <i>Copyright Act 1968</i> (2 instruments) | 21 Mar 2017 | 1 Apr 2017 | 1 Apr 2018 | To be replaced within 12 months, related Bill to be introduced soon | F2017L00291 |
| 18 | <i>Financial Management and Accountability (Establishment of Special Account) Determination 2002/06</i> ^D | 21 Mar 2017 | 1 Apr 2017 | 1 Apr 2018 | To be replaced within 12 months, related Bill before the Parliament | F2017L00292 |
| 19 | International Air Services Policy Statement No. 5 made under the <i>International Air Services Commission Act 1992</i> | 21 Mar 2017 | 1 Apr 2017 | 1 Apr 2018 | To be replaced within 12 months | F2017L00289 |
| 20 | <i>Maintenance Orders (Commonwealth Officers) Regulations 1969</i> | 21 Mar 2017 | 1 Apr 2017 | 1 Apr 2018 | To be replaced within 12 months | F2017L00290 |
| 21 | <i>Historic Shipwrecks Regulations 1978</i> ^C | 19 Apr 2017 | 1 Oct 2017 | 1 Oct 2018 | To be replaced within 12 months, related Bill to be introduced soon (announced 2015) | F2017L00472 |
| TOTAL INSTRUMENTS AFFECTED: 53 instruments | | | | | | |

Notes to table above

- A. Only some of the legislative instruments made under these Acts have had their sunset date deferred.
- B. These instruments had their sunset date deferred before the sunset list for that date was prepared (8 instruments in all).
- C. These instruments were considered to be exempt from sunsetting at the time the relevant sunset list was prepared (3 instruments in all).
- D. This special account determination relates to the Seafarers' Safety, Rehabilitation and Compensation Authority.

5. Sunset date changes under section 51A (thematic review)

The Attorney-General may align the sunset dates for a group of instruments to facilitate their review together (a thematic review). This process may involve bringing forward some dates, and deferring others back by no more than 5 years.

| Table 5: Sunset date changes under section 51A (thematic review) | | | | | | | | |
|--|--|--------------------------------|--------------------------------|---------------------------------|-------------------------------|----------------------------|------------------------------|-----------------------------|
| Item | Theme | Scope (instruments) | Date of declaration | Earliest sunset date | Latest sunset date | New sunset date | Outcome of review | More information |
| 1 | Agricultural export (control) instruments made under various Acts | 40 | 13 Nov 2014 | 1 Apr 2015 | 1 Apr 2022 | 1 Apr 2020 | Pending | F2014L01592 |
| 2 | Instruments made under the <i>Hearing Services Administration Act 1997</i> | 5 | 10 Sep 2015 | 1 Apr 2016 | 1 Oct 2022 | 1 Oct 2019 | Pending | F2015L01516 |
| 3 | Instruments made under the <i>Fuel Quality Standards Act 2000</i> | 8 | 11 Feb 2016 | 1 Oct 2016 | 1 Oct 2022 | 1 Oct 2019 | Pending | F2016L00125 |
| 4 | Medical indemnity instruments made under various Acts | 15 | 11 Feb 2016 | 1 Apr 2016 | 1 Apr 2020 | 1 Oct 2019 | Pending | F2016L00126 |
| 5 | Instruments made under the <i>Hearing Services Act 1991</i> | 2 | 7 Nov 2016 | 1 Apr 2017 | 1 Oct 2018 | 1 Oct 2019 | Pending | F2016L01750 |
| 6 | Agricultural levies instruments made under various Acts | 25 | 7 Nov 2016 | 1 Apr 2017 | 1 Oct 2022 | 1 Apr 2023 | Pending | F2016L01741 |
| 7 | Recovery plans made under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> | 39 | 20 Mar 2017 | 1 Apr 2017 | 1 Apr 2021 | 1 Apr 2022 | Pending | F2017L00282 |
| TOTAL INSTRUMENTS AFFECTED (EACH INSTRUMENT COUNTED ONCE ONLY): 126 | | | | | | | | |

6. Exemptions from sunseting

1 All legislative instruments are subject to sunseting unless they are exempt from sunseting. Exemptions are set out in section 54 of the Legislation Act 2003, the LEOMR and in other Acts. Most exemptions are set out in the LEOMR.

2 Agencies are asked to nominate whether an instrument is subject to sunseting at time of lodgement, and provide details of the authority for this. Agencies may also lodge written requests to update this information e.g. because a new exemption has been created for a class of instrument.

