

**National Interest Analysis [2017] ATNIA 26  
with attachment on consultation**

**Acts of the Universal Postal Union adopted by the 26<sup>th</sup> Congress:  
Ninth Additional Protocol to the Constitution, First Additional Protocol to the General  
Regulations, Convention and Final Protocol, and  
Postal Payment Services Agreement and Final Protocol**

(Istanbul, 6 October 2016)

**[2017] ATNIF 16**

## **NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY**

### **SUMMARY PAGE**

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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is the ratification of the amendments to the Constitution of the Universal Postal Union (the Constitution), the General Regulations, the Universal Postal Convention (the Convention), the Final Protocol to the Convention (the Final Protocol), and the Postal Payment Services Agreement and Final Protocol (PPSA). The Constitution and General Regulations are continuously in force and were amended by way of the Ninth Additional Protocol to the Constitution and First Additional Protocol to the General Regulations respectively. Technically the Convention, Final Protocol and PPSA are new instruments, as they are adopted afresh, with amendments, at each Congress of the Universal Postal Union (UPU).
2. These instruments were incorporated into the Acts of the UPU adopted by the 26<sup>th</sup> Congress of the UPU at Istanbul, Turkey on 6 October 2016 (the Acts). Australia signed the Acts, subject to ratification, on 6 October 2016. Australia now seeks to ratify the Acts, subject to consideration by the Joint Standing Committee on Treaties (JSCOT) and Federal Executive Council approval. Ratification would occur by deposit of an instrument of ratification with the Director General of the International Bureau (IB) of the UPU in accordance with Article 26 of the Constitution.
3. Article 25(3) of the Constitution states that the Constitution shall be ratified as soon as possible by signatory countries. Article 25(4) of the Constitution states that approval of the Acts, other than the Constitution, shall be governed by the constitutional regulations of each signatory country and Article 31(2) provides that they enter into force from the day fixed by the UPU Congress. The Acts enter into force generally on 1 January 2018. The Acts (incorporating the amendments agreed at the 26<sup>th</sup> Congress) will come into force for Australia on either the date provided in the instrument of ratification or 1 January 2018, whichever is the later date.

#### **Overview and national interest summary**

4. The UPU is a specialised agency of the United Nations with 192 member countries. The UPU is the primary forum for cooperation between postal sector players and provides the basis and rules for the exchange of international mail. Australia has been a UPU member since 1907.
5. The proposed ratification of the Acts will enable Australia to continue engaging in the international postal system at a multilateral level and leverage the effectiveness of the postal channel as a means of international communication and goods exchange. This will enable Australia to promote and safeguard its interests in the UPU and to continue to work to improve the international postal system, for the benefit of Australian consumers and Australia's designated postal operator, Australia Post.

## **Reasons for Australia to take the proposed treaty action**

6. The UPU is the key international agency responsible for formulating and setting the rules for the flow of international mail. It provides the basis for the reciprocal exchange of international mail and aims to foster the sustainable development of quality, universal, efficient and accessible postal services. The UPU provides information on international postal standards, technical systems, performance measures and service developments to the designated operators of member countries (Australia's designated operator is Australia Post). Participation in the UPU allows Australia and Australia Post to have input into the conduct of the UPU's affairs and the international policy, regulatory and operational frameworks governing the exchange of international mail.

7. Australia has routinely ratified the Acts of the UPU as adopted by Congresses. Most of the amendments adopted are developed by one or both of the UPU's governing bodies, the Council of Administration (CA) and the Postal Operations Council (POC). The CA consists of 41 member countries and ensures continuity of the UPU's work between Congresses, supervises its activities and studies regulatory, administrative, legislative and legal issues. The POC consists of 40 member countries and is responsible for operational, commercial, technical and economic issues concerning the postal service. Australia was a member of both bodies from 2012-2016 and was re-elected for a further four-year term at the 2016 Istanbul Congress.

8. Australia signed the treaties, subject to ratification, at the conclusion of the 2016 Congress. The revised Acts reflect incremental refinement and improvement of the regulatory framework and operational terms of the international postal system, and will deliver a net financial benefit to Australia Post over the next four years (2018-2021).

