

World Tourism Organization Statutes

Introduction

- 2.1 This chapter examines the proposal for Australia to withdraw from the *World Tourism Organization (WTO) Statutes*.
- 2.2 Under **Article 35** of the WTO Statutes, Australia may withdraw from the World Tourism Organization (WTO) on the expiry of one year's notice in writing to the Depositary Government (currently Spain).¹

Background

- 2.3 Australia became a Party to the WTO on 18 September 1979. It withdrew from the Agreement in 1990 and re-joined in 2004.²
- 2.4 The WTO came into operation in 1975 and became a special agency of the United Nations (UN) in 2003.³ It became known as the UNWTO to distinguish it from the World Trade Organization. The UNWTO is responsible for the 'promotion of responsible, sustainable and universally accessible tourism'. It is the leading international organisation in the field

1 National Interest Analysis [2015] ATNIA 4 with attachment on consultation *World Tourism Organization (WTO) Statutes*, done at Mexico City on 27 September 1970 [1979] ATS 15 (hereafter referred to as 'NIA'), para 1.

2 NIA, para 3.

3 World Tourism Organization UNWTO, 'History', <<http://www2.unwto.org/content/history-0>>, accessed 14 April 2015.

of tourism and 'promotes tourism as a driver of economic growth, inclusive development and environmental sustainability'.⁴

- 2.5 The current membership of the UNWTO includes 156 countries, 6 Associate Members and over 400 Affiliate Members.⁵
- 2.6 Australian tourism industry organisations and associations consider the leadership and coordinating role of the UNWTO as extremely important to the ongoing development of the Australian tourism industry:
- The UNWTO is the only world forum providing the specialization and the research basis for the development of international efforts, policies and opportunities for the world wide development of tourism and the opportunity to undertake dialog with both source and competitor countries.⁶
- 2.7 The tourism industry is one of Australia's five super growth industries, contributing \$91 billion (\$42 billion directly, \$48 billion indirectly) to Australia's GDP in 2012-13. The industry employed approximately 543 600 people directly and a further 385 400 indirectly during that period.⁷

Overview and national interest summary

- 2.8 According to the NIA, Australia's proposed withdrawal from the UNWTO has been prompted by renewed questions about the benefits of membership to Australia in recent years. The NIA claims the proposed withdrawal follows a comprehensive review in consultation with key industry stakeholders.⁸
- 2.9 The NIA identifies the following factors as a disincentive to Australia's continued membership of the UNWTO:
- the UNWTO has not given priority to Australian interests as would be expected given Australia's financial contribution;
 - membership fees have increased ninety-two per cent in the decade since 2004.⁹

4 World Tourism Organization UNWTO, 'Who we are', <<http://www2.unwto.org/content/who-we-are-0>>, accessed 14 April 2015.

5 World Tourism Organization UNWTO, 'Who we are', <<http://www2.unwto.org/content/who-we-are-0>>, accessed 14 April 2015.

6 Mr John King OAM, *Submission 1*, p. 3.

7 Tourism Research Australia, 'State of the Industry 2014', pp. 1, 5 and 6. In its report *Position for prosperity? Catching the next wave*, Deloitte identified five super growth industries that are expected to add \$250 billion to the Australian economy over the next 20 years: agribusiness, gas, tourism, international education and wealth management.

8 NIA, para 6.

9 NIA, para 6.

- 2.10 The NIA suggests that the cost of membership is high, the benefits of membership low and the return on Australia's investment minimal given the limited benefits to the Australian tourism industry and the Australian Government.¹⁰
- 2.11 The Committee queried if the broader implications of Australia's withdrawal from the UNWTO had been examined, particularly with regard to any detrimental effect on developing nations. The Department of Foreign Affairs and Trade (DFAT) assured the Committee that this aspect of the issue had been considered during the review of Australia's membership of the organisation in relation to Australian aid generally and specifically aid for trade:
- ... we concluded and recommended to the government that there would be no development impact, at the same time we uncovered other opportunities that exist, particularly in services trades – aid for trade and the use of tourism as an accelerator of economic development.¹¹

