

GUIDANCE NOTE

Review of expiring legislation (sunset reviews)

This note provides key points to consider when undertaking a review of expiring regulation (sunset review).

Background

Under the *Statutory Instruments Act 1992*, a regulation automatically expires (or 'sunset') after 10 years unless action is taken to preserve it. This automatic expiry only applies to subordinate legislation.

The purpose of the sunset provision is to ensure that regulations are regularly reviewed and have continuing relevance to the economic, social and general wellbeing of Queensland.

If an agency considers the regulation should continue, it can:

- seek a temporary exemption from expiry before this date. The responsible Minister can agree to an expiry date extension of 12 months
- remake the regulation, as a new regulation. *For example, a 2013 Regulation is replaced with a 2023 Regulation.*

If an agency wishes to remake a regulation, a 'sunset review' should be undertaken, to evaluate the continuing need, effectiveness and efficiency of the regulation.

Undertaking a sunset review

When undertaking a sunset review, an agency should consider whether the regulation:

Is still required? Does a problem still exist, and if so, is regulation still required? What would be the impacts if the regulation was not remade (that is, no regulation)?

Is effective? Is the regulation achieving its original policy objectives and purpose?

Is efficient? What are the costs and benefits of the regulation and is it achieving its objectives in a least cost way? Does the regulation prescribe fees and if so, are the fees appropriate?

Impacts competition? For example, does the regulation restrict entry into a market or profession. In such instances, a justification for the restriction should be provided.

An agency should also consider if amendments are proposed as part of a remade regulation, and whether such amendments are likely to have any adverse impacts on stakeholders.

Agencies should undertake preliminary consultation with relevant stakeholders to understand the impacts and help identify if the regulation is performing as intended.

When should a review commence?

The Office of the Queensland Parliamentary Counsel (OQPC) provides agencies with a list of their expiring regulations annually, at least 12 months prior to the expiry date. Agencies are encouraged to engage with the Office of Best Practice Regulation (OBPR) at that time to discuss the sunset review.

Agencies should also ensure the timelines for reviewing and remaking subordinate legislation incorporates sufficient time for stakeholder consultation.

Note: Once approved, all sunset review IASs should be published and sent to the OBPR for its records.

What does a review look like?

Sunset reviews have the same requirements and follow the same process as Impact Analysis Statements (IASs) for new regulatory proposals. Relevant information should be included in the IAS template.

Is further assessment required?

Through the sunset review process agencies should ensure there is a continued need for regulation and that the effectiveness and efficiency of a regulation has been adequately considered.

As part of this assessment process, the agency may determine that further regulatory analysis is required about the need to remake of the regulation, or to make the proposed amendments to the regulation. *For example, where significant adverse impacts have been identified.* If further analysis is required, it may require preparation of a Full IAS or targeted stakeholder consultation. The OBPR is available to provide guidance, assistance and support for all proposals to meet the RIA requirements.

Exemptions from expiry

Please contact OQPC for further information, including the relevant grounds for extension.

Proposals not requiring impact analysis

The Queensland Government Better Regulation Policy identifies regulatory proposals that do not require regulatory impact analysis. However, remaking a regulation 'as-is,' or with minor amendment, does not mean that regulatory impact analysis is not required. This is because the purpose of a sunset review is to evaluate the continuing need and performance of the entire regulation, rather than simply the proposed amendments to the regulation.