9. A decision not to ratify the Acts would reflect negatively on Australia's ongoing commitment to the UPU, particularly as a recently elected member of the CA and POC. It may also create uncertainty as to Australia's status regarding the Acts of the UPU and participation in the international mail system.

## **Obligations**

10. The UPU is governed by three treaty-level instruments which are binding on all members: the Constitution, the General Regulations and the Convention. The UPU may also establish other treaty-level agreements to regulate services other than those of letter-post and postal parcels between the countries that choose to become parties to them. The PPSA is one such agreement, to which Australia became a Party by acceding to the Acts of the UPU adopted by the 24<sup>th</sup> Congress, held in 2008. The Convention and PPSA are supplemented by Regulations (adopted and amended by the POC) that further detail and implement their terms.

### *The Constitution*

11. The Constitution contains the fundamental rules that provide the legal foundations of the UPU and remains in force indefinitely. Pursuant to Article 30, amendments to the Constitution are effected by means of an Additional Protocol adopted by a Congress. The Constitution was amended by the 26<sup>th</sup> Congress by way of the Ninth Additional Protocol to the Constitution of the UPU. Commentary on the substantive changes is set out below.

12. Articles 1 (Scope and objectives of the Union) and 1bis (Definitions) were amended as part of the work to modernise the UPU's products and services to meet changing customer needs and in recognition of the increasing significance of the exchange of parcels. The amendments: allow the Acts of the Union to further specify conditions relating to key terms; apply the single postal territory to 'postal items' (previously 'letter-post items'), thereby expanding coverage to parcels; include a definition for 'postal item'; and expand the definition of 'postal service' to include processing of postal items.

### *The General Regulations*

13. The General Regulations implement the Constitution and contain provisions for the operation of the UPU's main bodies, including with regard to composition, functions and meetings. The General Regulations remain in force indefinitely and amendments are effected by an Additional Protocol. The General Regulations were amended by the First Additional Protocol to the General Regulations at the 26<sup>th</sup> Congress. Commentary on the substantive changes is set out below.

14. Articles 103 (Functions of Congress), 113 (Functions of the POC) and 127 (Duties of the Director General) have all been amended to require the UPU bodies and Director General to develop a draft quadrennial business plan for approval by Congress. Article 113 was further amended to enable more rapid revision of Regulations between Congresses, by allowing the Regulations to be amended by the POC at all times, and not just 'in case of urgent necessity', subject to CA guidance.

15. Articles 106 (Composition and functioning of the CA) and 112 (Composition and functioning of the POC) have been amended to remove postal qualification requirements for representatives to UPU meetings, enhancing member country discretion to designate representatives.

16. Article 119 (Composition of the Consultative Committee) has been amended to allow the UPU Consultative Committee to include civil society organisations and high-level figures from the postal sector recommended by member countries or the UPU bodies concerned. The amended article further provides that if any of these organisations are registered, that registration must be in a UPU member country.

17. Article 130 (Preparation and distribution of documents of the Union Bodies) has been amended to improve efficiency by requiring that all meeting documents be available electronically at least two months before each session, with physical copies provided to members only by request.

18. New Article 138bis (Procedure for amending proposals submitted in accordance with article 138) imposes a two month deadline for proposing written amendments to proposals already submitted to Congress by the CA and POC, in recognition that member countries have had the opportunity to refine proposals through those bodies.

19. Article 140 (Consideration of proposals amending the Convention or the Agreements between Congresses) has been amended to reduce the time for member countries to comment on such proposals from two months to 45 days.

20. Article 142 (Amendment of the Regulations by the Postal Operations Council) has been amended to require a member country submitting a proposal to amend the Regulations to have the support of at least one other member country. This is to improve the quality and relevance of proposals to amend the Regulations.

21. Article 145 (Fixing of the expenditure of the union) has been updated so that if the 2020 Congress does not go ahead as planned the annual budget ceiling for the 2016-2020 cycle continues post 2020.

