

EXPLANATORY STATEMENT

Competition and Consumer Act 2010

Price Notification Declaration (Australia Post Letter Services) (No. 2) 2011

Issued by the authority of the Deputy Prime Minister and Treasurer

Purpose

The Price Notification Declaration (Australia Post Letter Services) (No. 2) 2011 (the Declaration) is made by the Deputy Prime Minister and Treasurer (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.

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 Australia Competition and Consumer Commission (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* (Post Act) 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 for Australia Post’s Letter Services* dated 23 February 2011), which is revoked by clause 3 of the Declaration, applied to all letter services reserved to Australia Post under Division 2 of Part 3 of the Post Act. In contrast, the Declaration only applies to certain letter services reserved to Australia Post.

The physical letter market has changed substantially over the last two decades and there is now considerable and increasing competition to letters from digital communications, such as email and social networking websites. These digital services provide competitive pressures on Australia Post's reserved letter services and have resulted in a significant decline in physical letter volumes.

Given the complexity of the issues considered by the ACCC and the need to consult with stakeholders, prices surveillance processes can be time-consuming—the ACCC took approximately five months to consider Australia Post price notifications in 2008 and 2009—and reduce Australia Post's flexibility to respond quickly to market changes and opportunities. The regulatory requirement for prices surveillance itself, along with the lengthy processes to implement it, restrict Australia Post's ability to plan, and to innovate in the design of, the products it offers to businesses and organisations in response to their needs.

Given the increased competition and the greater choice of communication media—which has lessened the dependency on Australia Post's discounted letter services—the Department of Broadband, Communications and the Digital Economy conducted a regulatory impact analysis in relation to reducing the scope of Australia Post's letter services subject to ACCC prices surveillance. This analysis is detailed in the regulation impact statement at **Appendix A**.

As a result of the regulatory impact analysis, the Australian Government has decided to limit the ACCC's prices surveillance of Australia Post letter services to those letter services set out in clause 5 of the Declaration.

Consultation

The Department of Broadband, Communications and the Digital Economy, the Department of Finance and Deregulation, the Australian Competition and Consumer Commission and Australia Post have been consulted in the preparation of the Declaration.

As part of regulatory impact analysis, the Department of Broadband, Communications and the Digital Economy undertook public consultation and received a number of submissions in response to its discussion paper on the proposal. Details of the public consultation are included in the attached regulation impact statement.

Notes on Clauses

Clause 1 provides that the name of the Declaration is the Price Notification Declaration (Australia Post Letter Services) (No. 2) 2011.

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 for Australia Post's Letter Services* dated 23 February 2011 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) and (3) 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, except for the letter services identified in subclause 5(2).

Subclause 5(2) sets out 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));
- 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. Such services are divided into two main groups—those supplied at a lower rate (paragraph 5(3)(a)) and those supplied at a higher rate (paragraphs 5(3)(b) and (c)) than the ordinary rate.

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 as at September 2011 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

as at September 2011 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 as at September 2011 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 as at September 2011 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 as at September 2011 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 as at September 2011 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 as at September 2011 include acquisition mail and metered/imprint mail.

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 as at September 2011 include prepaid envelopes and prepaid postcards (where the price for the item includes the envelope / card and postage).

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. Examples of such services as at September 2011 include reply paid (where the sender does not have to pay postage) and impact mail (for the carriage of non-rectangular-shaped letters).

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.

Subclause 5(4)

The effect of subclause 5(4) 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 1 August 2016, unless revoked earlier. The Department of Broadband, Communications and the Digital Economy

will monitor terms and conditions and prices for letter services no longer subject to ACCC scrutiny as a result of the Declaration, with a view to informing any decision on whether to continue or amend these arrangements prior to the expiry of the Declaration.

APPENDIX A – REGULATION IMPACT STATEMENT (RIS)