



Instrument Drafting Guidance Note No. 1.2

Sunsetting checklist

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The following is a checklist of issues to consider when conducting a review of a legislative instrument that is to sunset.

- Does the instrument pass the fit-for-purpose test (see paragraph 5.2 of the AGD Guide to Managing Sunsetting of Legislative Instruments)?
- Is the policy of each provision still necessary and appropriate?
- Is each provision of the instrument supported by an appropriate head of power in the enabling legislation?
The instrument might not explicitly refer to the head of power under which the provision is made. If so, you might need to speak to a drafter in OPC or seek legal advice.
- Are all references in the instrument to the following still appropriate and correct:
 - references to laws or other instruments;
 - references to persons, organisations or bodies.This might require checking those references in the laws of the Commonwealth, a State or a Territory, or in instruments made by another person, organisation or body.
- Does each provision of the instrument meet OPC drafting and publishing standards?
- Are any application, transitional or savings issues raised by repealing the instrument?
- If the instrument is not to be remade, has the instrument been repealed?
- If the instrument is to be remade, have all prerequisites required by the enabling legislation before making the new instrument been complied with?
- If the instrument is to be remade, does the new instrument have a unique name, and a commencement provision?
- Have you considered the power to make any instruments that are made under the legislative instrument, and the character of those instruments?
- Are any consequential amendments required to any other instruments because the instrument is to sunset or be remade?