22. Article 146 (Regulation of member countries' contributions) has been amended to set out how the International Bureau is to communicate with member countries on UPU payments.

### *The Universal Postal Convention*

23. The Convention comprises the operational rules applicable to the international postal service. The Convention does not remain indefinitely in force. It expires and is approved afresh

by each Congress, taking effect on the date specified by Congress. The approval of the Convention by the 26<sup>th</sup> Congress therefore constitutes the creation of a new treaty, although the content is the Convention agreed to at the 25<sup>th</sup> Congress and already in force, as amended by changes agreed to at the 26<sup>th</sup> Congress. The 26<sup>th</sup> Congress adopted a recast of the Convention which restructured the Convention articles to modernise, streamline and update its terms. Commentary on the substantive changes is set out below.

24. Article 1 (Definitions) has been amended to provide specific definitions of ‘letter-post item’, ‘parcel-post item’, ‘EMS item’, ‘documents’, ‘goods’ and ‘inquiry’. These replace general definitions of ‘postal item’ and ‘parcel’ hence modernising the UPU’s products to better distinguish between letters and parcels. Many of the subsequent changes are consequential to the introduction of this new categorisation of international mail.

25. Article 2 (Designation of entities responsible for fulfilling Convention obligations) has been amended to require member countries to specify the scope of services and geographical coverage of any new designated operator notified to the UPU, and to notify the International Bureau preferably at least three months prior to the entry into force of the change.

26. Article 4 (Freedom of transit) has been amended to expand an exception to the freedom of transit principle. The right of member countries to refuse transit of items containing infectious or radioactive substances is extended from letters to postal items.

27. Article 5 (Alteration or correction of address and/or addressee) has been amended to allow the recipient’s name on an item to be amended or corrected while the article is in transit.

28. Article 6 (Postage stamps) has been amended to allow countries to request the use of the official abbreviation or initials of the country on their postage stamps.

29. Article 8 (Postal security) has been amended so that designated operators’ protective security strategy must include the objectives defined in the Regulations.

30. Articles 9 (Violations) and 19 (Items not admitted. Prohibitions) have been amended to clarify and align the terminology relating to dangerous goods, and to allow the Regulations to describe dangerous goods that can be carried by post. This enables the list of permissible dangerous goods to be updated more readily. Article 9 further clarifies the list of violations relating to production of counterfeit postal prepayment.

31. Article 10 (Processing of personal data) has a new paragraph to clarify that where consistent with national legislation, designated operators may electronically transmit personal data required to fulfil the service to the designated operators of transit or destination.

32. Article 12 (Posting abroad of letter-post items) deals with circumstances where a sender posts an item in a foreign country to obtain cheaper postage rates. It has been amended to remove the ability of designated operators in the destination country to claim additional payment from the sender. This is because the designated operator of destination has no contractual relationship with the sender and the practice has instead been for additional payment to be sought from the designated operator of origin.

33. Article 13 (Use of UPU forms) provides that only designated operators can use UPU forms and documentation for the operation of postal services in accordance with the Acts of the Union. It further clarifies the requirements for their use in extraterritorial offices of exchange and international mail processing centres, noting that these operate subject to the national legislation or policy of the country or territory in which they are established.

34. Article 17 (Basic services) has been amended consistent with the changes to Article 1 to differentiate between letter-post items containing goods and those containing documents. The amended article further provides that letter-post items will be classified on the basis of the contents (documents or goods) and the speed of treatment. This is consistent with the increased market focus on parcels.

35. Article 18 (Supplementary services) has been amended to specify that items for the blind are not subject to storage charges. A further amendment provides that a designated operator may charge for delivery of international letter-post items outside of normal counter opening hours, if domestic items are subject to the same charge.

36. Article 19 (Items not admitted. Prohibitions) has been further amended to provide that a designated operator may remove and dispose of a prohibited article that is discovered in transit and send the remainder of the article on, with information about the disposal. It further provides that countries may develop agreements to admit dangerous goods provided their carriage is consistent with national and international transport rules and regulations.

