# REVISED EXPLANATORY STATEMENT

## Issued by authority of the Treasurer

*Competition and Consumer Act 2010*

*Competition and Consumer (Airservices Australia Prices Surveillance) Declaration 2018*

Section 95X of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may declare specified goods and services to be notified for the purposes of Part VIIA of the Act, and declare a person to be, in relation to notified goods and services, a declared person for the purposes of Part VIIA of the Act. A declared person must submit a price notification to the Australian Competition and Consumer Commission (ACCC) before increasing the price of the notified goods and/or services, and the ACCC may object to the proposed increase.

The purpose of the *Competition and Consumer (Airservices Australia Prices Surveillance) Declaration 2018* (the Declaration) is to remake *Declaration (No. 66) – Airservices Australia* before its ‘sunsetting’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed on or after their tenth anniversary of their registration. *Declaration (No. 66) – Airservices Australia* will be automatically repealed on 1 October 2018.Legislative instruments generally cease to have effect after 10 years unless further legislative action is taken to extend their operation, such as remaking the instrument.

The Declaration remakes *Declaration (No. 66) – Airservices Australia* *2008* by updating the title and language, restructuring provisions to align with current drafting practices and making minor technical changes to reflect machinery of Government changes.

The changes to the title, language and structure do not change the substantive meaning or operation of the provisions.

Details of the Declaration are set out in the Attachment.

The Act does not specify any conditions that need to be met before the power to make the Declaration may be exercised.

In accordance with section 17 of the *Legislation Act 2003*, the Department of Infrastructure, Regional Development and Cities, Airservices Australia and the ACCC have been consulted.

A Regulation Impact Statement is not required (OBPR ID: 23339).

The Declaration commences on the day after registration.

**ATTACHMENT**

**Details of the *Competition and Consumer (Airservices Australia Prices Surveillance) Declaration 2018***

This Attachment sets out further details of the *Competition and Consumer (Airservices Australia Prices Surveillance) Declaration 2018* (the Declaration). All references are to the Declaration unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in *Declaration (No. 66) – Airservices Australia*.

Changes of a minor or machinery nature, such as updating section numbers in accordance with current drafting practices, are generally not specifically identified in this Attachment. Where the Declaration makes changes that require further explanation, these are identified and explained in this Attachment.

*Section 1*

This section provides that the title of the Declaration is the *Competition and Consumer (Airservices Australia Prices Surveillance) Declaration 2018*.

*Section 2*

This section provides that the Declaration commences on the day after it is registered.

*Section 3*

This section provides that the Declaration is made under subsections 95X(1) and (2) of the *Competition and Consumer Act 2010*.

*Section 4*

This section defines terms used in the instrument.

*Section 5*

This section provides that each instrument that is specified in a Schedule to the Declaration is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Declaration has effect according to its terms.

*Sections 6 and 7*

These sections replicate the corresponding provisions in the *Declaration (No. 66) – Airservices Australia*, with changes to reflect current drafting practices.

The reference to safety regulatory services has been removed to reflect that these services are no longer provided by Airservices Australia because of machinery of Government changes.

An incorrect reference to section 52 of the *Air Services Act 1995* has been replaced with a reference to section 53.

*Schedule 1 – Repeals*

This schedule provides for the repeal of the *Declaration (No. 66) – Airservices Australia* as the instrument is due to sunset on 1 October 2018 and is being remade by the Declaration.

### Under section 7 of the *Acts Interpretation Act 1901*, as applied to legislative instruments by subsection 13(1) of the *Legislation Act 2003*, the repeal of the *Declaration (No. 66) – Airservices Australia* does not affect its previous operation.

### Statement of Compatibility with Human Rights

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

### *Competition and Consumer (Airservices Australia Prices Surveillance) Declaration 2018*

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 *Competition and Consumer (Airservices Australia Prices Surveillance) Declaration 2018* (Declaration) remakes *Declaration (No. 66) – Airservices Australia* (Original Declaration) before its scheduled sunsetting on 1 October 2018.

Section 95X of the *Competition and Consumer Act 2010* (the Act) provides that the Minister, or the Australian Competition and Consumer Commission (ACCC) with the approval of the Minister, may declare specified goods and services to be notified for the purposes of Part VIIA of the Act (about price surveillance), and declare a person to be, in relation to notified goods and services, a declared person for the purposes of Part VIIA of the Act. The ACCC must give the person notice in writing of the declaration. The purpose of making a Declaration is to enable the ACCC to monitor prices for particular goods and/or services in certain markets.

Where goods and/or services are notified, a declared person’s ability to increase the prices of such goods or services is restricted. A declared person must submit a price notification to the ACCC before increasing the price of the notified goods and/or services. The ACCC has the opportunity to object to the increase before the end of the applicable notice period. If the declared person does not comply with the notice requirements they may be liable to prosecution for an offence that carries a penalty of 100 penalty units.

The Declaration remakes the Original Declaration, updates the title and language, restructures the provisions to align with current drafting practices and makes minor technical changes to reflect machinery of Government changes. These changes do not affect the substantive meaning, operation or enforcement of the provisions.

### 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.