**EXPLANATORY STATEMENT**

*Competition and Consumer Act 2010*

**Price Notification Declaration (Australia Post Letter Services) (No. 2) 2015**

Issued by the authority of the Minister for Small Business

**Purpose**

The *Price Notification Declaration (Australia Post Letter Services) (No. 2) 2015* (the Declaration) is made by the Minister for Small Business (the Minister) under section 95X of the *Competition and Consumer Act 2010* (the Act). The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

The purpose of the Declaration is to declare certain letter services supplied by Australia Post as ‘notified services’ and Australia Post as a ‘declared person’ for the purposes of Part VIIA of the Act.

Regular letter services carried according to the timetable for ‘regular letters’ in Schedule 1 to the *Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulation 2015* (the Amendment Regulation) are declared as a notified service. That is, the Declaration applies to the letter service that is available at a single uniform rate of postage for the carriage within Australia, by ordinary post, of letters that are standard postal articles (the community service obligation).

Further, priority letter services carried according to the timetable for ‘priority letters’ in Schedule 1 to the Amendment Regulation are declared as a notified service in certain circumstances. Australia Post will have to notify the Australian Competition and Consumer Commission (ACCC) under the Declaration in relation to price changes for such a service if it intends to increase the postage rate of a priority letter to an amount that exceeds 150 per cent of the rate for a regular letter delivered to the regular timetable. As with regular letters, the notification applies only if no other special services apply to that priority letter service (such a business bulk discount, a pre‑paid envelope or reply paid). Australia Post’s separate ‘Express Post’ letters are not intended to be covered by this Declaration.

The new performance standards set out in Schedule 1 to the Amendment Regulation will take effect on a later day than the commencement of the Regulation. The Declaration makes it clear that before the new performance standards take effect, the Declaration will apply to the ‘regular letters’ described in the Amendment Regulation, along with the letter services with the current performance standards (which will become ‘priority letters’). Australia Post may give the ACCC a notice in relation to the ‘regular letters’ under Part VIIA of the Act before the new performance standards take effect.

**Background**

Part VIIA of the Act provides for the selective surveillance of the prices of certain goods and services, at the discretion of the Minister, and is applied to those markets where, in the view of the Minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers.

Division 4 of Part VIIA provides a price notification scheme which allows the Minister to declare goods or services to be ‘notified goods or services’ and to declare a person to be a ‘declared person’ in relation to such goods and services.

The Declaration provides that certain letter services supplied by Australia Post are notified services and Australia Post is a declared person in relation to those notified services for the purposes of Part VIIA.

The effect of the Declaration is that, to avoid breaching section 95Z of the Act, Australia Post must notify the ACCC if it proposes to:

* increase the price of a notified service;
* introduce a new service that would fall within the definition of notified services; or
* provide an existing notified service under terms and conditions that are not the same or substantially similar to the existing terms and conditions of that service.

Division 2 of Part 3 of the *Australian Postal Corporation Act 1989* provides Australia Post with the exclusive right to collect, carry and deliver letters within Australia, subject to exceptions (reserved letter services).

The earlier declaration (*Price Notification Declaration (Australia Post Letter Services) 2015* dated 21 July 2015), which is revoked by clause 3 of the Declaration, applied to certain letter services reserved to Australia Post.

The Australian Government has approved regulatory changes to enable Australia Post to introduce a two-speed letter service – comprising letters delivered to a ‘regular’ timetable and letters delivered to a ‘priority’ timetable at a higher price and a stated faster delivery. A timetable for both regular and priority is shown in Schedule 1 of the Amendment Regulation.

The Declaration will continue to apply the pricing oversight arrangements to regular letters at the ordinary rate, which will be delivered according to the regular timetable.

Letters delivered to the priority timetable will only be subject to ACCC pricing oversight if no other special service applies (such a business bulk discount, a pre‑paid envelope or reply paid) and if Australia Post proposes to price that service at a rate greater than 150 per cent of the ordinary rate for regular letters.

For example, if the ordinary rate for a regular letter was $1.00 and the price to send it as a priority letter was $1.40, the regular letter would be subject to ACCC oversight but the priority letter service would not. If the regular letter rate was $1.00 and the price to send it as priority was $2.00, ACCC pricing oversight would apply to both (as the priority rate would be greater than 150 per cent of the ordinary rate).