37. Articles 22 (Liability of designated operators. Indemnities), 32 (Parcel post land and sea rates) and 35 (Authority of POC to fix charges and rates) have been amended to provide that the optional e-commerce product known as 'ECOMPRO parcels' is exempted from UPU rules relating to parcels remuneration and liability. This allows the optional ECOMPRO parcel service to operate according to the commercial requirements of each member country.

38. Articles 28 (Terminal dues. General provisions), 29 (Terminal dues. Provisions applicable to operators of countries in the target system) and 30 (Terminal dues. Provisions applicable to operators of countries in the transition system) have been amended to reflect the continuing development of the terminal dues system, which governs payments between postal operators for the delivery of international letter-post mail. The amendments specify the revised remuneration rates to apply for 2018-2021 for various postal items.

39. The terminal dues system has two subsystems: a more cost-based target system (which Australia is part of) and a transitional system created for developing countries. The goal is to progressively move all countries into the target system. The terminal dues rules have been amended so that from 2018 target system countries will apply separate pricing for letters and small packets, in recognition that the delivery of small packets involves higher costs and that the growth of e-commerce has substantially increased the volume of these items in the international postal system. The system also introduces new sub-categories of letter post items: small, large and bulky. This allows a more segmented approach to remuneration which better aligns remuneration to the costs incurred by the receiving designated operator. As a net importer of mail, it is in Australia's interest to have these sub-categories considered separately in the Acts allowing a closer alignment between remuneration and the designated operators' actual costs of delivering in various categories. The rates for letters will continue to be calculated on the basis of the domestic rates for a 20 gram small letter and a 175 gram large letter. There have been increases to the remuneration caps and floors for countries in the target system and rates for the mandatory registered service have also been increased. The amendments will increase the terminal dues payments to Australia Post for the delivery of inbound letter post mail including small packets.

40. Article 31 (Quality of Service Fund (QSF)) outlines the operation of the QSF, which provides funding to developing countries to improve their postal services and hence the global UPU supply chain. It is funded by mandatory contributions from all countries except those classified as the least developed. The amended article provides for the formation of a QSF common fund to improve the quality of service in countries who may not have benefited from current arrangements. The common fund will be funded by two sources: a one per cent increase

on the terminal dues paid by countries in the target system to countries that joined the target system in 2016; and existing QSF funds that have not been used within a specified period.

#### *The Postal Payment Services Agreement*

The PPSA is a treaty that provides the basis for a secure and accessible international postal payment service between designated operators. The PPSA remains in operation until the entry into force of the Acts adopted by the next Congress. The approval of the PPSA by the 26<sup>th</sup> Congress therefore constitutes the creation of a new treaty, although its content is merely the PPSA already in force, as amended by the 26<sup>th</sup> Congress. Australia Post does not currently offer services covered by the PPSA, however being a party to the PPSA provides Australia Post with the option to commence offering PPSA services.

41. The PPSA has been amended to: include the goal of fostering financial inclusion for citizens (preamble and Article 10); clarify requirements for governments to notify the IB of the designated operator responsible for providing PPSA services and the relevant government oversight body (Article 3); allow a designated operator to subcontract part of the postal payment services delivery network where this is consistent with national legislation (Article 5); streamline and refine the processes for account payments and the procedure for situations where the a money transfer involves a currency exchange (Article 10).

#### *Reservations to the Acts of the UPU*

42. Article 22(1) of the Constitution provides that the Constitution and General Regulations shall not be subject to reservations. Reservations may be made to the Convention or PPSA subject to the terms outlined in Article 39 of the Convention and Article 26 of the PPSA respectively. No reservations to the PPSA were lodged by Australia.

43. Australia made 15 reservations to the Convention which are recorded in the Final Protocol to the Convention. Of these, 13 renew existing reservations and two (below) add Australia to reservations lodged by other member countries:

- a) Article III(5) reserves the right of Australia to more fully recover the costs of delivering remail items (mail sent in a third country for the purpose of obtaining cheaper postage rates) rather than being limited to specified bulk mail rates that do not recover costs of delivery
- b) Article XI(2) reserves the right of Australia to collect a processing charge from customers for any items presented to customs authorities.