3 There are currently nine generic exemptions and more than 80 specific exemptions as detailed in tables 6B and 6C respectively. Many cover only a few instruments but others are very large. The largest categories of instrument on the FRL that are exempt from sunseting are as follows:

Table 6A: Extent of exemptions from sunseting

| Categories of legislative instrument | Instruments registered | Instruments repealed | Instruments not repealed (likely to be in force) | Double exemption (sunseting and disallowance) |
|---|------------------------|----------------------|--|---|
| Legislative instruments exempt from sunseting: | | | | |
| - Airworthiness Directives | 15,223 | 6,116 | 9,107 | YES |
| - Tariff Concession Orders | 8,597 | 2,024 | 6,573 | YES |
| - Food Standards | 425 | 317 | 108 | YES |
| - Vehicle Standards | 248 | 116 | 132 | YES |
| - Other exempt instruments | 6,933 | 5,365 | 1,568 | Some |
| Legislative instruments subject to sunseting (not exempt) | 29,620 | 23,061 | 6,559 | NO |
| All legislative instruments | 61,046 | 36,999 | 24,047 | |

4 Most exempt instruments have a double exemption, in that they are exempt from both sunseting and disallowance (although this may not be obvious as the exemption from disallowance is often located in enabling legislation while exemptions from sunseting are usually located in LEOMR).

5 More information about individual classes of instrument may be obtained by using the links to relevant Acts in the table below.

Table 6B: Detail of generic exemptions from sunseting

| Item | Scope of exemption from sunseting | Location of exemption | Double exemption (sunseting and disallowance) |
|------|--|--|---|
| 1 | A legislative instrument if the enabling legislation for the instrument (not being the Corporations Act 2001): (a) facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made by the body or for the purposes of the body or scheme. | <i>Legislation Act 2003</i> s 54(1) | Regulations NO Otherwise YES |
| 2 | A legislative instrument that prescribed by regulation made under section 54(2)(b) | <i>Legislation Act 2003</i> s 54(2)(b) | |
| 3 | An instrument the sole purpose of which, or a primary purpose of which, is to give effect to an international obligation of Australia | LEOMR section 11 item 1 | |
| 4 | An instrument that establishes a body having power to enter into contracts for the purposes of the body's functions | LEOMR section 11 item 2 | |
| 5 | An instrument that is a direction by a Minister to any person or body | LEOMR section 11 item 3 | YES |
| 6 | An instrument the sole purpose of which, or a primary purpose of which, is to confer power on a self-governing Territory | LEOMR section 11 item 4 | |
| 7 | An Ordinance made under a power delegated by the Parliament in an Act providing for the government of a non-self-governing Territory | LEOMR section 11 item 5 | |
| 8 | An instrument (other than a regulation) relating to superannuation | LEOMR section 11 item 6 | Some but not all |
| 9 | An instrument made under an annual Appropriation Act | LEOMR section 11 item 7 | YES |

Table 6C: Detail of specific exemptions from sunseting (that specify an instrument or its enabling legislation)

| Item | Scope of exemption | Location of exemption | Double exemption (sunseting and disallowance) |
|------|---|---|---|
| 1 | A legislative instrument that is a regulation made for the purposes of specified provisions within the Legislation Act 2003 | Legislation Act 2003 s 54(2)(c) | |
| 2 | An instrument made under section 8 or 9 of the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 | LEOMR section 12 item 2 | |
| 3 | A regulation made under the Aboriginal Land Rights (Northern Territory) Act 1976 | LEOMR section 12 item 3 | |
| 4 | A substituted reference order made under section 19B of the Acts Interpretation Act 1901 | LEOMR section 12 item 1 | YES |
| 5 | Each of the following: (a) an instrument relating to aviation safety made under the Air Services Act 1995 ; (b) an instrument made under a regulation made under that Act | LEOMR section 12 item 4 | |
| 6 | Each of the following: (a) a statement made under subsection 8(1) of the Airspace Act 2007 ; (b) a regulation made under that Act; (c) an instrument relating to aviation safety made under a regulation made under that Act | LEOMR section 12 item 5 | YES |
| 7 | A rule made under section 229 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 | LEOMR section 12 item 6 | |
| 8 | An instrument made under an annual Appropriation Act | LEOMR section 11 item 7 | |
| 9 | A national capital plan made under the Australian Capital Territory (Planning and Land Management) Act 1988 | LEOMR section 12 item 7 | |
| 10 | A determination specifying drugs, made under section 4A of the Australian Federal Police Act 1979 | LEOMR section 12 item 8 | |
| 11 | A declaration of an international agreements made under section 47 of the Australian Human Rights Commission Act 1986 | Australian Human Rights Commission Act 1986 , s 47(3) | |
| 12 | A regulation made under the Australian National Registry of Emissions Units Act 2011 | LEOMR section 12 item 8A | |
| 13 | Each of the following: (a) a statute made under the Australian National University Act 1991 ; (b) a rule or order made under such a statute | LEOMR section 12 item 9 | |
| 14 | Each of the following: (a) an instrument made under the Australian Participants in British Nuclear Tests (Treatment) Act 2006 ; (b) a regulation made under that Act | LEOMR section 12 item 9A | |
| 15 | A statement made under subsection 34C(1) of the Australian Security Intelligence Organisation Act 1979 | LEOMR section 12 item 10 | YES |
| 16 | A regulation made under the Australian War Memorial Act 1980 | LEOMR section 12 item 10A | |
| 17 | A regulation made under the Aviation Transport Security Act 2004 | LEOMR section 12 item 11 | |

