# EXPLANATORY STATEMENT

## Issued by authority of the Treasurer

*Competition and Consumer Act 2010*

*Competition and Consumer (Price Monitoring—Domestic Air Passenger Transport) Direction 2023*

Subsection 95ZE(1) of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may give the Australian Competition and Consumer Commission (ACCC) a written direction to monitor prices, costs and profits relating to the supply of goods or services by persons in an industry, and to give the Minister reports on the monitoring. Subsection 95ZH(1) of the Act provides that the Minister may also give the ACCC a written direction to give special consideration to matters in exercising the ACCC’s powers and performing the ACCC’s functions under Part VIIA of the Act.

The purpose of the *Competition and Consumer (Price Monitoring—Domestic Air Passenger Transport) Direction 2023* (the Direction) is to require the ACCC to monitor prices, costs and profits relating to the supply of goods or services by persons in the air passenger transport services industry. The Direction requires the ACCC to give special consideration to monitoring the supply of domestic air passenger transport services, and related goods and services.

The Direction gives effect to the Government’s policy that Australia’s national interest is best served through having a safe, sustainable, and efficient aviation sector. Price monitoring by the ACCC will complement its enforcement of competition and consumer law. A competitive airline industry helps to put downward pressure on prices and deliver more choice for Australians facing cost‑of‑living pressures..

The Direction requires the ACCC to monitor prices, costs and profits for a period of three years, and to report to the Treasurer at least once every quarter on the monitoring during that period.

The air passenger transport service industry is defined by reference to the *Australian and New Zealand Standard Industrial Classification 2006* (ANZSIC) published by the Australian Bureau of Statistics (1292.0), as in force at the time the Direction commenced. ANZSIC is used as a standard means of classifying business units into industry sectors. At the time the Direction was registered, this document was freely available on the Australian Bureau of Statistics’ website (http://www.abs.gov.au).

In accordance with section 17 of the *Legislation Act 2003*, the ACCC has been consulted on the terms of the Direction.

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 instrument is not disallowable and does not sunset as it is a direction by a Minister to a person or body. It is appropriate that this instrument is not disallowable as it is a ministerial direction, and therefore executive control is intended. Similarly, the direction is intended to remain in place until it is repealed on 1 January 2027 or it is revoked by the Treasurer, and therefore it is appropriate that it not sunset.

Details of the Direction are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Direction commenced on the day after it was registered on the Federal Register of Legislation.

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: OIA23‑05947) and agreed that an Impact Analysis is not required.

**ATTACHMENT A**

**Details of the Competition and Consumer (Price Monitoring—Domestic Air Passenger Transport) Direction 2023**

Section 1 – Name

Section 1 provides that the name of the Direction is the *Competition and Consumer (Price Monitoring—Domestic Air Passenger Transport) Direction 2023* (the Direction).

Section 2—Commencement

Section 2 provides that Parts 1 and 2 of the Direction commenced on the day after it was registered on the Federal Register of Legislation. Part 3 of the Direction commences on 1 January 2027.

Section 3—Authority

Section 3 provides that the Direction was made under the *Competition and Consumer Act 2010* (the Act).

Section 4—Definitions

Section 4 provides definitions of expressions used in the Direction.

The industry referred to in section 6 is defined by reference to the *Australian and New Zealand Standard Industrial Classification 2006* (ANZSIC) published by the Australian Bureau of Statistics (1292.0). ANZSIC is used as a standard means of classifying business units into industry sectors.

The references to ANZSIC in this instrument are to that document as it was revised and in force at the time the Direction commenced. At the time the Direction was registered, this document was freely available on the Australian Bureau of Statistics’ website (http://www.abs.gov.au).

Section 5—Object

Section 5 states the object of the Direction, which is to monitor prices, costs and profits relating to the supply of domestic air passenger transport services, and of related goods and services.

Section 6—Commission to monitor prices

Section 6 directs the ACCC to monitor prices, costs and profits relating to the supply of goods or services by persons in the air passenger transport service industry.

The ACCC is required to monitor prices, costs and profits for a period of three years, and to report to the Treasurer on the monitoring at least once every quarter, starting from the quarter ending on 31 March 2024.

This direction is given under subsection 95ZE(1) of the Act.

Section 7—Direction to give special consideration to specified matters

Section 7 directs the ACCC to give special consideration to monitoring the prices, costs and profits relating to the supply of domestic air passenger transport services, and of related goods and services, when exercising its powers and performing its functions under the Act as required by the direction in section 6. Section 7 also directs the ACCC to give special consideration to the object of the Direction.

The direction in section 7 is given because it is intended that the ACCC monitors domestic air passenger transport services, rather than both domestic and international services. If a service includes both a domestic flight and an international flight, that service will be treated as a domestic service for the purposes of the Direction, but only to the extent the service relates to the domestic flight.

This direction is given under subsection 95ZH(1) of the Act.

Section 8—Repeal

Section 8 states the Direction is automatically repealed on 1 January 2027.

**ATTACHMENT B**

### Statement of Compatibility with Human Rights

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

### Competition and Consumer (Price Monitoring—Domestic Air Passenger Transport) 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

Subsection 95ZE(1) of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may give the Australian Competition and Consumer Commission (ACCC) a written direction to monitor prices, costs and profits relating to the supply of goods or services by persons in an industry, and to give the Minister reports on the monitoring.

The *Competition and Consumer (Price Monitoring—Domestic Air Passenger Transport) Direction 2023* (the Direction) is a direction to the ACCC to monitor prices, costs and profits relating to the supply of goods or services by persons in the air passenger transport services industry. The Direction requires the ACCC to give special consideration to monitoring the supply of domestic air passenger transport services, and related goods and services.

The Direction requires the ACCC to monitor prices, costs and profits for a period of three years, and to report to the Treasurer at least once every quarter on the monitoring during that period.

### Human rights implications

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

### Conclusion

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