

Sunsetting Timeline
Sunsetting of Instrument of Designation of the Republic of Nauru as a Regional Processing Country under subsection 198AB(1) of the Migration Act 1958

Date	Chronology
19/01/2021	Incoming Correspondence - the Office of Parliamentary Counsel (OPC) emailed all agencies the list of instruments due for sunseting on 1 October 2022. Agencies were asked to confirm if instruments are within their portfolio responsibility, confirm instruments are correctly cited, confirm whether instruments have been repealed, and advise if instruments are exempt from sunseting. Legislation Branch within Legal Group are the recipients of this email. The draft sunseting list for 1 October 2022 includes the instrument designating Nauru as a regional processing country.
19/01/2021	Internal email (Legal Group) - Instruments Drafting Section within Legislation Branch forwarded OPC's email of 19 January 2021 to relevant sections within Legislation Branch and confirmed Instruments Drafting Section would collate comments on the list of instrument due to sunset on 1 October.
28/01/2021	Internal email (Legal Group) - Instruments Drafting Section emailed other individuals within the Instruments Drafting Section, with tracking document of migration sunseting instruments, noting the compiling of policy contacts <u>in case</u> policy teams need to be engaged regarding remaking instruments. No records have been identified that indicate the sunseting list was shared with policy areas at this time.
2/02/2021	Internal email (Legal Group) - In response to 19 January 2021 email from Instruments Drafting Section, National Security and Law Enforcement Legislation Section provided comments on Telecommunications (Interception and Access) (Emergency Service Facilities — Tasmania) Instrument 2012.
2/02/2021	Internal email (Legal Group) - In response to 19 January 2021 email from Instruments Drafting Section, Customs and Trade Legislation Section advised no input for Customs and Trade Legislation Section.
16/02/2021	Internal email (Legal Group) - Instruments Drafting Section emailed officers within Instruments Drafting Section noting that only National Security and Law Enforcement Legislation Section and Customs and Trade Legislation Section had responded to the 19 January 2021 email, and queried if a response has been received from National Critical Risk and Identity Legislation Section. There is no identified record to indicate that a follow up email to National Critical Risk and Identity Legislation Section seeking a response to the 19 January 2021 task was sent.
17/02/2021	External email - Instruments Drafting Section emailed OPC with Home Affairs response (provided by some sections within Legislation Branch) to OPC's email of 19 January 2021. The Department's advice to OPC confirmed that the 11 instruments scheduled to sunset on 1 October 2022 (including the Nauru Designation) were accurately reflected on the draft sunseting list. The Department's Legal Group checks the Federal Register of Legislation (FRL), including the Administrative Arrangements Order (AAO), and related departmental records to confirm whether the content of the draft list is accurate.
11/05/2021	Parliament - List of instruments due to sunset on 1 October 2022 was tabled in both Houses of Parliament. This is available on the FRL.
12/05/2021	Incoming correspondence - OPC emailed Legal Group (Legislation Branch) to advise that the sunset list for 1 October 2022 was tabled in both Houses of Parliament on 11 May 2021, with the sunseting list attached.
12/05/2021	Incoming correspondence - First Parliamentary Counsel, OPC provided advice to the Home Affairs Secretary of legislative instruments due to sunset on 1 October 2022. The advice was forwarded to the Executive Support Unit (ESU, responsible for tasking the Secretary's correspondence and requests) to internally task for action.
13/05/2021	Internal email (Legal Group) - Instruments Drafting Section forwarded OPC's email of 12 May 2021 to other sections within Legislation Branch advising of the final sunset list for 1 October 2022, as tabled in Parliament on 11 May 2021. Records indicate that some policy teams were provided the lists at a section to section level. There is no identified TRIM record of the list being provided to the Regional Processing and Resettlement Division (precursor to the current People Smuggling Policy and Implementation Taskforce) at this time.
13/05/2021	Internal action (ESU to Legal Group) - ESU created a record in the Department's Parliamentary Document Management System (PDMS). The 12 May 2021 OPC advice forwarded on by the Secretary was attached, with ESU assigning to Legal Group, through the General Counsel's Executive Officer (GC EO), for action.
13/05/2021	Internal action (Legal Group) - GC EO received the document from ESU and assigned the tasking to Legislation Branch and Customs and Trade Legislation Section for action, copying in Instruments Drafting Section.

