

EXPLANATORY STATEMENT

Australian Postal Corporation Act 1989

Australian Postal Corporation (Performance Standards) Regulations 2019

Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020

Issued by the Authority of the Minister for Communications, Cyber Safety and the Arts

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, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 28C of the Act provides for the making of regulations that 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 lodgement points, or offices of Australia Post or other places from which Australia Post products or services may be purchased.

Purpose

The purpose of the *Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020* (the Amendment Regulations) is to amend the *Australian Postal (Performance Standards) Regulations 2019* (the 2019 Regulations) to provide urgent and temporary change to performance standards for the delivery of letters to enable Australia Post to effectively manage any COVID-19 impacts on its operations, including by optimising the use of its workforce. The Amendment Regulations will also give Australia Post an exemption from its retail outlet requirements, should temporary closures be necessary due to workforce impacts COVID-19.

COVID-19 is forecast to have a significant operational and financial impact on Australia Post, due to rapidly changing consumer and business needs, significant disruption to its delivery network and impacts on its workforce due to social distancing and self-isolation requirements.

These Amendment Regulations provide temporary regulatory relief to Australia Post from its performance standards to reflect the operating constraints and limitations that have resulted from COVID-19. This temporary regulatory relief provides Australia Post the flexibility to reallocate its resources to respond to the impacts of COVID-19 and meet increased demand for parcels, and allow Australia Post to continue to deliver essential products and services to Australians, including pharmaceutical and grocery products as Australians stay at home to combat the health crisis. The changes will apply up until 30 June 2021.

The 2019 Regulations set performance standards to be met by Australia Post.

There are four separate standards which Australia Post is currently required to meet:

- Letter delivery frequency – Australia Post is usually required to service 98% of all postal delivery points daily, excluding any Saturday, Sunday and public holiday, and 99.7% of all postal delivery points at least two days per week. Requirements in regards metropolitan areas will be relaxed by the Amendment Regulations.
- Letter delivery accuracy and speed – Australia Post is usually required to deliver at least 94% of reserved services letters lodged with Australia Post (excluding those listed in subsections 8(2) and (3)), to the indicated or appropriate address according to the delivery timetable in subsection 8(6). The 94% requirement will remain, albeit in accordance with the revised delivery timetable, which temporarily removes the priority mail service and relaxes the timetable for intrastate letters.
- Mail lodgement points – Australia Post is required to maintain lodgement facilities at each of its retail outlets, and a minimum of at least 10,000 street posting boxes. This will remain unchanged by the Amendment Regulations. However, minor amendments have been made to relieve Australia Post of any requirement to clear lodgement points on a Saturday, Sunday or a Public Holiday in the location of the lodgement point.
- Retail outlets – Australia Post is required to maintain at least 4,000 retail outlets:
 - at least 50% of retail outlets, and not less than 2,500 are required to be located in rural or remote areas
 - in metropolitan areas, retail outlets are required to be located such that at least 90% of residences are located within 2.5 kilometres of an outlet
 - in non-metropolitan areas, retail outlets are required to be located such that at least 85% of residences are located within 7.5 kilometres of an outlet.

The Amendment Regulations will require Australia Post, before 1 July 2021, to maintain the prescribed requirements for retail outlets to the extent that is reasonably practicable. Australia Post is expected to keep retail outlets open during COVID-19, however the change will give Australia Post flexibility to temporarily close outlets should this be necessary due to workforce impacts of COVID-19.

The Amendment Regulations is a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

The Amendment Regulations, with the exception of Schedule 2, commence on the day after the instrument is registered on the Federal Register of Legislation.

Schedule 2 of the Amendment Regulations will commence on 1 July 2021.

Consultation

Australia Post was consulted in the development of the Amendment Regulations.

Regulatory Impact

On 18 March 2020 the Prime Minister, the Hon Scott Morrison MP granted an exemption from the need to complete regulatory impact analysis in the form of Regulation Impact Statements (RISs) for all Australian Government measures made in response to COVID-19.

The Amendment Regulations are made due to urgent and unforeseen events related to the spread of COVID-19 and are, therefore, subject to the Prime Minister's exemption of 18 March 2020.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

Other details

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

Details of the accompanying Amendment Regulations are set out in **Attachment C**.

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 (2020 Measures No. 1) Regulations 2020

The *Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020* (the Amendment Regulations) are compatible with the human rights and freedoms recognised or declared in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the proposed Regulations

The Amendment Regulations amend the existing Australian Postal (Performance Standards) Regulations 2019 (the 2019 Regulations) to provide urgent and temporary relaxation of performance standards for the delivery of letters and retail operations to enable Australia Post to effectively manage any COVID-19 impacts on its operations, while also redeploying staff from its letters network to the parcels network in response to the growth in parcels and declines in letter volumes driven by COVID-19.

COVID-19 is forecast to have a significant operational and financial impact on Australia Post, due to rapidly changing consumer and business needs, significant disruption to its delivery network and impacts on its workforce due to social distancing and self-isolation requirements.