Reasons for Australia to take the proposed treaty action

- 2.12 The NIA maintains that, while the UNWTO has emphasised the importance of Australia's membership, it has not given priority to Australian interests, as evidenced by its work program. The NIA emphasises that Australia has regularly completed biennial surveys for the UNWTO indicating its tourism needs and priorities but these have not influenced the organisation's work program.¹²
- 2.13 The NIA concedes that Australia's tourism priorities do not align with those of the majority of UNWTO Members.¹³ A significant proportion of the organisation's membership is from developing countries for which poverty alleviation, the United Nations Millennium Development Goals and sustainable development are core priorities. The NIA indicates that the UK, USA, New Zealand, Canada, Singapore, Ireland and Belgium have either not joined or withdrawn from their membership of the

10 NIA, para 7.

11 Mr Paul Wojciechowski, Assistant Secretary, Economic Advocacy and Analysis Branch, Trade, Investment and Economic Diplomacy Division, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 11 May 2015, p.4.

12 NIA, para 9.

13 NIA, para 10.

- UNWTO due to budgetary considerations and the organisation's priorities.¹⁴
- 2.14 Membership fees have increased ninety-two per cent in the decade since Australia re-joined the UNWTO: from €160 911 (approximately AU\$263 537) in 2004 to €308 834 (approximately AU\$448 649 subject to currency fluctuations) for 2015. The NIA states that the significant cost of membership has limited Australia's current engagement to attending key meetings and receiving UNWTO publications and statistical data and responding to Member surveys.¹⁵
- 2.15 On the other hand, industry groups argue strongly that the perceived lack of value for money of the Australian membership of the UNWTO has been caused by the 'disconnect between the Government's UNWTO representation and the industry itself'.¹⁶ Industry claims that there has been 'almost no engagement with or involvement of the Australian tourism industry in the Government's representation role on UNWTO'.¹⁷ As a consequence there has been little or no exchange of information between the industry and the UNWTO.¹⁸
- 2.16 The Queensland Tourism Industry Council suggest that, considering the economic benefit of the industry to Australia, the cost of membership is 'well worth the value of the international exposure and policy development which UNWTO membership gives Australia'.¹⁹
- 2.17 The Australian Government has refocused its multilateral tourism engagement towards the APEC Tourism Working Group and the OECD Tourism Committee. The NIA suggests that these provide a better return on Australia's investment, include Australia's key tourism markets (India and China) and assist Australia to achieve its policy priorities and economic diplomacy objectives. The NIA adds that membership of these bodies also supports Australia's efforts to build strong bilateral tourism relationships with key tourism markets.²⁰
- 2.18 However, submitters to the inquiry suggest that neither the APEC nor OECD organisations provide a suitable alternative to membership of the UNWTO and contend that the two bodies have:
- no outcomes of relevance or value to the Australian tourism industry;

14 NIA, para 11.

15 NIA, para 12.

16 National Tourism Alliance, *Submission 2*, p. 2.

17 Mr King, *Submission 1*, p. 6.

18 Mr King, *Submission 1*, p. 5.

19 Queensland Tourism Industry Council, *Submission 3*, p. 3.

20 NIA, para 13.

- no research programs or capabilities of any relevance to the Australian tourism industry;
- no engagement, involvement or input with or by the Australian tourism industry;
- no benchmarking or relevant policy development, and made no efforts to eliminate trade impediments provided or successfully achieved for the Australian tourism industry; or
- no contribution to make or relevance to the achievement of the Tourism 2020 goals (the current Australian Government tourism policy).²¹

2.19 The Department of Foreign Affairs and Trade (DFAT) counter that Australia has a close relationship with APEC and that the APEC Tourism Working Group is actively promoting tourism in our region. In particular, DFAT argues that the Working Group's research program is aligned with the Government's current requirements:

It does research into topics of interest to Australia and its members. It is an organisation which we find is quite responsive to being tasked to do the kinds of things we are interested in. For example, we would like to get up a major proposal in APEC which focuses on labour and skills and labour mobility. These topics are at the heart of what the government is trying to achieve in the tourism sector in Australia.²²

2.20 In contrast to the focus of the UNWTO, DFAT see the OECD Tourism Committee as focused on the needs of the tourism industry in developed countries and therefore more likely to address the problems Australia's industry faces.²³

2.21 The NIA points out that Australia's withdrawal from the UNWTO does not preclude the Government from engaging with the organisation. Additionally, affiliate membership of the UNWTO is open to any public or private organisation, non-government or government organisation, education institution or entity involved in tourism-related activities. This means that Affiliate Members can join the UNWTO individually regardless of whether their country of origin is a Full Member or not.²⁴

2.22 The NIA offers assurance that Australia's withdrawal from the UNWTO will not reduce or eliminate access to its consultancies and project work for Australian Affiliate Members.²⁵ DFAT examined this issue and found

21 Mr King, *Submission 1*, p. 7.

22 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 2.