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15/07/2021	<p>Incoming correspondence - the OPC emailed all agencies, including the Department's Legal Group, the draft list of instruments due to sunset on 1 April 2023, for comment. The final sunset list for 1 October 2022 was also included as part of this correspondence.</p> <p><i>Note : Tasking and further client area engagement related to the draft April 2023 list only, and only to client areas with instruments on that list, in direct response to OPC's request to review the draft 1 April 2023 list.</i></p>
27/07/2021	<p>Internal email (Legal Group) - GC EO emailed Customs and Trade Legislation Section, copying in Instruments Drafting Section, following up on the action. Customs and Trade Legislation Section emailed GC EO, copying in Instruments Drafting Section, advising that EC21-002974 is noted and is being actioned.</p>
19/08/2021	<p>Internal email (ESU to Legal Group) - Through an internal audit of PDMS identifying Secretary taskings still awaiting response or action, ESU emailed GC EO regarding all open PDMS records that were assigned to Legal Group at the time.</p>
30/08/2021	<p>Internal email (Legal Group to ESU) - GC EO emailed ESU advising that Legislation Branch is being consulted on whether the tasking is being actioned and can be closed, and a further response will be provided to ESU.</p>
30/08/2021	<p>Internal email (Legal Group) - GC EO emailed Legislation Branch and Customs and Trade Legislation Section requesting action of the task, following the ESU's PDMS audit. There are currently no records to suggest that a response was provided at this time.</p>
19/10/2021	<p>Internal email (Legal Group) - General Counsel's Executive Support Officer (GC ESO) emailed Customs and Trade Legislation Section asking if the task was being actioned outside of PDMS. There are currently no records to suggest that a response was provided at this time.</p>
21/10/2021	<p>Internal email (Legal Group to ESU) - GC ESO emailed ESU advising that PDMS record can be closed as its being dealt with outside of PDMS.</p>
22/10/2021	<p>Internal action (ESU) - ESU closed PDMS record.</p>
22/09/2021	<p>External request - Regional Processing and Resettlement Policy Branch (policy line in the Regional Processing and Resettlement Division) sought advice from Special Counsel to determine whether the Papua New Guinea (PNG) regional processing country designation needs to be revoked in line with termination of the Regional Resettlement Arrangement and related Memorandum of Understanding (MOU) on 31 December 2021.</p>
18/10/2021	<p>Internal email - Special Counsel provided advice to Regional Processing and Resettlement Policy Branch (policy line in the Regional Processing and Resettlement Division) confirming that PNG designation did not need to be revoked. Request focussed on PNG only, with no discussion on Nauru.</p>
21/01/2022	<p>Incoming correspondence - OPC emailed all agencies, including the Department's Legal Group, the draft sunset list for 1 October 2023 for comment. The final sunset list for 1 October 2022 and 1 April 2023 were included as attachments, along with the draft list for October 2023 relating to OPC's request.</p> <p><i>Note : Tasking and further client area engagement related to the draft Oct 2023 list only, and only to client areas with instruments on that list, in direct response to OPC's request to review the draft October 2023 list.</i></p>
22 January - 1 March 2022	<p>External consultation - Regional Processing and Resettlement Policy Branch (policy line in the Regional Processing and Resettlement Division) consulted with Special Counsel and provided further advice regarding PNG designation. Nauru designation not contemplated/considered.</p>
16/02/2022	<p>External consultation - Legislation Branch provided response to OPC on the draft list of instruments scheduled to sunset on 1 October 2023. The response covers whether the instruments remain within the Portfolio under the AAO, whether the enabling provisions are in force and whether they are subject to any exemptions.</p>
1/10/2022	<p>Designation of the Republic of Nauru as a Regional Processing Country sunsets and is repealed.</p>
5/12/2022	<p>External request - Regional Processing and Resettlement Policy Branch (policy line - now in People Smuggling Policy and Implementation Taskforce after the Regional Processing and Resettlement Division was renamed in July 2022), whilst undertaking due diligence on PNG designation sunseting, also questioned Special Counsel if there were any similar requirements regarding Nauru's designation as a regional processing country.</p>
15/12/2022	<p>Incoming advice - Special Counsel confirmed the designation of Nauru as a regional processing country had sunset on 1 October 2022, and provided advice on the steps that would need to be taken to urgently remake the designation.</p>
15/12/2022	<p>Internal advice - Regional Processing and Resettlement Policy Branch immediately informed First Assistant Secretary People Smuggling Policy and Implementation Taskforce of the matter, who subsequently immediately informed Associate Secretary Immigration, who in turn immediately informed the Secretary and Minister for Home Affairs' Office.</p>
16/12/2022 - present	<p>Internal action - Legal Group and Regional Processing and Resettlement Policy Branch began drafting documents and confirming requirements for the re-designation of Nauru as a regional processing country.</p>

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16/12/2022	Internal action: Regional Processing and Resettlement Policy Branch consulted with Legal Group on documents to re-designate Nauru as a regional processing country. Legislation Branch provided fulsome information regarding steps and timeframes for remaking the designation informed by discussions with the Australian Government Solicitor (AGS).
16/12/2022	Internal action (Legal Group): Legislation Branch drafted a new instrument of designation under s198AB(1), explanatory statement, and direction instrument under s198AD(5), and provided drafts to Regional Processing and Resettlement Policy Branch.
16/12/2022	Internal action: Legislation Branch provided detailed summary of next steps to remake the instrument and history on sunseting and advice relating to ongoing powers and authorities. Advice provided to General Counsel and Regional Processing and Resettlement Policy Branch.
16/12/2022	Advice: General Counsel wrote to Minister for Home Affairs' Chief of Staff (cc Secretary, Associate Secretary Immigration and a/Deputy Secretary Executive) providing advice relating to ongoing powers and authorities following their briefing of that morning.
16/12/2022	External request: Legislation Branch sought advice from AGS relating to ongoing powers and authorities.