



Express law *fast track information for clients*

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Parliament passes Bill that changes the way legislative instruments cease

The Legislative Instruments (Sunsetting Measures) Bill 2012, passed by Parliament on 13 September 2012, will make 2 important changes to the way that legislative instruments 'sunset' – that is, cease to be in force.

The Bill will amend the *Legislative Instruments Act 2003* (LI Act) to:

- automatically repeal certain spent legislative instruments and provisions of legislative instruments
- make changes to the date on which legislative instruments will sunset and the way that the sunsetting of certain legislative instruments may be deferred or altered.

The Bill will also make minor changes to the requirements for an explanatory statement for a legislative instrument. The Bill will commence on Royal Assent.

New automatic repeal provisions

What do the automatic repeal provisions apply to?

The automatic repeal provisions will apply to:

- a legislative instrument, or a provision of a legislative instrument, whose only legal effect is to amend or repeal another legislative instrument
- a legislative instrument whose only legal effect is to provide for the commencement of another legislative instrument or an Act
- a provision of a legislative instrument whose only legal effect is to provide for the commencement of the legislative instrument, another legislative instrument or an Act
- a provision of a legislative instrument whose only legal effect is to provide for the commencement of a provision of the legislative instrument, a provision of another legislative instrument, or a provision of an Act.

What is the effect of the automatic repeal provisions?

The effect will be to automatically repeal the relevant legislative instrument or provision. The repeal of the relevant legislative instrument or provision will not affect any amendment, repeal or commencement made by that legislative instrument or provision.

When does the automatic repeal take effect?

The automatic repeal will take effect on the latest of:

- the date that the legislative instrument or provision commences or

- the date that the legislative instrument was registered on the Federal Register of Legislative Instruments.

Will the automatic repeal provisions apply to legislative instruments or provisions already in existence?

No. The automatic repeal provisions will only apply to legislative instruments that are made on or after the date that the Bill commences. The Bill commences on the date that it receives Royal Assent.

Do departments and agencies need to take any action in relation to the automatic repeal provisions?

No. On commencement of the Bill, the automatic repeal of relevant legislative instruments and provisions of legislative instruments will happen by force of law.

There will also be a regulation-making power if a department or agency wishes to repeal other spent legislative instruments or provisions.

Amendments to sunseting provisions

What is the main effect of the amendments to the sunseting provisions?

The amendments to the sunseting provisions in the LI Act, Pt 6, will change the current general rule that a legislative instrument will sunset on the first 1 April or 1 October occurring 10 years after the legislative instrument *commences*. The new general rule will be that a legislative instrument will sunset on the first 1 April or 1 October occurring 10 years after the legislative instrument is registered on the Federal Register of Legislative Instruments.

An exception will apply in the case of a legislative instrument that was registered on 1 January 2005.

The amendments will also provide a mechanism (new s 51A) for the Attorney-General, by legislative instrument, to align the sunseting dates for related legislative instruments.

Will there be any additional changes to the sunseting provisions?

The Bill contains provisions that will enable the Attorney-General to defer sunseting for a legislative instrument for up to 12 months. In addition, the Bill will enable Parliament to pass a resolution to override the sunseting of a legislative instrument so that the legislative instrument should continue in force as if it had been registered on the date on which it would otherwise sunset (if not for the resolution).

What legislative instruments will the amendments apply to?

The amendments will apply to all legislative instruments, including those already in force.

Do departments and agencies need to take any action in relation to the amendments to the sunseting provisions?

A legislative instrument that has sunsetted under the LI Act will cease to be in force. This may have significant legal effects.

Accordingly, for each legislative instrument that is due to sunset, departments and agencies will need to consider:

- whether to let the legislative instrument sunset
- whether to seek to have the sunset date of the legislative instrument deferred
- whether to seek to have the sunset date of the legislative instrument aligned with other related legislative instruments
- whether to seek to petition the Parliament to pass a resolution allowing the legislative instrument to continue in force.

If a Department or Agency wishes to:

- defer the sunset date of one or more legislative instruments
- align the sunset dates of related legislative instruments
- petition the Parliament to pass a resolution allowing the legislative instrument to continue in force

it should contact the Attorney-General's Department.

For further information please contact:

Lisa Redman
Counsel
T 02 6253 7130 F 02 6253 7303
lisa.redman@ags.gov.au

Jenny Francis
Senior General Counsel
T 02 6253 7108 F 02 6253 7304
jenny.francis@ags.gov.au

Tara McNeilly
Senior General Counsel
T 02 6253 7374 F 02 6253 7304
tara.mcneilly@ags.gov.au

Attorney-General's Department contact:

Alex Madsen
T 02 6141 3668
alex.madsen@ag.gov.au

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