23 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 2.

24 NIA, para 17.

25 NIA, para 19.

evidence that member countries were not necessarily favoured in the competition for contracts with the UNWTO:

In fact, the UK picks up quite a number of consultancies with the UNWTO and it is not a member.²⁶

Reasons for Australia not to withdraw from the UNWTO

2.23 Submitters to the inquiry argue that continued membership of the UNWTO is essential if the industry is to maintain a cutting edge in an increasingly competitive field. They emphasise the disadvantages posed by Australia's geographical remoteness and the importance of being part of international forums:

Australia's location makes it physically remote from its major markets, its competitors and from trend drivers and information exchange forums.

...

It is therefore essential that to be both 'in tune' with and to influence, where possible, the trends and circumstances that shape the global tourism industry and its development, that Australia needs to work harder than most other countries to engage with the wider global industry and key forums.²⁷

2.24 DFAT emphasised that affiliate membership was available to anyone, that it was relatively inexpensive and that it provided the same opportunities to engage with UNWTO as Australia's membership:

If you feel in some way it enriches your engagements with the tourism industry, be it in terms of work you might get as a consultant or the value you might receive as an educational institutions, that is the way to go.²⁸

2.25 DFAT also suggested that if an organisation's research interests aligned with the UNWTO's projects, affiliate membership would provide the means to advance those interests.²⁹

26 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 4.

27 Mr King, *Submission 1*, p. 6. See also National Tourism Alliance, *submission 2*, p. 1 and Queensland Tourism Industry Council, *Submission 3*, p. 3.

28 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 3.

29 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, pp. 3–4.

Obligations

- 2.26 Under **Article 25** (Budget and Expenditure) of the WTO Statutes, Australia is obliged to financially contribute to the organisation. While there is no direct obligation to comply with the aims of the UNWTO, under the threat of suspension of membership placed by **Article 34** (Suspension of Membership) of the WTO Statutes, Australia is obliged to not 'persist in a policy that is contrary to the fundamental aim'. The fundamental aim of the UNWTO is stated in **Article 3**(Aims) as the 'promotion and development of tourism with a view to contributing to economic development, international understanding, peace, prosperity, and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.³⁰
- 2.27 Under **Article 32** (Legal Personality, Privileges and Immunities) of the WTO Statutes, Australia is required to provide the UNWTO with the privileges and immunities in the territory of Australia required for the exercise of its functions.³¹
- 2.28 Australia has given effect domestically to its obligations at international law under **Article 32** of the WTO Statutes, by including the UNWTO as an organisation that enjoys privileges and immunities under the *Specialized Agencies (Privileges and Immunities) Regulations 1986* (Specialised Agencies Regulations). The Specialised Agencies Regulations are enacted under the *International Organisations Privileges and Immunities Act (Cth)* (IOPI Act). The privileges and immunities available under the Regulations include inviolability of property assets and premises of the UNWTO, tax concessions, immunity from legal suit, and diplomatic privileges and immunities for the High Officer of the UNWTO.³²
- 2.29 Once Australia's withdrawal from the UNWTO takes effect, Australia will no longer have an obligation under **Article 32** of the WTO Statutes in relation to privileges and immunities. It is the intention of the IOPI Act that regulations made under the Act are supported by an international instrument (in this instance the WTO Statutes).³³ Therefore, as a matter of Australian domestic law, the Specialised Agencies (Privileges and Immunities) Regulation 1986 will be amended after the instrument of withdrawal is lodged.³⁴

