



Sunsetting review – consultation paper

Department of Finance submission

General comments

The Department of Finance (Finance) supports the objective of the sunseting framework, as set out in section 49 of the *Legislation Act 2003*. As a matter of good governance practice and clear public accountability, legislative instruments should be kept up to date and only remain in force for so long as they are needed. Finance also notes the policy intent that the sunseting framework remains flexible and responsive to government needs. We suggest that, in the interest of reducing red tape and risk of legislative uncertainty, the Sunseting Review Committee could give consideration to reviews of legislative instruments under the sunseting framework being linked to the cycle of the functions or activities undertaken under the instrument, rather than driven by a fixed date calculated from the date that the instrument was registered. This refinement would acknowledge the parliamentary scrutiny that occurs at the time a function or activity commences and would help ensure that current and ongoing government activities are not inadvertently disrupted, or subject to uncertainty in their administration.

Responses to specific questions

We provide the additional specific comments below. We have not addressed all questions raised in the consultation paper, but have provided comments in response to certain questions on which we wish to make specific observations.

2. Do you have any other issues or concerns about the sunseting framework?

We support the aims of reducing red tape, delivering clearer laws and aligning existing legislation with current government policy. The inherent risk in the framework is that, due to the lead time required to remake legislative instruments, there may be a lapse in the operation of a legislative instrument. We note this risk is currently managed through early and regular reporting on instruments due to sunset.

3. Is the current sunseting period of 10 years appropriate?

Yes. Noting that the review process is resource intensive to administer, the 10-year timeframe strikes a good balance between the need to update or repeal legislation and the need to administer legislation efficiently. A shorter timeframe (in particular if it were of six

years or less) is likely to result in a government reviewing legislation that may have been introduced within its term of office.

4. What effect has the sunsetting framework had on departmental and agency processes for conducting fit for purpose reviews of legislative instruments?

The sunsetting framework has had a positive effect on Finance processes for conducting fit for purpose reviews. The framework prompts an internal (departmental) review and evaluation of the currency and merit of the legislative instrument.

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

See below response to question 7.

6. Is there a need to clarify the roles and responsibilities of different Commonwealth departments and agencies in relation to the sunsetting framework?

See below response to question 7.

7. Is there a need to develop policy or legislative guidance on undertaking reviews of sunsetting legislative instruments?

Clear policy guidelines on managing sunsetting legislative instruments (primary legislation and any related regulation) with guidance on roles and responsibilities would be helpful, including guidance on how to undertake a review of a sunsetting legislative instrument would also assist. Such guidance should outline the process, any legislative or other requirements, who should undertake the review and what factors should be considered in the review before a decision on the sunsetting instrument is made. The guidance should aim to minimise unnecessary administrative burden and also provide flexibility in the conduct of the review.

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 sunsetting framework?

In our view, section 51 sets very broad criteria and allows greater flexibility, and no changes are required.

10. Should the Attorney-General have the power to defer the sunsetting of an instrument for more than 12 months?

In our view, generally no, unless it is necessary to allow for a thematic review of aligned legislation.

11. To what extent is the prorogation of Parliament an appropriate criterion to justify the deferral of the sunsetting of an instrument?

It is appropriate on the basis that as it is Parliament's prerogative to make legislation, it is arguably its prerogative also to 'unmake' legislation (i.e. by disallowing the tabled instrument). We note that this is not practicable while Parliament is prorogued.

12. Should section 51 be amended to replace all references to ‘cease to have effect’ with ‘repealed’?

Either term could be used but a single term should be used consistently throughout the Act. ‘Cease to have effect’ may be more precise and is readily understandable.

16. Would it be appropriate for more than one deferral of sunsetting to be granted for the same instrument?

If there were exceptional or specified circumstances this may be warranted, however generally, a second deferral may not be appropriate.

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

Yes, section 51A should allow the Attorney-General to align the sunsetting dates of instruments that have been the subject of a completed review in order to facilitate the implementation of the findings of that review. This would be a practical measure that promotes administrative efficiency.

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?

Yes, future policy guidance on the types of thematic review may be helpful, but any policy guidance on this matter should be fairly broad and not prescriptive.

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

Yes, see our response to question 20 above. This measure would support administrative efficiency.

Contact details

Should you wish to discuss any matters raised in this submission please contact the Legislation Liaison Team on the details provided in the covering letter.