



**Australian Government**  
**Department of Social Services**

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

By email: [REDACTED]

**REVIEW OF THE OPERATION OF THE SUNSETTING PROVISIONS IN THE  
*LEGISLATION ACT 2003***

The Department of Social Services (the Department) appreciates the opportunity to make this submission as part of the formal public consultation for the 2017 Review of Sunsetting.

The Department is generally satisfied with the operation of the sunseting framework and believes it is achieving its purpose under the *Legislation Act 2003*. We offer the following comments in relation to questions raised in the Consultation Paper.

***To what extent has the purpose of the sunseting framework been realised, and is that purpose still appropriate?***

The experience within the Department is that sunseting provides an opportunity to revisit longstanding policy, and in a number of cases legislative instruments have been remade or allowed to sunset.

The Department considers that the sunseting framework has achieved its aim of ensuring that legislative instruments are kept up to date and remain in force only for as long as they are needed.

***Is the current sunseting period of 10 years appropriate?***

Given the significant number of legislative instruments made under social security law, the sunseting framework is beneficial in terms of providing an automatic trigger for reviewing instruments and repealing them if no longer required.

The Department agrees that the 10 year sunseting period is appropriate, a shorter period may increase the administrative burden of reviewing or remaking instruments that should not yet be removed from the statute book. It balances the need to ensure unnecessary instruments do not remain in force against creating an environment where instruments are reviewed too frequently.

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

It would be useful for AGD to develop plain language training material for non-legal staff in relation to the efficient design of legislative instruments, covering issues such as end dates and review points.

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

The Department believes this remains an appropriate criterion.

We have made a legislative instrument that will replace an instrument due to sunset on 1 October 2017. In accordance with the provision of the Act under which the instrument is made, the instrument will come into effect 15 sitting days after the instrument is tabled in each House of Parliament (unless amended by the Parliament within that time). However, if the Parliament is prorogued shortly after the instrument is tabled, the instrument may not come into effect before the original instrument sunsets.

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

The Department appreciates having the option to apply for thematic review and would like this to continue.

The Department has reviewed a large number of instruments that may have qualified for 'thematic review'. At the time the sunseting regime commenced, staff considered applying for thematic review but ultimately decided not to, as the process was relatively cumbersome compared to any perceived advantage. In particular, combining a large number of instruments into a single project with a set delivery schedule risked making it more difficult to flexibly review instruments.

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

The Department agrees that the tabling of sunseting lists is helpful to ensure that the sunseting of instruments is managed effectively.

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

Overall, the sunseting information provided on the FRL is useful in giving a snapshot of the status of an instrument. However, it would be useful for the FRL to provide proactive updates of changes to portfolio owners of legislative instruments arising from Machinery of Government changes, and allow for the capability to run reports (by portfolio) on legislative instruments which have a sunseting exemption applied to them from the time of registration.

I hope this feedback from the Department assists the Committee in considering the operation and effectiveness of the sunseting framework for the purposes of the 2017 Review.

Sincerely

A large black rectangular redaction box covering the signature of the sender.

Acting Deputy Secretary / Chief Operation Officer

7 July 2017