Table 6C: Detail of specific exemptions from sunseting (that specify an instrument or its enabling legislation)

| Item | Scope of exemption | Location of exemption | Double exemption (sunseting and disallowance) |
|------|--|--------------------------|---|
| 18 | Each of the following: (a) an instrument made under subsection 5(8) of the Banking Act 1959 ; (b) an instrument made under section 16AD of that Act; (c) an instrument made under section 70C of that Act | LEOMR section 12 item 12 | YES |
| 19 | An instrument made under section 26 of the Broadcasting Services Act 1992 | LEOMR section 12 item 13 | |
| 20 | A determination made under subsection 70A(4) of the Cheques Act 1986 | LEOMR section 12 item 14 | |
| 21 | An instrument relating to aviation safety made under the Civil Aviation Act 1988 , the Civil Aviation Regulations 1988 or the Civil Aviation Safety Regulations 1998 | LEOMR section 12 item 15 | |
| 22 | Each of the following: (a) an instrument made under section 104 or 105 of Schedule 2 to the Competition and Consumer Act 2010 (including a prescribed consumer product safety standard made under section 65C of the <i>Trade Practices Act 1974</i> that was in force immediately before the commencement of item 4 of Schedule 7 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>); (b) an instrument made under section 114 of Schedule 2 to the <i>Competition and Consumer Act 2010</i> (including a notice given under subsection 65C(7) of the <i>Trade Practices Act 1974</i> that was in force immediately before the commencement of item 3 of Schedule 7 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>); (c) an instrument made under section 134 or 135 of Schedule 2 to the <i>Competition and Consumer Act 2010</i> (including a prescribed consumer product information standard made under section 65D of the <i>Trade Practices Act 1974</i> that was in force immediately before the commencement of item 5 of Schedule 7 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>) | LEOMR section 12 item 16 | |
| 23 | A Proclamation made under section 3A or 3B of the Control of Naval Waters Act 1918 | LEOMR section 12 item 17 | YES |
| 24 | Each of the following: (a) a standard made under section 334 or 336 of the Corporations Act 2001 ; (b) a rule made under section 798G of that Act; (c) an instrument made under section 827D of that Act | LEOMR section 12 item 18 | |
| 25 | A regulation made under the Cross-Border Insolvency Act 2008 | LEOMR section 12 item 19 | |
| 26 | Each of the following: (a) a determination made solely for the purposes of either or both of sections 13 and 13A of the Currency Act 1965 ; (b) a regulation made under that Act | LEOMR section 12 item 20 | |

Table 6C: Detail of specific exemptions from sunseting (that specify an instrument or its enabling legislation)

| Item | Scope of exemption | Location of exemption | Double exemption (sunseting and disallowance) |
|------|---|---------------------------|---|
| 27 | Each of the following: (a) a regulation made solely for the purposes of section 50 or 112 of the Customs Act 1901 ; (b) a determination made under paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2) of that Act; (c) a tariff concession order made under Part XVA of that Act | LEOMR section 12 item 21 | Regulations NO Otherwise YES |
| 28 | A determination made under subsection 6(4) of the Defence Housing Australia Act 1987 | LEOMR section 12 item 22 | YES |
| 29 | A regulation made under the Defence Service Homes Act 1918 | LEOMR section 12 item 22A | |
| 30 | A disability standard made under section 31 of the Disability Discrimination Act 1992 | LEOMR section 12 item 23 | |
| 31 | An instrument made under section 178, 181, 183, 207A, 248, 303CA, 303DB, 303EB, 303FG, 324G, 341G or 344 of the Environment Protection and Biodiversity Conservation Act 1999 ²⁰ | LEOMR section 12 item 24 | In many cases YES |
| 32 | Each of the following made under section 165 of the Excise Act 1901 : (a) Excise By-law No. 75; (b) Excise By-law No. 114; (c) Excise By-law No. 127; (d) Excise By-law No. 129; (e) Excise By-law No. 151; (f) Excise By-law No. 154 | LEOMR section 12 item 25 | Not applicable (instruments already made) but other bylaws YES |
| 33 | A regulation made under the Extradition Act 1988 | LEOMR section 12 item 26 | |
| 34 | An instrument made under subsection 14(4) of the Fair Work Act 2009 | LEOMR section 12 item 27 | YES |

