



Australian Government
Department of Veterans' Affairs
OFFICE OF THE SECRETARY

Mr Iain Anderson
Chair of the Sunsetting Review Committee
Chief Operating Officer and Deputy Secretary
Attorney-General's Department
4 National Circuit
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Dear Mr ^{Bain}Anderson

I refer to your 30 May 2017 letter to me advising of the establishment of the Sunsetting Review Committee (the Committee) and inviting me to provide a submission to the Review of the Operation of the Sunsetting Provisions of the *Legislation Act 2003* (the Review) established by the Attorney-General, Senator the Hon George Brandis QC.

I am pleased to provide the Committee with the attached brief submission which touches on issues of particular relevance and significance to my Department.

I would like to thank the Committee for this opportunity to contribute to the Review.

Yours sincerely

S. Lewis PSM
Secretary

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**Review of the Operation of the Sunsetting Provisions of the Legislation Act 2003
(Legislation Act) established by the Attorney-General, Senator the Hon George Brandis
QC**

Submission provided by the Department of Veterans' Affairs (DVA)

Responses to specific questions raised in the consultation paper.

Sunsetting of legislative instruments

- **To what extent has the purpose of the sunsetting framework been realised, and is that purpose still appropriate?**
- **What effect has the sunsetting framework had on departmental and agency processes for conducting fit for purpose reviews of legislative instruments?**

Since the sunsetting regime was introduced, the Department has managed 6 sunsetting lists for the period covering 1 April 2015 to October 2017 and has conducted reviews of over 88 legislative instruments during that period.

The Department has generally managed the sunsetting program well over this 3 year period. It was necessary to commence work well in advance of the first sunset date of 1 April 2015 in order to successfully manage the extensive review program for that year. The internal workload involved in the process of reviewing legislative instruments to determine whether they are still required, together with the subsequent "fit for purpose" review, drafting work, briefings and approval processes involved in remaking instruments is extensive and absorbs a significant amount of Departmental time and resources. While this was most pronounced in the first 2 years of the program – 2015 and 2016 – it is expected to reduce over coming years and peak again in 2025 and 2026.

Attachment A shows DVA's sunset lists for 1 April 2015 through to 1 October 2017 and provides information on instruments that have been replaced and those that have been allowed to sunset during that period. By 1 October 2017, the Department will have allowed 22 of those 88 legislative instruments that were reviewed, to sunset.

These figures are exclusive of the Statements of Principles that appear on the DVA sunset lists. The Statements of Principles are managed separately by the Repatriation Medical Authority – a statutory authority established under the *Veterans' Entitlements Act 1986* to prepare statements

of causation based on sound scientific medical evidence. It is understood that the Repatriation Medical Authority will respond separately to this review.

The Department notes that the purpose of the sunseting regime is to reduce red tape, deliver clearer laws and align existing legislation with current government policy. Further, section 49 of the *Legislation Act 2003* specifically states that the purpose of the sunseting program is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

The Department is of the view that this purpose has been achieved insofar as it relates to legislative instruments within the scope of this portfolio.

Tabling of sunseting lists

- **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?**

The Office of Parliamentary Counsel's (OPC) practice of notifying the Department once the sunset lists are tabled in Parliament is effective in helping with managing the sunset review and remake timeline.

Generally, 18 months' notice is considered to be an adequate lead-in period, noting that the Department receives earlier notification from OPC by way of the draft lists prior to tabling. This is appreciated in that it provides a longer lead-in period to assist in managing workload and allocation of resources.

Further, the advance notification from OPC provides an opportunity for the Department to review the lists prior to tabling and is effective in helping to ensure the lists can be corrected before that time. For example, by alerting OPC to the inclusion of instruments that are exempt from sunseting, or instruments that fall within a different portfolio, such as the Department of Defence.

Exemptions from sunseting

- **To what extent does the scope of the current sunseting exemptions achieve the broader objectives of the sunseting framework?**

- **Is there an appropriate balance between the operation of the exemptions provisions and the administrative burden for the responsible agency?**
- **Should the criteria for granting specific exemptions from sunseting be set out in legislation, rather than policy?**
- **Are the five policy criteria still appropriate and aligned to the overall objectives of the sunseting framework?**
- **To what extent are the classes of instrument set out in section 11 of the LEOMR still appropriate, having regard to the broader objectives of the sunseting framework?**

The exemption mechanisms in place under the *Legislation Act 2003* and the *Legislation (Exemption and Other Matters) Regulations 2015* (LEOMR) are an important tool in assisting the Department managing its sunseting program and ensuring that the framework remains flexible and responsive to government needs.

This is particularly relevant in the case of a Department with a large number of legislative instruments on the statute book. This Department, for example, has administrative responsibility for over 800 legislative instruments under the Administrative Arrangements Order (including the Statements of Principles).

A number of DVA instruments have for some time been exempt from the sunseting program by way of specific exemptions under section 12 of LEOMR. Recently, with the assistance of OPC and the Attorney-General's Department, further exemptions from the sunseting regime were approved by the Attorney-General on the basis that the instruments were "closed class" schemes or alternatively, were designed to be enduring in nature. This resulted in exemptions for a significant number of instruments within this portfolio.

These new exemptions will greatly reduce the Department's workload associated with the sunseting program and, importantly, will ensure continuity of a number of legislative schemes that provide benefits to veterans and their dependants.

The Department is grateful to the First Parliamentary Counsel for supporting the Department in its application for these further exemptions and would like to acknowledge the assistance and expertise provided by the Attorney-General's Department in bringing them to fruition.

The Department notes the consultation paper includes a proposal to prescribe a new class of exemption from sunseting for instruments of the type that are effectively frozen "closed class" schemes. The Department is supportive of this proposal and its implementation either by way of inclusion as a new class of sunset-exempt legislative instruments in section 11 of LEOMR, or

alternatively, by way of addition of a new criterion to the 5 current long-standing policy criteria that justify the granting of an exemption on application.