

EXPLANATORY STATEMENT

Select Legislative Instrument No. 119, 2015

Issued by the Authority of the Minister for Communications

Australian Postal Corporation Act 1989

Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulation 2015

Legislative authority

Section 102 of the *Australian Postal Corporation Act 1989* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed.

Section 28C of the Act provides for the making of regulations to prescribe performance standards to be met by Australia Post. The performance standards must relate to:

- the frequency, speed or accuracy of mail delivery; or
- availability or accessibility of post-boxes or other mail lodgment points, or offices of Australia Post or other places from which Australia Post products or services may be purchased.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Accordingly, the *Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulation 2015* (the Amending Regulation) is made under section 102 of the Act for the purposes of section 28C of the Act.

The Amending Regulation is a legislative instrument for the purposes of paragraph 6(a) of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the the Amending Regulation is to amend the existing *Australian Postal Corporation (Performance Standards) Regulations 1998* (the Performance Standards) to enable Australia Post to introduce a two-speed letter service for all consumers; comprising letters delivered according to either a regular or priority timing standard, as selected by the sender.

Background

The Performance Standards were introduced to provide a legislative mechanism for monitoring and improving the performance of Australia Post.

There are four separate standards, dealing with: frequency of delivery; accuracy and speed of delivery; mail lodgment points, and retail outlets.

In particular, Australia Post is required to meet the following standards:

- Letter delivery frequency – Regulation 5 of the Performance Standards requires Australia Post to service 98% of all postal delivery points five days per week, excluding any Saturday, Sunday and public holiday, and 99.7% of all postal delivery points at least two days per week.
- Letter delivery accuracy and speed – Regulation 6 of the Performance Standards requires Australia Post to deliver at least 94% of reserved services letters lodged with Australia Post (excluding those listed in Regulation 6(1)), to the indicated or appropriate address according to the delivery timetable in Regulation 6(2)(b). For instance, letters for delivery within the metropolitan area of the capital city of posting should be delivered by the next business day after posting.

The Office of Best Practice Regulation has certified the Regulation Impact Statement (RIS) as compliant with the Government's RIS requirements and consistent with best practice.

Amendments relating to the Performance Standards

The Amending Regulation replaces paragraph 6(2)(b) and the table in paragraph 6(2)(b) of the Performance Standards with a new table which outlines the letter delivery speed requirements (in business days after the day of posting) for both priority and regular letters.

For priority letters, the letter delivery speed table requires Australia Post to meet the delivery timeframes set out in the previous letter delivery speed table – i.e. the table formerly at paragraph 6(2)(b) of the Performance Standards.

For regular letters, the letter delivery speed table requires Australia Post to meet delivery timeframes that are, for letters delivered within the State of posting, up to two days slower and, for letters delivered between States, up to three days slower than previously required.

Australia Post will continue to deliver letters five days per week – excluding Saturdays, Sundays and public holidays.

A standard postal article, carried by ordinary Post, e.g. an article to which the Basic Postage Rate (BPR) applies, will be delivered as per the 'regular letter' timetable. The BPR, and rates for other notifiable letters, will continue to be subject to pricing oversight by the Australian Competition and Consumer Commission (ACCC) under Part VIIA of the *Competition and Consumer Act 2010*.

The proposed priority letter service would be a 'special service' within the meaning of the Act by virtue of the fact that priority letters would be delivered on a faster timetable compared to regular letters and an additional fee would be charged for this service. Given its impending status as a 'special service' the priority letter service would not be subject to pricing oversight, nor would it be subject to the community service obligations set out under section 27 of the Act, as these obligations only apply in respect of letters carried by ordinary post.

Consultation

Australia Post consulted with key stakeholders in relation to the proposed reforms, including its workforce and key representative bodies, customers, international postal organisations and members of the community. The Department of Communications and the Department of Finance also consulted with other relevant government agencies impacted by the Amending

Regulation and sought expert external advice on the challenges facing Australia Post, and potential implications and options for regulatory reform.

Australia Post will continue to engage with key stakeholder groups during 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.

Australia Post, Treasury and the ACCC were consulted on the development of this Amending Regulation.

