



Principle (k): Exemption and deferral from sunseting

Overview

Senate standing order 23(3)(k) requires the committee to scrutinise each instrument as to whether it is exempt from the sunseting provisions of the *Legislation Act 2003* (Legislation Act). Under this scrutiny principle, the committee also scrutinises instruments that are automatically repealed by the operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act where such an instrument amends a principal instrument that is exempt from sunseting. In addition, the committee will scrutinise those instruments which defer the sunseting date of another instrument. Under this principle, the committee will typically be concerned with instruments which:

- are exempt from the sunseting provisions of the Legislation Act;
- contain measures that will remain in force within a principal instrument that is exempt from sunseting; and
- defer the sunseting date of another instrument.

The following sections provide additional guidance on key issues which the committee may raise under scrutiny principle (k). This guideline will be updated regularly to reflect any developments in committee practices under this principle.

Exemption from sunseting

Section 50 of the Legislation Act provides that all legislative instruments registered on the Federal Register of Legislation after 1 January 2005 are automatically repealed ten years after registration. This process is called 'sunseting'. The committee considers that the current sunseting framework provides an important opportunity for the Parliament to maintain effective and regular oversight of its delegated legislative powers and ensures that the content of legislative instruments remains current and appropriate. In this way, the regime promotes parliamentary supremacy.

The committee considers that delegated legislation should be subject to sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances.

Where an instrument is exempt from sunseting, or contains measures that will remain in force within a principal instrument that is exempt from sunseting, the explanatory statement to the instrument should provide a thorough justification for the exemption, noting the effect of the exemption on parliamentary oversight.

Deferral of sunseting date

Section 51 of the Legislation Act provides that the Attorney-General may defer the sunseting of an instrument in certain circumstances.

Where an instrument defers the sunseting date of another instrument, the explanatory statement to the instrument should set out how the deferral of sunseting meets the requirements of section 51 of the Legislation Act and should provide a thorough explanation of the appropriateness of the deferral.

Explanatory statement checklist

The following checklist summarises the types of information which should be included in an explanatory statement.

- Exemption from sunseting** Where an instrument is exempt from sunseting, or contains measures that will remain in force within a principal instrument that is exempt from sunseting, the explanatory statement should:
 - set out the source of the exemption from sunseting; and
 - justify the exemption, noting the effect of the exemption on parliamentary oversight.

- Deferral of sunseting date** Where an instrument defers the sunseting date of another instrument, the explanatory statement should:
 - explain how the deferral of sunseting meets the requirements of section 51 of the Legislation Act; and
 - provide a thorough explanation of the appropriateness of the deferral.