²⁰ Note: this Act contains notes indicating that instruments made under sections 194C, 209, 324G and 341G may also be exempt from sunseting by regulations made under the *Legislation Act 2003*, but there does not appear to be any corresponding provision in the LEOMR. Instruments made under these provisions are all exempt from disallowance.

Table 6C: Detail of specific exemptions from sunseting (that specify an instrument or its enabling legislation)

| Item | Scope of exemption | Location of exemption | Double exemption (sunseting and disallowance) |
|------|---|--|---|
| 35 | A Proclamation made under any of the following provisions of the Family Law Act 1975 : (a) subsection 39(7); (b) subsection 39(7A); (c) subsection 40(3); (d) subsection 41(2); (e) subsection 60E(6) as in force before its repeal by the <i>Family Law Reform Act 1995</i> (see subsection 69ZF(3) of the <i>Family Law Act 1975</i>); (f) subsection 69J(3); (g) subsection 69J(6); (h) subsection 69ZF(1); (i) subsection 96(3) | LEOMR section 12 item 28 | |
| 36 | A plan of management made under section 17 of the Fisheries Management Act 1991 | LEOMR section 12 item 29 | |
| 37 | Each of the following: (a) a Proclamation made under section 5 of the Flags Act 1953 ; (b) a warrant made under section 6 of that Act; (c) a rule made under section 7 of that Act | LEOMR section 12 item 30 | YES |
| 38 | Standards and certain other instruments made under the Food Standards Australia New Zealand Act 1991 | Food Standards Australia New Zealand Act 1991 , s 6(4), 23(4), 82(2), 94, 97(6), or 106(6) | YES |
| 39 | A regulation made under the Foreign Acquisitions and Takeovers Act 1975 | LEOMR section 12 item 31 | |
| 40 | A determination made under Schedule 1, subsection 2 of the Future Fund Act 2006 | Future Fund Act 2006 , Schedule 1 s 2(3) | YES |
| 41 | Each of the following: (a) an instrument made under subsection 21(1) of the Gene Technology Act 2000 ; (b) a determination made under subsection 78(1) of that Act | LEOMR section 12 item 31A | |
| 42 | Each of the following: (a) a Proclamation made under section 31 of the Great Barrier Reef Marine Park Act 1975 ; (b) a zoning plan prepared in accordance with Division 2 of Part V of that Act; (c) a plan of management prepared in accordance with Part VB of that Act | LEOMR section 12 item 32 | YES |

Table 6C: Detail of specific exemptions from sunseting (that specify an instrument or its enabling legislation)

