

EXPLANATORY STATEMENT

Select Legislative Instrument No. 37, 2015

Issued by authority of the Minister for Small Business

Competition and Consumer Act 2010

Competition and Consumer Amendment (Electronic Service of Documents and other Measures) Regulation 2015

Subsection 172(1) of the *Competition and Consumer Act 2010* (the CC Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The objective of the CC Act is to enhance the welfare of Australians through the promotion of competition and fair trading and to make provisions for consumer protection. In pursuing this, the CC Act requires that certain documents must be served on a person connected to a proceeding or matter before the Australian Competition and Consumer Commission (ACCC) or the Australian Competition Tribunal (Tribunal), to ensure that person is privy to information relating to that proceeding or matter.

The *Competition and Consumer Regulations 2010* (the Principal Regulations) supplements the CC Act by, among other things, dictating the administrative requirements for the service of documents.

Currently, under the Principal Regulations, an address for service is generally identified as a postal address.

The purpose of the *Competition and Consumer Amendment (Electronic Service of Documents and Other Measures) Regulation 2015* (the Regulation) is to amend the Principal Regulations to allow an electronic address to be used as an address for service. An electronic address includes an email address, fax number or secure website submission form or other secure electronic portal. Additionally, the Regulation repeals Division 3 of the Principal Regulations as the sections of the CC Act to which this Division refers have been repealed, rendering Division 3 redundant.

The service of documents to an electronic address is now a routine method for delivering documents. It is widely accepted as a more convenient and direct method of delivering documents and it will be time and cost effective, as it will reduce the need for documents to be printed, compiled and physically posted or delivered. Further, given that a person is more likely to retain the same electronic address over a long period of time compared to a postal address, the ACCC may be able to devote less time to administrative and time-consuming tasks such as updating personal records.

Documents submitted electronically can also be sent and received faster than traditional postal methods, reducing turn-over times, and electronic service will also allow recipients to better manage documents (for example a recipient business would not need to scan and make copies of such a document). Further, repealing Division 3 of the Principal Regulations will

reduce confusion and simplify the Principal Regulations given that the sections of the CC Act to which it refers have been repealed.

These amendments will reduce red tape for business and within government, and contribute to the Government's deregulation agenda.

Details of the Regulation are set out in the Attachment.

The CC Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation commences on the day after it is registered.

No public consultation was undertaken because the Regulation is minor or machinery in nature and does not substantially alter existing arrangements (see subsection 18(2)(a) of the *Legislative Instruments Act 2003*). More specifically, the Regulation seeks only to modernise the administrative requirements for the service of documents, so as to remain up to date with current technological advancements that are already widely adopted within society and to provide an additional option to the ACCC, Australian Competition Tribunal, businesses and households for the service and receipt of documents. Consultation was conducted with the ACCC, as the regulator responsible for adhering to and applying the Regulation, as well as the Australian Competition Tribunal.

ATTACHMENT

Details of the *Competition and Consumer Amendment (Electronic Service of Documents and Other Measures) Regulation 2015*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Competition and Consumer Amendment (Electronic Service of Documents and Other Measures) Regulation 2015* (the Regulation).

Section 2 – Commencement

This section provides that the Regulation commences on the day after registration.

Section 3 – Authority

This section provides that the Regulation is made under the *Competition and Consumer Act 2010* (the CC Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedule to this instrument is amended or repealed or otherwise has effect according to its terms.

Schedule 1 - Amendments

The objective of the CC Act is to enhance the welfare of Australians through the promotion of competition and fair trading and to make provisions for consumer protection. In pursuing this, the CC Act requires that certain documents must be served on a person connected to a proceeding or matter before the Australian Competition and Consumer Commission (ACCC) or the Australian Competition Tribunal (Tribunal), to ensure that person is privy to information relating to that proceeding or matter.

The *Competition and Consumer Regulations 2010* (the Principal Regulations) supplements the CC Act by, among other things, dictating the administrative requirements for the service of documents.

Currently, under the Principal Regulations, an address for service is generally identified as a postal address.

The Regulation amends administrative requirements contained in the Principal Regulations to allow an address for service to be an electronic address and to repeal Division 3.

Items 1-4 and 15 of Schedule 1 to the Regulation amend the Principal Regulations to allow for an electronic address to be provided as an address for service as an alternative to a postal address. This is achieved by inserting the words “(which may be an electronic address)” in connection with a requirement (or permission) for a party to provide an address for delivery of documents in the Principal Regulations. Item 15 of Schedule 1 to the Regulation inserts subregulation 21(1A) after subregulation 21(1) to allow an electronic address for the service of documents to optionally be provided in addition to the postal address required in subregulation 21(1).