The Amendments Regulations comprise two schedules. The amendments at Schedule 1 prescribe reduced letter delivery performance standards which Australia Post is required to meet until 30 June 2021. The items at Schedule 2 repeal the changes made by Schedule 1 to the performance standards and requirements, effectively restoring the original standards and requirements on and from 1 July 2021 (this timeframe acknowledges that Australia Post has one of the largest networks and extended workforces in Australia and structural adjustments such as these require significant transition periods).

The Amendment Regulations temporarily amend three separate standards in the existing 2019 Regulations that Australia Post is required to meet.

- Letter delivery frequency is reduced in metropolitan areas, from daily delivery to alternate business day delivery (not including Saturdays, Sundays and public holidays). Delivery frequency in non-metropolitan areas is not changed.
- Letter delivery accuracy and speed: the temporary suspension of the faster priority mail service and an increase is made to the maximum delivery speed for intrastate letters to day of posting plus five business days. Australia Post will still be required to meet the same 94% accuracy rate.
- Retail outlets: Australia Post is required to maintain a designated number of outlets in defined areas and adhere to location requirements. Australia Post is expected to keep retail outlets open during COVID-19, however the change will give Australia Post flexibility to temporarily close outlets should this be necessary due to workforce impacts of COVID-19.

Human rights implications

The Amendment Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Regulations are compatible with human rights as they do not raise any human rights issues.

Details of the *Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020*

Section 1 – Name

This section provides that the title of the Amendment Regulations is the *Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020*.

Section 2 – Commencement

This section provides for the Amendment Regulations, with the exception of Schedule 2, to commence on the day after the instrument is registered on the Federal Register of Legislation. It further provides that Schedule 2 of the Amendment Regulations will commence on 1 July 2021.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Australian Postal Corporation Act 1989*.

Section 4 – Schedules

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

There are two Schedules to the Amendment Regulations. Schedule 1 makes amendments to the *Australian Postal (Performance Standards) Regulations 2019* (the 2019 Regulations) and Schedule 2 repeals these amendments with effect on 1 July 2021.

SCHEDULE 1 – AMENDMENTS COMMENCING DAY AFTER REGISTRATION

PART 1—SERVICES DURING PERIOD ENDING 30 JUNE 2021

Item 1 – After subsection 7(1)

Section 7 of the 2019 Regulations sets out the mail delivery frequency requirements, including that Australia Post must service 98% of all delivery points daily (except for Saturdays, Sundays and public holidays in the delivery location).

Item 1 of Schedule 1 to the Amendment Regulations inserts new subsection 7(1A) which has the effect, in combination with existing paragraph 7(1)(a), of only requiring Australia Post to deliver to each delivery point in a metropolitan area on alternate business days.

The item is not intended to change the existing delivery frequency service standards in non-metropolitan areas, which Australia Post is expected to maintain.

Item 2 – Subsection 8(6)

Item 2 repeals subsection 8(6), but not the table thereunder, and substitutes in its place a replacement subsection 8(6) requiring Australia Post to deliver a reserved services letter within the delivery time set out in the item in the table that covers the mail lodgement point at which the letter is lodged and the address to which Australia Post must deliver the letter under subsection 8(5).

Item 3 – Subsection 8(6) (table, heading to column 3)

Item 3 inserts the words ‘on or after 1 July 2021’ after the words ‘priority letter’ in the heading to column 3 of the table under subregulation 8(6). This has the effect of suspending the priority letter service until that date.

Item 4 – Subsection 8(6) (table, heading to column 4)

This item removes the words ‘a regular letter’, in the heading to column 4 of the table under subregulation 8(6) and substitutes the words ‘any reserved services letter before 1 July 2021, and for a regular letter on or after 1 July 2021’. This has the effect of applying the delivery times set out in column 4 of the table under subregulation 8(6) to any reserved services letters until 1 July 2021 and any regular letter after that date.

Item 5 – Subsection 8(6) (table items 1 and 2, column 4)

Item 6 – Subsection 8(6) (table items 3, 4 and 5, column 4)

Subsection 8(6) of the 2019 Regulations sets out the delivery speed for both regular and priority letters, and includes a table setting out the delivery time requirements based on the point of mail lodgement, identified in column 1 of the table, and the delivery address of the letter, identified in column 2 of the table.

Item 5 substitutes “5 business days” for “3 business days” in column 4 of the table in subsection 8(6). Item 6 substitutes “5 business days” for “4 business days” in column 4 of table in subsection 8(6).

These changes mean that all reserved services letters lodged in a state for delivery in the same state are required to be delivered up to 5 days after the day of posting.

Item 7 – At the end of section 11

Section 11 of the 2019 Regulations outlines Australia Post’s obligation to maintain retail outlets from which Australia Post products or services may be purchased, including the requirement for it to maintain a minimum of 4,000 retail outlets and at least 50% of these outlets and, in any case, at least 2,500 must be located in rural or remote zones, and rules regarding the specific locality of outlets.

This item inserts a new heading and accompanying subsection 11(5). The new subsection provides that before 1 July 2021, if the coronavirus impacts the workforce of retail outlets to such an extent that it is not reasonably practicable for a particular retail outlet to remain in operation, the retail outlet is taken to remain in operation for the purposes of subsections 11(1) to (3).