| Item | Scope of exemption | Location of exemption | Double exemption (sunseting and disallowance) |
|------|---|---------------------------|---|
| 43 | Each of the following: (a) an approval given under subsection 16-25(1) of the Higher Education Support Act 2003 ; (b) an approval given under subclause 6(1) or (1A) of Schedule 1A to that Act | LEOMR section 12 item 33 | |
| 44 | Each of the following: (a) an instrument made under section 62ZZC of the Insurance Act 1973 ; (b) an instrument made under section 131A of that Act | LEOMR section 12 item 34 | |
| 45 | A regulation made under the International Transfer of Prisoners Act 1997 | LEOMR section 12 item 35 | |
| 46 | A regulation made under the Judges' Pensions Act 1968 | LEOMR section 12 item 36 | |
| 47 | An instrument made under section 251A of the Life Insurance Act 1995 | LEOMR section 12 item 37 | |
| 48 | A regulation made under the Maritime Transport and Offshore Facilities Security Act 2003 | LEOMR section 12 item 38 | |
| 49 | The <i>Migration Regulations 1994</i> | LEOMR section 12 item 38A | |
| 50 | A determination made under section 6 or 8 of the Military Rehabilitation and Compensation Act 2004 | LEOMR section 12 item 39 | YES |
| 51 | An instrument made under section 7 or 9 of the Motor Vehicle Standards Act 1989 | LEOMR section 12 item 40 | |
| 52 | A regulation made under the Mutual Assistance in Business Regulation Act 1992 | LEOMR section 12 item 41 | |
| 53 | A regulation made under the Mutual Assistance in Criminal Matters Act 1987 | LEOMR section 12 item 41A | |
| 54 | A declaration made under section 32 of the Mutual Recognition Act 1992 | LEOMR section 12 item 42 | YES |
| 55 | Each of the following: (a) a determination made under section 10 or 75 of the National Greenhouse and Energy Reporting Act 2007 ; (b) a rule made under section 22XS of that Act; (c) a regulation made under that Act; (d) an instrument made under a regulation made under that Act | LEOMR section 12 item 42A | |
| 56 | Each of the following: (a) a determination of the National Land Transport Network made under subsection 5(1) of the National Land Transport Act 2014 ; (b) an instrument determining conditions made under section 27, 44, 86 or 90 of that Act | LEOMR section 12 item 43 | Determinations under s 5(1) NO Otherwise YES |
| 57 | A regulation made solely for the purposes of section 7 of the National Transport Commission Act 2003 | LEOMR section 12 item 44 | YES |

Table 6C: Detail of specific exemptions from sunseting (that specify an instrument or its enabling legislation)

| Item | Scope of exemption | Location of exemption | Double exemption (sunseting and disallowance) |
|------|--|---------------------------|---|
| 58 | Each of the following: (a) a determination made under subsection 54(1) or 232(1) of the National Vocational Education and Training Regulator Act 2011 ; (b) an instrument made under paragraph 157(1)(p) of that Act; (c) a direction made under subsection 160(1) or 181(1) of that Act; (d) an instrument made under subsection 185(1), 186(1), 187(1), 188(1) or 189(1) of that Act | LEOMR section 12 item 44A | YES |
| 59 | Each of the following: (a) a determination made under paragraph 26(3)(b) of the Native Title Act 1993 as in force immediately before 30 September 1998; (b) an instrument made under subparagraph 26(1)(c)(iv), subsection 26A(1), 26B(1) or 26C(2), paragraph 43(1)(b) or 43A(1)(b), subsection 207A(1), 207B(3), 245(4) or 251C(4) or (5), or paragraph (i) of the definition of <i>infrastructure facility</i> in section 253, of that Act; (c) a regulation made solely for the purposes of Division 6 or 7 of Part 2 of that Act | LEOMR section 12 item 45 | |
| 60 | A regulation made under the Papua New Guinea (Members of the Forces Benefits) Act 1957 | LEOMR section 12 item 45A | |
| 61 | A regulation made under the Papua New Guinea (Staffing Assistance) Act 1973 | LEOMR section 12 item 46 | |
| 62 | A regulation made under the Parliamentary Contributory Superannuation Act 1948 | LEOMR section 12 item 47 | |
| 63 | Each of the following: (a) a direction made under section 20 of the Parliamentary Service Act 1999 ; (b) an instrument made under section 23 or subsection 24(3) of that Act | LEOMR section 12 item 48 | YES |
| 64 | Each of the following: (a) a regulation made under the Payment Systems and Netting Act 1998 ; (b) an approval given under section 9 of that Act | LEOMR section 12 item 49 | |
| 65 | Each of the following: (a) a declaration made under subsection 9(3) of the Payment Systems (Regulation) Act 1998 ; (b) an instrument made under Subdivision A of Division 3 of Part 3 of that Act; (c) an instrument made under section 18 of that Act; (d) an instrument made under section 25 of that Act; (e) a regulation made under that Act | LEOMR section 12 item 50 | Declarations under s 9(3) NO Otherwise YES |
| 66 | A regulation made under section 23 of the Protection of the Sea (Powers of Intervention) Act 1981 | LEOMR section 12 item 51 | |