Subregulation 12(3) outlines the method for the service of documents to a person connected with a proceeding or matter before the Commission. Item 5 of Schedule 1 to the Regulation adds the words “that is not an electronic address” after the words “address for service” to subregulation 12(3)(a) to avoid confusion, as this subregulation relates only to the service of documents by personal delivery or via registered post.

Item 6 of Schedule 1 to the Regulation inserts subregulation (aa) after paragraph 12(3)(a) to provide an equivalent provision to subregulation (a) for the service of documents to an electronic address.

Subparagraph 12(3)(b)(ii) allows for documents to be delivered to a person (other than a body corporate) to their last known address. Item 7 of Schedule 1 to the Regulation extends this to allow documents to be sent to the last electronic address used by a person to contact the Commission.

Subregulation 12(4) outlines the method that the Commission must follow when giving notice under subsection 90A(2) or 93A(2) of the CC Act.

Items 8 and 9 of Schedule 1 to the Regulation amend the Principal Regulation so that the requirement to send notice by pre-paid post applies specifically to subregulation 12(4)(a) (which deals with notice sent to a postal address) of the Principal Regulation rather than applying globally to subregulation 12(4). Item 10 of Schedule 1 to the Regulation inserts subparagraph (aa) after paragraph 12(4)(a) to provide an equivalent provision to the new subparagraph (a) for giving notice via an electronic address.

Items 11, 12 and 13 of Schedule 1 to the Regulation add the requirement for notice to be sent via pre-paid post to subparagraphs 12(4)(b)(i), (ii) and (iii) respectively. This is to clarify that notice sent pursuant to these subparagraphs must be sent to a postal address, and not an electronic address. Item 14 of Schedule 1 to the Regulation amends subparagraph 12(4)(1)(b)(iv) to allow notice sent under this subparagraph to be sent to either the last known postal address or the last electronic address used by the person to contact the Commission.

Regulation 21 of the Principal Regulation provides instructions for service in proceedings before the Tribunal.

Item 16 of Schedule 1 to the Regulation repeals Division 3 of the Principal Regulations as it refers to sections of the CC Act that have been repealed, and is therefore no longer relevant.

Item 17 of Schedule 1 to the Regulation replaces the word “e-mail” with “electronic address” in paragraph 46(b) to align this paragraph with the global incorporation of electronic addresses more broadly.

Schedule 1 of the Principal Regulations contains the Forms required by the CC Act.

Items 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42 and 44 of Schedule 1 to the Regulation insert a new paragraph into Forms A-GA, respectively, to allow a party which is required to provide those forms to provide an electronic address in addition to the postal address required in the Forms. Items 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43 and 45 of Schedule 1 to the Regulation support these amendments by inserting a Direction into Forms A-GA, respectively, to clarify that where an address is required by the Forms, an electronic address can be provided in addition to the postal address.

Item 46 of Schedule 1 to the Regulation inserts, after the title field of Form I, the instruction to follow the directions located on the back of the Form. Item 47 of Schedule 1 to the Regulation inserts paragraph 7 into Form I, to allow an electronic address to optionally be provided in addition to the postal address required in paragraph 6. Item 48 of Schedule 1 to the Regulation inserts a Directions section at the end of Form I containing Direction 1, which clarifies that where an address is required by the Form, an electronic address can be provided in addition to the postal address. Items 49-51, 52-54, 55-57, 58-60, 61-63, 64-66, 67-69, 70-72 and 73-75 of Schedule 1 to the Regulation achieve the same amendments with respect to Forms J-JE and L-LA, respectively.

Item 76 of Schedule 1 to the Regulation repeals Form M as it relates to regulations of the Principal Regulations that are repealed by this Regulation at Item 16 above.

Item 77 of Schedule 1 to the Regulation inserts a new paragraph 1(e) into Form N to allow an electronic address to optionally be provided in addition to the postal address required in paragraph 1(d), and moves the existing paragraph 1(e) to 1(f). Item 78 supports this amendment by inserting a Direction into Form N to clarify that where an address is required by the Form, an electronic address can be provided. Items 79-80, 81-82, 83-84, 85-86, 87-88, 89-90, 91-92, 93-94 and 95-96 of Schedule 1 to the Regulation achieve the same amendments with respect to Forms O-W, respectively.

Statement of Compatibility with Human Rights

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

Competition and Consumer Amendment (Electronic Service of Documents and Other Measures) Regulation 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 objective of the CC Act is to enhance the welfare of Australians through the promotion of competition and fair trading and to make provisions for consumer protection. In pursuing this, the CC Act requires that certain documents must be served on a person connected to a proceeding or matter before the ACCC, to ensure that person is privy to information relating to that proceeding or matter.

The Principal Regulations supplement the CC Act by, among other things, dictating the administrative requirements for the service of documents.

The Regulation will make amendments to these administrative requirements to allow an address for service to be an electronic address.

Human rights implications

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

Conclusion

This Regulation is compatible with human rights.