



**ASIC**

Australian Securities & Investments Commission

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Senior Executive Leader, Strategic Policy

4 July 2017

Sunseting Review Secretariat  
c/- Attorney-General's Department  
4 National Circuit  
BARTON ACT 2600

By e-mail: [REDACTED]

Dear Sunseting Review Secretariat

### **Review of the Operation of the Sunseting Provisions in the Legislation Act 2003**

Thank you for the opportunity to respond to the issues in the consultation paper '*Review of the Operation of the Sunseting Provisions in the Legislation Act 2003*'.

We are of the view that generally, the sunseting framework is appropriate and functioning well. The only matter we wish to raise relates to sunset date distribution occasioned by the treatment of instruments made before 1 January 2005. Of ASIC's 400+ instruments, 241 instruments had sunset dates between April 2015 and October 2017, with 157 of these sunseting in 2017. This was a substantial number of instruments to review in a relatively short time-period. To best manage the volume of instruments sunseting over a short time period, ASIC has pre-emptively remade, consolidated, repealed or rolled over 277 legislative instruments to date.

The sunseting process would have been easier to manage if the sunset dates for ASIC's legislative instruments were not concentrated in a narrow timeframe. All other things being equal, the concentration in sunseting will recur every decade. We recommend that the Attorney-General's Department take steps to spread agencies' legislative instrument sunset dates over a broader period. We suggest two possible methods that could achieve this: -

- 1) Put in place a formula that could be applied to instruments based on their registration date, that would push back sunset dates in a graduated way to ensure a more even spread of sunset dates across a five-year period.
- 2) Delegate a power to the Attorney-General's Department to grant approval for agencies to spread out the sunset dates of their instruments according to a plan.

While we managed the large volume of instruments sunsetting in a short period by bringing forward a large portion of the policy review work in order to remake/ repeal class orders well in advance of the sunset dates, the sheer volume of class orders sunsetting in such a short period had a significant impact on our capacity to progress our other work.

Fifty case officers across ASIC carried out the bulk of the policy work required to deal with ASIC's sunsetting workload (not counting supervisors, policy decision-makers and project management, editing and legal drafting resources who also needed to put in substantial effort to finalise this work). While some of the legislative instruments were able to be grouped and consulted on together, many could not, but needed instead to be consulted on and remade individually. Allowing for variations between those instruments which were working effectively and only required minor revisions, and those requiring substantial revisions, on average, each legislative instrument required approximately 100 days to complete, including time for internal consultation, policy review within ASIC, drafting of consultation papers for external consultation, consideration of submissions, making decisions on the best policy choices going forward and publishing the feedback reports/ remaking/ repealing the instrument.

Please contact [REDACTED] on [REDACTED] if you would like to discuss this submission in more detail.

Yours sincerely

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SENIOR EXECUTIVE LEADER, STRATEGIC POLICY