



Australian Government

National Health and Medical Research Council

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

Consultation Paper

In response to the email dated 30 May 2017 inviting submissions on the Consultation Paper, we offer the following comments. In doing so, please note that the NHMRC is a small statutory agency (established under the *National Health and Medical Research Act 1992*) and has few legislative instruments, the primary ones being regulations under portfolio legislation which also includes the *Research Involving Human Embryos Act 2002* and the *Prohibition of Human Cloning for Reproduction Act 2002*.

Responses

- 1. To what extent has the purpose of the sunsetting framework been realised, and is that purpose still appropriate?**

In our view the initial purpose has been met in ensuring that legislative instruments are kept up-to-date and remain in force for so long as they are needed. We query whether the broader purpose of reducing red tape has been achieved, as the procedures for agencies are complex and cumbersome.

- 2. Do you have any other issues or concerns about the sunsetting framework?**

No

- 3. Is the current sunsetting period of 10 years appropriate?**

Yes. We would not support a shorter period.

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

No comment

- 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?**

Yes. Such a policy would help agencies that have a number of bodies falling under their portfolio. The Guidance could include templates for assisting in coordination of the legislation across a portfolio.

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

No comment

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

No

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

As a small agency, requesting a deferral has not arisen. However, we assume that appropriate resources are provided in AGD to ensure that any such an application process is timely and uneventful.

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?

No comment

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

Yes, especially giving the long lead times for policy approval, drafting resources etc.

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

Prorogation of Parliament should continue to be included.

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

Yes.

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

The level of discretion appears to be appropriate.

14. Should the power to grant deferrals of sunseting be delegable?

Yes

15. Is the tabling requirement for certificates of deferral appropriate?

No. It is not clear why such certification should be tabled. If transparency is the issue, the relevant pages of the FRL could be updated with an appropriate link to the certificate

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

Possibly in exceptional circumstances for example where the primary legislation has a requirement for consultation with States and Territories.

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?

No comment

18. Is it appropriate for section 51A declarations to be subject to disallowance?

No comment

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?

No comment

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?

Yes

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

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?

No comment

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?

Very effectively. We would support this requirement to continue as it facilitates coordination within a portfolio.

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

No comment

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?

No comment

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?

No comment

27. To what extent does the scope of the current sunseting exemptions achieve the broader objectives of the sunseting framework?

Appears to do so. However, there is a level of uncertainty about determining whether a particular instrument would fall within an exemption which is more generally described, and how would this be more generally know once a decision is made that an instrument does fall within this type of exemption. One option could be to create a specific recognition of this in FRL.

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

No comment

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

Remains appropriate.

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

Yes

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

Yes

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

Continue to remain appropriate and relevant.

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

Yes, as the legislative basis provides greater certainty.

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?

Continue to remain appropriate.

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

Modified automatic repeal.

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?

Yes

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

No comment

38. To what extent are the automatic repeal provisions appropriate?

Continue to remain 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?

Not necessary.