

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 2008 Regulation is replaced with a 2018 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 should consider commencing their sunset reviews at that time to ensure the timelines for reviewing and remaking subordinate legislation incorporates sufficient time for stakeholder consultation and review by the Office of Best Practice Regulation (OBPR).

Note: All sunset reviews undertaken by agencies must be submitted to OBPR for assessment before a regulation is remade.

What does a review look like?

The OBPR has published a template which outlines questions relating to the requirements for a sunset review.

Is further assessment required?

The OBPR assesses all sunset reviews to ensure there is a continued need for regulation and that the effectiveness and efficiency of a regulation has been adequately considered by an agency.



As part of this assessment process, the OBPR (or the agency itself) 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 requested, it may require a Preliminary Impact Assessment, a Regulatory Impact Statement or targeted stakeholder consultation.

Exemptions from expiry

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

Agency-assessed exclusion categories

The Queensland Government Guide to Better Regulation allows agencies to self-assess some regulatory proposals. However, remaking a regulation 'as-is,' or with minor amendment, should not be excluded under an agency-assessed exclusion category. 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.

Appendix A RIA steps for national agreements

