Australian Government
Repatriation Medical Authority

ABN 23 964 290 824
GPO Box 1014
Brisbane Qld 4001
E: info@rma.gov.au
W: http://www rma.gov.au
T: [redacted]
F: [redacted]

Contact: [redacted]
TRIM Ref: 1304855

3 July 2017

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

By email: [redacted]

Submission to the Review of the Operation of the Sunsetting Provisions in the *Legislation Act 2003*

Thank you for the opportunity to provide a submission in relation to the review of the Sunsetting Provisions in the *Legislation Act 2003* (the LA).

The Repatriation Medical Authority (the Authority) is an independent Statutory Authority responsible to the Minister for Veterans' Affairs. The Authority's role is to determine Statements of Principles (SOPs) for any disease, injury or death that can be related to military service. These SOPs are Legislative Instruments determined under the *Veterans' Entitlements Act 1986*, and are accordingly required to be lodged and registered in accordance with the provisions of the LA.

This submission is restricted to addressing a number of the specific questions posed in the Consultation Paper distributed by the Review Committee which directly relate to the experience of the Authority, or may impact upon the operations and/or obligations of the Authority.

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

The Authority currently has some 668 SOPs covering 334 medical conditions. Medical-scientific understanding of the causes of these conditions is constantly evolving. Claims for pensions and medical treatment lodged under the Acts to which SOPs pertain can only succeed if they are consistent with a causal factor in the relevant SOP. i.e. the causes listed in the SOPs are exhaustive. As such, it is critically important that the SOPs are regularly

reviewed to reflect the most up-to-date medical science. The potential for a legislative instrument to lapse if not reviewed within the mandated ten year period helps to ensure regular reviews are resourced and undertaken.

As a 'micro' agency responsible for such a large number of legislative instruments, the Authority has been aware of the workload challenges it faced as a result of the sunsetting provisions since the passage of the legislation. The Authority has been carefully scheduling reviews of legislative instruments since 2006.

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

The current sunsetting period of 10 years is broadly in line with the pace of changing medical-scientific understanding of the aetiology of the various diseases and injuries relevant to the Authority. The Authority does not support any amendment to provide for sunsetting after five years, or in fact any reduction in the current 10 year period. The statutory provisions relating to the Authority's responsibilities require each review to consider all new medical-scientific evidence. Each review requires a significant expenditure of resources. The option of merely 'remaking' a SOP without considering relevant medical-science is not open to the Authority. A reduction in the sunsetting period, without a significant injection of resources to support the greater frequency of reviews required could result in SOPs lapsing. This would cause significant disadvantage for many veterans and their dependants who rely upon the clear identification of causal factors listed in SOPs to support claims.

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

The Authority agrees that it should be a matter for each responsible agency to determine the most appropriate approach and manner of reviewing its legislative instruments. The regulatory 'burden' (or benefit) of different types of instrument, issues for consideration, level of stakeholder interest and frequency of review will vary significantly. A review restricted to the issue of whether there is a continuing need for an instrument, is quite distinct from a review considering the content matter and detail of an instrument. Accordingly, the Authority does not believe that any whole-of-government policy guidance would be capable of offering anything much more useful that advising agencies to schedule timely work plans which take into account the number of, complexity and stakeholder interest in the instruments for which each agency is responsible.

Q. 23 How effectively does tabling of the sunsetting lists support departments and agencies in managing the sunsetting of the legislative instruments for which they are responsible?

The effective management to date of the review and remaking of SOPs scheduled to sunset is primarily the result of careful scheduling of reviews and detailed workload planning by the senior officers of the Authority. However, involvement in the preparation of the sunsetting lists required by section 52 of the LA assists in ensuring a timely focus on the small proportion of the Authority's SOPs which have not been remade at least 18 months prior to their sunsetting date. In recent years these have averaged less than 4 instruments,

which are subsequently immediately prioritised. The Authority supports this process being continued.

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

As indicated in comments relating to Q1, it is critically important that the Authority's SOPs are regularly reviewed in order to reflect the most up-to-date medical science. A rolling schedule of reviews ensures that these are undertaken. The Authority cannot envisage a scenario where parliamentary roll over of a SOP would be required to prevent sunsetting.

In summary, the Authority supports the sunsetting framework as it currently operates. If you would like clarification of any of the above, or propose to hold any consultations or forums where the issues might be explored, I can be contacted on ([redacted]

Yours sincerely

[redacted]

[redacted]
Registrar
Repatriation Medical Authority