Table 6C: Detail of specific exemptions from sunseting (that specify an instrument or its enabling legislation)

| Item | Scope of exemption | Location of exemption | Double exemption (sunseting and disallowance) |
|------|--|---------------------------|---|
| 67 | Each of the following: (a) a regulation made under subsection 33(1) of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 ; (b) an order made under subsection 34(1) of that Act | LEOMR section 12 item 52 | |
| 68 | A regulation made under the Protection of Word "Anzac" Act 1920 | LEOMR section 12 item 53 | |
| 69 | Each of the following: (a) a direction issued under section 21 of the Public Service Act 1999 ; (b) an instrument made under section 23 or subsection 24(3) of that Act | LEOMR section 12 item 54 | YES |
| 70 | Each of the following: (a) a notice given under section 36 of the Radiocommunications Act 1992 ; (b) a declaration made under section 153B of that Act | LEOMR section 12 item 55 | |
| 71 | An instrument required to be laid before the Parliament under subsection 7(7) of the Remuneration Tribunal Act 1973 | LEOMR section 12 item 56 | |
| 72 | A regulation made under the Renewable Energy (Electricity) Act 2000 | LEOMR section 12 item 56A | |
| 73 | Each of the following: (a) a declaration made under subparagraph (c)(iii) of the definition of Commonwealth authority in subsection 4(1) of the Safety, Rehabilitation and Compensation Act 1988 ; (b) a declaration made under section 4A of that Act; (c) an instrument made under subsection 5(6) of that Act; (d) a declaration made under subparagraph 6(1)(h)(ii), or (i)(ii), of that Act; (e) a declaration made under section 100 of that Act | LEOMR section 12 item 57 | |
| 74 | A Proclamation made under section 7, 8, 10B, 12 or 13B of the Seas and Submerged Lands Act 1973 | LEOMR section 12 item 57A | |
| 75 | A regulation made under the Superannuation Act 1922 | LEOMR section 12 item 58 | |
| 76 | A regulation made under the Superannuation Act 1976 (other than a regulation made solely for the purposes of section 153AN or subsection 160(1) of that Act) | LEOMR section 12 item 59 | |
| 77 | A regulation made under the Superannuation (Productivity Benefit) Act 1988 | LEOMR section 12 item 60 | |
| 78 | Each of the following: (a) a code made under subclause 37(1) of Schedule 1 to the Telecommunications Act 1997 ; (b) a declaration made under subclause 4(1) of Schedule 3A to that Act | LEOMR section 12 item 61 | |
| 79 | A declaration made under subsection 6N(2) or section 34 of the Telecommunications (Interception and Access) Act 1979 | LEOMR section 12 item 62 | |

Table 6C: Detail of specific exemptions from sunseting (that specify an instrument or its enabling legislation)

| Item | Scope of exemption | Location of exemption | Double exemption (sunseting and disallowance) |
|------|--|---|--|
| 80 | Each of the following: (a) a declaration made under section 6 of the Terrorism Insurance Act 2003 ; (b) a regulation made under that Act | LEOMR section 12 item 63 | Regulations NO Otherwise YES |
| 81 | A declaration made under section 31 of the Trans-Tasman Mutual Recognition Act 1997 | LEOMR section 12 item 64 | YES |
| 82 | Each of the following: (a) a determination made for the purposes of the definition of <i>non-warlike service</i> or <i>warlike service</i> in subsection 5C(1) of the Veterans' Entitlements Act 1986 ; (b) an instrument made under section 29, 69B, 105 or 117 of that Act; (c) a determination made for the purposes of the definition of <i>hazardous service</i> in subsection 120(7) of that Act; (d) a regulation made under that Act | LEOMR section 12 item 65 | Determinations under s 5C(1) YES Otherwise NO |
| 83 | A regulation made under the War Graves Act 1980 | LEOMR section 12 item 66 | |
| 84 | Each of the following: (a) a Basin Plan adopted under section 44 of the Water Act 2007 ; (b) an amendment of a Basin Plan adopted under section 23B or 48 of that Act; (c) an amendment of a Basin Plan made under a regulation made under that Act; (d) a decision to accredit a water resource plan under section 63 of that Act; (e) a decision to accredit an amendment of a water resource plan under section 65 of that Act; (f) a rule made under section 92 or 97 of that Act; (g) a regulation made under that Act | LEOMR section 12 item 67 | Varies |
| 85 | Other instruments made under the Water Act 2007 including: (a) a regulation made under section 18C of that Act; (b) a protocol made by the Murray-Darling Basin Authority under a schedule to the Agreement (b) a direction made by the Minister under section 135 or 175 of that Act | Water Act 2007 s 18C, 18D, 135 and 175 | YES |
| 86 | Each of the following: (a) a declaration made under section 12 of the Water Efficiency Labelling and Standards Act 2005 ; (b) a determination made under section 18 of that Act | Water Efficiency Labelling and Standards Act 2005 , s 12 and s 18 | Declarations YES Determinations NO |