

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Minister for Competition, Charities and Treasury**

#### *Competition and Consumer Act 2010*

#### *Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2023*

The object of the *Competition and Consumer Act 2010* (the Act) is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

Section 95ZH of the Act permits the Minister to direct the Australian Competition and Consumer Commission (the ACCC) to give special consideration to a specified matter or matters in exercising its powers and performing its functions under Part VIIA of the Act. The ACCC must comply with any such directions.

The object of the *Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2023* (the Direction) is to facilitate continued access to Sydney (Kingsford-Smith) Airport by operators of regular public transport air services operating wholly within the State of New South Wales.

The Direction achieves this objective by directing the ACCC to give special consideration to the Government's policy that any increases in the price of certain aeronautical services and facilities provided by Sydney Airport Corporation to such operators over a financial year should be limited to the increases in inflation as measured by the consumer price index. The aeronautical services and facilities to which the Direction applies are those that are declared to be notified services by the *Competition and Consumer (Price Notifications—Aeronautical Services to NSW Regional Airlines) Declaration 2023*.

Further details of the Direction are set out in [Attachment A](#).

The Act does not specify any particular matters that the Minister must be satisfied of before making this Direction.

Public consultation on the Direction was not undertaken as it extends the existing prices surveillance arrangements contained in the *Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2022*, which applied from 1 July 2022 to 30 June 2023. However, consultation was undertaken with Sydney Airport Corporation and affected regional airlines on the proposal to extend the current arrangements by another three years prior to the making of this Direction.

The prices surveillance arrangements are extended for another three years, which will allow the Government time to review the arrangements in light of any findings made from the Aviation White Paper, which is expected to be released by the Government in 2024.

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

In accordance with item 2 of the table in section 9 and item 3 of the table in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the Direction is not subject to disallowance and sunseting because it is a direction by a Minister to a person or body.

The Direction commenced on 1 July 2023.

The Direction applies from 1 July 2023 and ceases to have effect on 30 June 2026.

The Direction is repealed on 1 July 2026.

The Office of Impact Analysis (OIA) has been consulted and considers that the Declaration is unlikely to have a more than minor impact, therefore an Impact Analysis is not required (OIA23-05001).

A Statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2023**

This attachment sets out further details of the *Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2023* (the Direction). All references are to the Direction unless otherwise stated.

This Direction extends the operation of the *Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2022* (the previous direction). Other than the extended duration, the Direction has substantially the same effect as the previous direction.

**Part 1—Preliminaries**

**Section 1 – Name**

This section provides that the title of the instrument is the *Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2023*.

**Section 2 – Commencement**

This section provides that the whole of the instrument commences on 1 July 2023.

**Section 3 – Authority**

The Direction is made under the *Competition and Consumer Act 2010* (the Act).

**Section 4 – Schedules**

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

**Section 5 – Definitions**

This section contains the defined expressions that are used in the Direction, as follows:

- ‘ABN’ has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*;
- ‘aeronautical services and facilities’ has the meaning given by Part 7 of the *Airports Regulations 1997*;
- ‘index number’ for a quarter means the All Group Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter;
- ‘quarter’ means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December’; and
- ‘the Act’ means the *Competition and Consumer Act 2010*.

The Direction also uses the term ‘Commission’, which takes its meaning from the Act because of paragraph 13(1)(b) of the *Legislation Act 2003*. The Act defines the term ‘Commission’ as the ACCC established by section 6A of the Act, and includes a member of the ACCC or a Division of the ACCC performing functions of the ACCC.

## **Part 2—Direction to give special consideration in undertaking prices surveillance**

### **Section 6 – Object**

This section provides that the object of the Direction is to facilitate continued access to Sydney (Kingsford-Smith) Airport by operators of regular public transport air services operating wholly within the State of New South Wales.

### **Section 7 – Scope of the Direction**

This section directs the ACCC to focus their attention to particular exercises of power and performance of functions under Part VIIA when implementing the Direction.

The powers and functions to which the Direction applies are those that are done in relation to the pricing of aeronautical services and facilities at Sydney (Kingsford-Smith) Airport in respect of the *Competition and Consumer (Price Notifications—Aeronautical Services to NSW Regional Airlines) Declaration 2023* and the *Competition and Consumer Act 2010 – Monitoring of the Prices, Costs and Profits Relating to the Supply of Aeronautical Services and Facilities at Specified Airports in Australia*.

Limiting the Direction to exercises of power and performance of functions under Part VIIA is consistent with the scope of section 95ZH of the Act, which authorises the Minister to make directions for the purposes of Part VIIA.

Limiting the Direction to the above instruments ensures that it is appropriately focussed on the pricing of aeronautical services and facilities at Sydney (Kingsford-Smith) Airport.

### **Section 8 – Direction**

This section directs the ACCC to give special consideration to the Government’s policy that any increases in the price of certain aeronautical services and facilities provided by Sydney Airport Corporation to the operators of regular public transport air services operating wholly within the State of New South Wales over a financial year should be limited to the increases in inflation as measured by the consumer price index.

The aeronautical services and facilities to which the Direction applies are those that are declared to be notified services by the *Competition and Consumer (Price Notifications—Aeronautical Services to NSW Regional Airlines) Declaration 2023*.

The Direction requires a comparison of the percentage increase in the price charged for the services and facilities to which the Direction applies over a financial year against the percentage increase of the CPI over a 12-month period. The 12-month period for the CPI increase is the period comprised of the four quarters ending on the 31 March that occurs immediately before the financial year. As this data is available at the start of the financial year, it allows the upper limit of price increases that can occur over the financial year to be ascertained from the start of the year.

### **Part 3—Application**

#### **Section 9 – Application**

This section provides that the Direction applies to the financial years commencing on 1 July 2023, 1 July 2024 and 1 July 2025.

#### **Section 10 – Cessation and repeal**

This section provides that the Direction ceases to apply on 30 June 2026 and self-repeals on 1 July 2026.

This time is based on the time that the *Competition and Consumer (Price Notifications—Aeronautical Services to NSW Regional Airlines) Declaration 2023* is scheduled to cease. As the Direction is based on aeronautical services and facilities that are declared to be notified services under that Declaration, the Direction will not have any effect in the absence of the Declaration.

#### **Schedule 1 – Repeals**

Schedule 1 to the Direction repeals the *Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2022*, which applied from 1 July 2022 to 30 June 2023.

**Statement of Compatibility with Human Rights**

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

**Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2023**

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 Legislative Instrument directs the ACCC to give special consideration to the Government’s policy that any increases in the price of certain aeronautical services and facilities provided by Sydney Airport Corporation to such operators over a financial year should be limited to the increases to the consumer price index.

The aeronautical services and facilities to which the Direction applies are those that are declared to be notified services by the *Competition and Consumer (Price Notifications—Aeronautical Services to NSW Regional Airlines) Declaration 2023*.

The Legislative Instrument extends the existing prices surveillance arrangements contained in the *Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2022* for a further three years.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms as it relates to the prices charged by the Sydney Airport Corporation Limited, which is not a natural person.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.