The 150 per cent threshold applies to the ordinary rate as it is from time to time – if the ordinary rate changes, then the 150 per cent threshold would apply to any new increased ordinary rate.

The *Regulation Impact Statement (RIS) for proposed reforms to postal regulation* considered several options for amending the pricing oversight on Australia Post’s letter services in light of the proposed introduction of a two-speed letter service comprising regular and priority services. It concluded that the option to apply pricing oversight only to the letters delivered to the regular timetable, with no oversight on the letters delivered to the priority timetable, offers the highest net benefit.

The implementation section of the RIS noted that application of the ACCC price notification arrangements to letters delivered to the regular timetable service will require the Minister for Small Business to:

* revoke the current price notification Declaration; and
* make a new price notification Declaration pursuant to section 95X of the Act.

The RIS published on ComLaw reflected the postal regulatory instruments that were registered on the Federal Register of Legislative Instruments on 27 July 2015.

The Government’s RIS requirements apply to the deliberations of the Government and not to deliberations of the Parliament. Therefore changes made by the Parliament will not be reflected in the RIS published with the explanatory material. The RIS published with the explanatory material was assessed as compliant with the Government’s requirements and best practice by the Office of Best Practice Regulation.

**Consultation**

The Department of Communications, the ACCC and Australia Post have been consulted in the preparation of the Declaration.

Australia Post consulted on possible reform options. This consultation included key stakeholders as well as international postal organisations. The Departments of Communications and Finance also consulted relevant government agencies impacted by the reform and sought independent expert advice on the challenges facing Australia Post, their potential implications and options for regulatory reform.

Australia Post will continue to engage with key stakeholder groups during on the reform implementation phase. Consultation channels include local community discussion groups; consumer and small business focus groups; a National Conversation Portal; and engaging Australia Post’s workforce through regular updates and briefings, the Workforce Conversation platform and a nationwide roadshow.

The Department of Communications will monitor terms and conditions and prices for letter services not subject to ACCC oversight.

**Notes on Clauses**

**Clause 1** provides that the name of the Declaration is the *Price Notification Declaration (Australia Post Letter Services) (No. 2) 2015*.

**Clause 2** provides that the Declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Clause 3** provides that the earlier declaration *Price Notification Declaration (Australia Post Letter Services) 2015* dated 21 July 2015 is revoked.

**Clause 4** sets out the definitions of certain terms used in clause 5.

**Clause 5** is the main operative clause.

Subclauses 5(1), (2), (3) and (4) operate together to identify which of Australia Post’s letter services are notified services for the purposes of Part VIIA of the Act.

The effect of subclause 5(1) is that all of the letter services provided by Australia Post for the carriage within Australia of letters are declared to be a notified service.

Subclause 5(2) notes that subclause 5(1) does not apply to three separate categories of letter services that are not notified services for the purposes of Part VIIA, those being:

* letter services that are not reserved to Australia Post under Division 2 of Part 3 of the Post Act (paragraph 5(2)(a));
* subject to subclause 5(4), letter services that involve the supply by Australia Post of a special service for which a special charge or additional fee is payable (paragraph 5(2)(b)); and
* letter services under an incoming overseas mail service to which a convention applies (paragraph 5(2)(c)).

Subclause 5(3) defines, for the purposes of the Declaration, those letter services that involve the supply by Australia Post of a special service for which a special charge or additional fee is payable.

*Paragraph 5(2)(a)*

The effect of paragraph 5(2)(a) is to exclude any letter services provided by Australia Post that are not reserved letter services from being notified services. Section 30 of the Post Act set outs the exceptions to Australia Post’s reserved services. Accordingly, none of the services listed in section 30 of the Post Act are notified services.

*Paragraph 5(2)(b) and subclause 5(3)*

Paragraph 5(2)(b) excludes letter services that involve the supply by Australia Post of a special service for which a special charge or additional fee is payable from being a notified service for the purposes of Part VIIA. The special services are described in paragraphs 5(3)(a) to (c).

### *Paragraph 5(2)(c)*

The effect of paragraph 5(2)(c) is to exclude letters posted overseas and carried by Australia Post in Australia under the terms of an international convention, principally the Universal Postal Union (UPU) convention. Generally, postage prices for incoming overseas letters are set by postal operators in the country of origin, and the payments Australia Post receives for delivering them are set according to UPU terminal dues arrangements.