The practical effect will be that Australia Post will have greater freedom in managing the post office network should the staff at some retail outlets be affected by COVID-19 and it is not possible for that retail outlet to operate. For example, it may be necessary for Australia Post to cease operations at a Post Office where staff are directly affected by COVID-19 or are in isolation to prevent possible transmission, and it is not possible to staff the Post Office safely. Australia Post must take all reasonable steps to keep outlets open.

The new item applies to all types of retail outlets, with “workforce of retail outlets” to be interpreted broadly.

PART 2—DEFINITION OF DAY OF POSTING

Item 8 – section 5

This item inserts definitions of *notified clearance day* and *notified clearance time* and those terms have the meaning given by new subsections 8(7A) and 8(7B) respectively (see notes below for further details).

Item 9 – Paragraph 8(7)(a)

Subsection 8(7) of the 2019 Regulations defines the *day of posting* for mail lodgement points, which underpins the requirements in the delivery table at subsection 8(6).

Item 9 repeals existing paragraph 8(7)(a) and substitutes it with two new subparagraphs. The effect of this change is that, in addition to existing paragraph 8(7)(b), there are two other provisions to ascertain the day of posting for mail lodged at a mail lodgement point. Each paragraph is mutually exclusive. The mail lodgement point may have notified clearance times for every day or for only some days, or it may have no notified clearance times at all.

Under new paragraph 8(7)(a), the day of posting for a particular letter will be day the letter is lodged. This rule applies in all cases where paragraphs 8(7)(aa) and (b) do not apply to the particular circumstance, namely 8(7)(a) will apply where: the mail lodgement point has no notified clearance times or the letter is lodged within the notified clearance times; and the letter is not taken out of the normal course of carriage.

The rule in paragraph 8(7)(aa) applies in the case where there are notified clearance days for the particular mail lodgement point and paragraph 8(7)(b) does not apply. The day of posting will be the first notified clearance day after the day the letter is lodged if the letter was:

- lodged on the notified clearance day but after the notified clearance time for that day; or
- on a day that is not a notified clearance day.

The term '*notified clearance day*' is defined in new subsection 8(7A) as a day for which there is a notified clearance time (refer to Item 11 below). The term *notified clearance time*, for a day, is defined in new subsection 8(7B) as the time notified as the latest time for posting at the mail lodgement point on that day (refer to Item 11 below).

Paragraph 8(7)(b) remains unchanged and continues to provide for the day of posting in cases where a letter is removed from the normal course of carriage by Australia Post under subsection 90UA(1) or (3) of the Act and later returned to the normal course of carriage.

Item 10 - At the end of subsection 8(7)

Item 10 adds an example at the end of subsection 8(7) to help illustrate the operation of the rule under new paragraph 8(7)(aa). The example covers the circumstance where a street posting box bears a notice stating that the latest time for posting before clearance of the box is 2:00pm (Monday to Friday) and the letter is posted in the box after the notified clearance time.

Setting notification times is a matter for Australia Post and the example is not intended to fetter Australia Post's discretion in this regard.

Item 11 - After subsection 8(7)

Item 11 inserts two new subsections. New subsection 8(7A) defines a notified clearance day as being a day for which there is a notified clearance time. New subsection 8(7B) defines a notified clearance time, for a day, is a time notified as the latest time for posting at the mail lodgement point on that day. A note accompanies the new subsection to remind readers that a mail lodgement point may have notified clearance times for every day or for only some days, or no notified clearance days at all.

SCHEDULE 2—AMENDMENTS COMMENCING 1 JULY 2021

As the changes made by Schedule 1 (Items 1 – 11) are temporary and to assist Australia Post respond to the COVID-19 pandemic, they will cease on 30 June 2021, and from 1 July 2021 onwards, the original standards and requirements will be restored.

Item 1 - Subsection 7(1A)

Item 1 repeals subsection 7(1A) thereby requiring Australia Post from 1 July 2021, to service all delivery points in a metropolitan area daily, except for a Saturday, Sunday or Public Holiday.

Item 2 - Subsection 8(6) (table, heading to column 3)

Item 3 - Subsection 8(6) (table, heading to column 4)

These two items repeal the changes made in Items 3 and 4 of Schedule 1 to the delivery timeframe table at subsection 8(6), restoring the original timeframes applicable for the regular letter and the priority letter services.

Item 4 - Subsection 8(6) (table items 1 and 2, column 4)

Item 5 - Subsection 8(6) (table items 3, 4 and 5, column 4)

Items 4 and 5 repeal the changes made to the table at subsection 8(6) by Items 5 and 6 of Schedule 1. This has the effect of reinstating the prescribed performance standards to be met by Australia Post in respect of the frequency, speed and accuracy of mail delivery for Items 1 to 5 of the table at subsection 8(6).

Item 6 - Subsection 11(5)

This item repeals subsection 11(5), reversing the change made by Item 7 of Schedule 1.