Regulatory Impact

The Regulatory Impact Statement for the Amending Regulation is set out in **Attachment A**.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights for the Amending Regulation is set out in **Attachment 1**.

Other details

The Act specifies no conditions that need to be satisfied before the power to make the Amending Regulation may be exercised.

Section 1 to 4 (inclusive) of the Amending Regulation commence on the day after it is registered. Schedule 1 of the Amending Regulation, which sets out the revised delivery speed requirements, commences on a day to be fixed by the Minister for Communications. If Schedule 1 of the Amending Regulation does not commence within 12 months of the Amending Regulation being registered, it would commence on the day after the end of that period.

Prior to the introduction of a two-speed letter service for all consumers, Australia Post will notify the ACCC of the intended price for the carriage of ordinary letters via the regular service. In considering this price the ACCC will work with Australia Post to ensure the cost allocation model of Australia Post's letters network accurately reflects the costs of providing the services over this network, and will undertake public consultations on the proposed increase. Australia Post will also be required to implement a number of operational changes related to introduction of a two-speed letter service for all consumers.

The provision for Schedule 1 to commence within 12 months provides certainty for commencement, as well as sufficient time for these actions to be completed. The provision for the Minister to fix a date by notice in the Gazette provides the flexibility for an earlier commencement date.

Details of the accompanying Amending Regulation are set out in **Attachment 2**.

Statement of Compatibility with Human Rights

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

Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulation 2015

The *Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulation 2015* (the Amending Regulation) is compatible with the human rights and freedoms recognised or declared in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Amending Regulation

The Amending Regulation is to amend the existing *Australian Postal Corporation (Performance Standards) Regulations 1998* (the Performance Standards) to enable Australia Post to introduce a two-speed letter service for all consumers, comprising regular letters and priority letters.

Human rights implications

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

Conclusion

The Amending Regulation is compatible with human rights as it does not raise any human rights issues.

Details of the *Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulation 2015*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulation 2015* (the Amending Regulation).

Section 2 – Commencement

This section provides that sections 1 to 4 (inclusive) of the Amending Regulation commence on the day after it is registered on the Federal Register of Legislative Instruments. This section also provides that the Schedule 1 of the Amending Regulation, which sets out the revised delivery speed requirements, commences on a day to be fixed by the Minister for Communications by notice in the Gazette. If the Schedule 1 of the Amending Regulation does not commence within 12 months of the Amending Regulation being registered, it commences on the day after the end of that period.

Section 3 – Authority

This section provides that the legislative authority for the Amending Regulation is the *Australian Postal Corporation Act 1989*.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in that Schedule and that any other item in a Schedule to this instrument has effect according to its terms. The Amending Regulation has only one Schedule, which amends the *Australian Postal Corporation (Performance Standards) Regulations 1998* (the Performance Standards).

Schedule 1 – Amendments

Item 1 – Paragraph 6(2)(b) of the Performance Standards

Paragraph 6(2)(b) requires Australia Post to deliver at least 94% of all reserved services letters lodged with Australia Post within the delivery times mentioned for the address in the table in the paragraph.

This item amends this paragraph by introducing two categories of reserved services letters (comprising regular letters and priority letters) and applying separate letter delivery speed requirements to each category.

Item 2 – Paragraph 6(2)(b) of the Performance Standards (table)

The delivery speed table in the previous Performance Standards set out the number of business days after posting for the delivery of reserved services letters by Australia Post within the State of posting and between States.

This item replaces the existing table in paragraph 6(2)(b) of the Performance Standards and substitutes it with a new table which specifies separate letter delivery speed requirements for regular letters and priority letters, as follows:

- Australia Post will be required to deliver priority letters according to the letter delivery speed requirements previously set out in the table at Regulation 6(2)(b) of the Performance Standards.

- The requirements for regular letters extend the time over which Australia Post can deliver these letters. For regular letters that are delivered:
 - within the State of posting, the new table provides that Australia Post must deliver these letters *within* an additional two days compared to previous requirements; and
 - between States, the new table provides that Australia Post must deliver these letters *within* an additional three days compared to previous requirements.

For the purpose of paragraph 1(b) of the table in this item, the reference to ‘adjacent town’ is expanded to include ‘adjacent city’.