30 NIA, para 20.

31 NIA, para 21.

32 NIA, para 22.

33 NIA, para 23.

34 Mr Wojciechowski, DFAT, *Committee Hansard*, 11 May 2015, p. 2.

- 2.30 Pursuant to **Article 35** (Withdrawal from Membership) of the WTO Statutes, Australia may withdraw from the UNWTO on the expiry of one year's notice in writing to the Depository Government. Pursuant to amendments to the WTO Statutes adopted by the General Assembly in 1981, the Depository Government changed from Switzerland to Spain. These amendments were effectively adopted by Australia when it re-joined the UNWTO in 2004 (although no separate treaty action was taken by Australia in respect of amendments to the WTO Statutes between 1979 and 1989). Notification in the form of an instrument of withdrawal will be lodged with the Spanish Government as Depository following the completion of tabling of Australia's proposed withdrawal from the UNWTO under the WTO Statutes, consideration by JSCOT, amendment of the Specialised Agencies Regulations and approval of the withdrawal by the Executive Council.³⁵
- 2.31 Under a 2005 amendment to **Article 5** of the WTO Statutes (not formally adopted by Australia) States that have withdrawn from the UNWTO in accordance with the provisions of **Article 35** have the right to become Full Members of the organisation again, without the requirement of a vote, on formally declaring that they adopt the WTO Statutes and accept the obligations of membership.³⁶
- 2.32 Should Australia wish to again re-join the UNWTO at some later date, any future treaty action would be subject to Australia's domestic treaty process, including tabling in both Houses of Parliament and consideration by JSCOT.³⁷

Implementation

- 2.33 Following completion of Australian domestic requirements for withdrawal from the UNWTO and amendment of the Specialised Agencies Regulations, an Instrument of withdrawal will be lodged with the Spanish Government, as the Depository of the WTO Statutes. In accordance with **Article 35** of the Statutes, Australia's withdrawal will take effect one year from the date of deposit. The Australian Government will honour its financial commitment to the UNWTO until this process is complete.³⁸

35 NIA, para 24.

36 NIA, para 32.

37 NIA, para 33.

38 NIA, para 26.

Costs

- 2.34 According to the NIA, Australia is required to pay Member contributions to the UNWTO for 2015, totalling €308 834 (ie approximately AU\$448 669). Under **Article 14** of the Annex to the WTO Statutes, for the period during which Australia remains a member, Australia will be required to pay a pro rata amount of the 2016 Member contribution for 2016 (€331 996 or approximately AU\$482 297). The amount will depend on when the Depositary Government is notified of Australia's withdrawal from the UNWTO and when the twelve month notification period ends.³⁹
- 2.35 On joining the UNWTO, a one-off payment of around five per cent of the initial annual membership fee, (ie €8 295 or approximately AU\$12 050.30) was made by Australia to the UNWTO's Working Capital Fund. Under the Financial Regulations and Rules of the UNWTO made pursuant to **Articles 11** and **18** of the WTO Statutes, this payment will be refunded after satisfaction of any financial obligation of a Member to the Organisation. Should Australia choose to request a refund of this amount, it could be considered a cost-saving.⁴⁰
- 2.36 The NIA states that there are no foreseeable costs, or cost savings, to business or industry.⁴¹ In addition it states that regulatory costs associated with this proposed treaty action, including administrative, substantive compliance and delay costs are limited to the cost of UNWTO fees during the one year withdrawal notification period under **Article 35** of the WTO Statutes.⁴²
- 2.37 DFAT emphasised that savings made in the past from similar exercises have been redirected towards tourism promotion. For example, Tourism Australia had contributed half of the membership fee up till the 2013–14 financial year (approximately \$215 000). However, since then that funding has been put directly into marketing:
- [Tourism Australia] promote Australia as a tourism destination around the world. The global tourism market is becoming more and more competitive, not less so, and we just feel that is a much better use of those funds for us – certainly investing in our key markets and promoting our great country.⁴³

39 NIA, para 27.

40 NIA, para 28.

41 NIA, para 29.

42 NIA, para 30.

43 Mr Tim Mahony, Executive General Manager, Corporate Affairs, Government and Industry, Tourism Australia, *Committee Hansard*, 11 May 2015, p. 5.

Conclusion

- 2.38 The Committee recognizes the important work of the UNWTO and its focus on promoting responsible, sustainable tourism particularly in developing countries.
- 2.39 The Committee acknowledges the concerns expressed by submitters to the inquiry regarding Australia's withdrawal from the UNWTO but the evidence suggests that affiliate membership is available to organisations and institutions and will provide equal access to the benefits of the UNWTO.
- 2.40 The Committee is aware that the decision can be reversed, as it has been in the past, if institutions or national priorities change.
- 2.41 The Committee supports the withdrawal of Australia from the UNWTO.

Recommendation 1

- 2.42 **The Committee supports the withdrawal of Australia from the *World Tourism Organization (WTO) Statutes*.**