*Paragraph 5(3)(a)*

Paragraph 5(3)(a) provides that a letter service involves the supply by Australia Post of a special service for which a special charge or additional fee is payable if the letter service is supplied at a lower rate subject to the sender meeting certain requirements of that letter service including, but not limited to, requirements concerning:

* *The volume of letters lodged*: letter services may be supplied at a lower rate subject to minimum volume requirements – examples of such services offered by Australia Post include PreSort letters, charity mail, acquisition mail, clean mail and local letters.
* *The format of letters lodged*: letter services may be supplied at a lower rate subject to specific format requirements for the envelope or the addressing of the envelope. Format requirements are designed to minimise the number of processes, either automated or manual, that letters must undergo at mail or delivery centres. Examples of such services include PreSort letters, charity mail, acquisition mail and clean mail.
* *The pre-sorting of letters lodged*: letter services may be supplied at a lower rate subject to specific sorting requirements prior to lodgement. Pre-sorting requirements are designed to minimise the number of processes, either automated or manual, that letters must undergo at mail or delivery centres. Examples of such services include PreSort letters, charity mail and acquisition mail.
* *The content of letters lodged*: letter services may be supplied at a lower rate subject to specific requirements in relation to the content of letters – examples of such services include seasonal greeting cards and acquisition mail.
* *The sender of letters lodged*: letter services may be supplied at a lower rate subject to specific eligibility requirements in relation to the sender – an example of such a service is charity mail.
* *The method of payment*: letter services may be supplied at a lower rate subject to specific payments arrangements (such as by an Australia Post charge account or postage meter) – examples of such services include acquisition mail, metered/imprint mail and reply paid.
* *The method of lodgement*: letter services may be supplied at a lower rate subject to specific procedures in relation to the lodgement of letters – examples of such services include acquisition mail and metered/imprint mail.

*Paragraph 5(3)(b)*

Paragraph 5(3)(b) provides that a letter service involves the supply by Australia Post of a special service for which a special charge or additional fee is payable if the letter service is supplied at a higher rate on account of goods that are integral to the letter service being supplied by Australia Post as part of the letter service, such as an envelope, packet, parcel, container, wrapper or card. Examples of such services include prepaid envelopes and prepaid postcards (where the price for the item includes the envelope / card and postage).

*Paragraph 5(3)(c)*

Paragraph 5(3)(c) provides that a letter service involves the supply by Australia Post of a special service for which a special charge or additional fee is payable if the letter service is supplied at a higher rate on account of additional service features being supplied by Australia Post as part of that letter service.

Generally, the priority letter service set out in Schedule 1 to the Amendment Regulationwith faster delivery would fall within paragraph 5(3)(c) because that letter service would meet the description of ‘priority delivery’ in subparagraph 5(3)(c)(i). However, subclause 5(4) below provides that priority letter services are notified in certain circumstances.

Other examples of letter services falling within paragraph 5(3)(c) include reply paid (where the sender does not have to pay postage) and impact mail (for the carriage of non-rectangular shaped letters).

*Subclause 5(4)*

Subclause 5(4) makes certain priority services notified services. It operates to make the priority letter service a notified service only if the postage rate of a priority letter (as described in Schedule 1 of the Amendment Regulations) is supplied at a rate exceeding 150 per cent of the ordinary rate of postage for a regular letter.

Paragraph 5(4)(b) provides consistency between regular and priority letters by excluding priority letter services that also involve the supply by Australia Post of a special service from being a notified service for the purposes of Part VIIA. The special services are described in paragraphs 5(3)(a) and (b) and subparagraphs (c)(ii)-(iii).

*Subclause 5(5)*

Subclause 5(5) provides that to avoid doubt, before Schedule 1 to the Amendment Regulation commences, a letter service of the description set out in that Schedule for ‘regular letters’ is a notified service, unless the letter service falls within one of the three categories in subclause 5(2).

*Subclause 5(6)*

The effect of subclause 5(6) is to make Australia Post a declared person in relation to its notified services for the purposes of Part VIIA of the Act.

**Clause 6** provides that the Declaration ceases to have effect on 30 June 2025, unless revoked earlier.

**Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights for this Legislative Instrument is set out in **Attachment 1**.

### Attachment 1

### Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Price Notification Declaration (Australia Post Letter Services) (No. 2) 2015***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the Declaration is to declare certain letter services supplied by Australia Post as ‘notified services’ and Australia Post as a ‘declared person’ for the purposes of Part VIIA of the Act.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.