#### **Implementation**

44. The amendments to the Acts of the UPU can be implemented by Australia Post within current legislative authority by adjusting its internal systems and processes. No change to the *Australian Postal Corporation Act 1989* or related primary legislation is required.

45. The Australian Government's role in the UPU will not change as a result of the proposed treaty amendments and no action needs to be taken at State or Territory Government level as the Commonwealth has constitutional responsibility for postal services. Existing Commonwealth legislation incorporates relevant offences.

#### **Costs**

46. Article 21 of the UPU Constitution provides that member countries choose their contribution class upon joining the UPU and requires member countries to jointly bear the expenses of the UPU. Australia elected to contribute 20 units and provides CHF 0.87 million (approximately AUD 1.2 million) per annum, approximately 2.4 per cent of the total UPU budget of approximately CHF 37.2 million. This amount is paid by Australia Post.

47. In addition to Australia's contribution to UPU expenses, Australia Post incurs expenses for a range of mandatory and voluntary participatory activities. Such activities include for example the Telematics Cooperative, the EMS (Express Mail Services) Cooperative, the Direct Mail Advisory Board and fees for publications and English translation services. These expenses amount to around \$0.5 million per annum.

48. Australia Post has advised that the changes to terminal dues under articles 28, 29 and 30 of the Convention are expected to result in an annual increase in revenue of approximately AUD \$18 million by 2020. These figures are based on internal estimates and are subject to mail volume variations, currency fluctuations and changes in mail profiles.

### **Future treaty action**

49. Any treaty-status amendments arising from future UPU Congresses will be subject to the domestic treaty process, including consideration by JSCOT, before they enter into force for Australia.

50. Changes to the Constitution must be approved by two-thirds of the member states with a right to vote and will enter into force generally at the same time as the Acts.

51. Changes to the General Regulations shall be accepted if a majority of those represented at the Congress with the right to vote agree, provided that at least two-thirds of the members of the Union with a right to vote are present at the time of voting.

52. The Convention and the PPSA can be changed both at and between Congresses, as outlined in Article 38 of the Convention and Article 27 of the PPSA. Where the changes are submitted to a Congress, a change shall be adopted where the majority of members present and voting with a right to vote agree, provided that half the members represented at the Congress and having the right to vote are present at the time of voting. Proposals amending the Convention which are submitted between Congresses must obtain two thirds of the votes provided at least half of member countries which have the right to vote have voted. If the changes involve an interpretation of provisions, a majority of votes is required.

### **Withdrawal or denunciation**

53. Article 12 of the UPU Constitution provides for the voluntary withdrawal of any member country from the UPU. Withdrawal is effected by means of a denunciation of the Constitution given by the Government of the country concerned to the Director General of the IB of the UPU, and by him or her to the Governments of member countries. Withdrawal takes effect one year after the day on which the Director General receives the notice of denunciation. Withdrawal by Australia would be subject to the domestic treaty process, including tabling and consideration by JSCOT.

### **Contact details**

Post and ACMA Branch  
Market Reforms Division  
Department of Communications and the Arts



## ATTACHMENT ON CONSULTATION

### **Acts of the Universal Postal Union adopted by the 26<sup>th</sup> Congress: Constitution, Convention and Final Protocol, First Additional Protocol to the General Regulations and Postal Payment Services Agreement and Final Protocol,**

(Istanbul, 6 October 2016)

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## **CONSULTATION**

1. Prior to the 26<sup>th</sup> Universal Postal Congress, the Government consulted with Australia's designated operator, Australia Post. Australia Post was involved in the development of policy positions and was part of the Australian Delegation at Congress. As a consequence, Australia Post was involved directly with the processes which amended previously agreed provisions and/or adopted new provisions of the Acts of the UPU. Through such engagement Australia Post was well aware of any new obligations created by the treaty amendments and the implications for its business operations and its statutory service obligations.
2. States and Territories were advised of preparations for the 26<sup>th</sup> Congress through the Standing Committee on Treaties ahead of its meetings on 4 May 2016 and 2 November 2016.