
The Parliament of the Commonwealth of Australia
Joint Standing Committee on Treaties

Report 153

Treaties tabled on 16 June and 23 June 2015

Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations (Brussels, 22 April 2015)

Marrakesh Treaty to Facilitate Access to Published Works for People who are Blind, Visually Impaired or otherwise Print Disabled (Marrakesh, 27 June 2013)

Ratification of the Decisions of the 2012 Doha Congress: Universal Postal Union: General Regulations of the Universal Postal Union, Universal Postal Convention and Final Protocol to the Universal Postal Convention and Postal Payment Services Agreement, (Doha, 11 October 2012)

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament;
 - (ii) a Minister; or
 - (iii) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

CA	Council of Administration
COAG	Council of Australian Governments
DFAT	Department of Foreign Affairs and Trade
EU	European Union
GNI	Gross National Income
NIA	National Interest Analysis
POC	Postal Operations Council
PPSA	Postal Payment Services Agreement
RIS	Regulation Impact Statement
UN	United Nations
UPU	Universal Postal Union



List of recommendations

2 Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

Recommendation 1

The Committee supports the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* and recommends that binding treaty action be taken.

3 Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations

Recommendation 2

The Committee supports the *Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations* and recommends that binding treaty action be taken.

4 Ratification of the Decisions of the 2012 Doha Congress: Universal Postal Union: General Regulations of the Universal Postal Union, Universal Postal Convention, Final Protocol of the Universal Postal Convention and Postal Payment Services Agreement

Recommendation 3

The Committee supports the Ratification of the Decisions of the 2012 Doha Congress: *Universal Postal Union: General Regulations of the Universal Postal Union, Universal Postal Convention, Final Protocol of the Universal Postal Convention and Postal Payment Services Agreement* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of three treaty actions. Two treaty actions were tabled on 16 June 2015:
 - *The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*; and
 - *The Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations*.
- 1.2 The third treaty action was tabled on 23 June:
 - *Ratification of the Decisions of the 2012 Doha Congress: Universal Postal Union: General Regulations of the Universal Postal Union, Universal Postal Convention, Final Protocol of the Universal Postal Convention and Postal Payment Services Agreement*.
- 1.3 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in Parliament.
- 1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.5 Prior to tabling, major treaty actions are subject to a National Interest Analysis (NIA), prepared by the Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal

and State and Territory agencies, and with industry or non-government organisations.

- 1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties under consideration in this report did not require a RIS.
- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 A copy of the treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties.

Conduct of the Committee's review

- 1.9 The treaty actions reviewed in this report were advertised on the Committee's website from the dates of tabling. The Committee invited written submissions. The Committee also invited all State Premiers, Territory Chief Ministers and the Presiding Officers of each Parliament to lodge submissions.
- 1.10 The Committee held the following public hearings:
- In Canberra on Monday 10th August for the treaties tabled on 16 June 2015; and
 - In Canberra on Monday 17th August for the treaty tabled on 23 June 2015.
- 1.11 The transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaties' tabling date, 16 June 2015 or 23 June 2015.
- 1.12 A list of submissions received and their authors is at Appendix A.
- 1.13 A list of witnesses who appeared at the public hearing is at Appendix B.

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

Introduction

- 2.1 The *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* (the proposed Treaty) is intended to make books and other printed materials available in formats accessible to a person with a print disability, while balancing the commercial interests of the copyright holders.¹
- 2.2 The Attorney General's Department claims that there are 357,000 blind or visually impaired people in Australia. Only five per cent of print material is available in a format these people can access.²
- 2.3 According to the Department:
- The object of the Marrakesh treaty is simple: improving the availability of books in an accessible format so that they may be enjoyed by as many people as possible. It does so by removing unnecessary barriers to the supply of accessible format material.³

1 National Interest Analysis [2015] ATNIA 9, *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* [2014] ATNIF 15 (hereafter referred to as the NIA), paras 6 and 7.

2 Mr Andrew Walter, Assistant Secretary, Civil Law Division, Commercial and Administrative Law Branch, Attorney-General's Department, *Committee Hansard*, Canberra, 10 August 2015, p. 1.

3 Mr Walter, *Committee Hansard*, Canberra, 10 August 2015, p. 1.

- 2.4 The NIA states that the *Copyright Act 1968* in its present form is sufficient for Australia to already comply with the provisions of the proposed Treaty.⁴

Current Copyright Act provisions

- 2.5 The Copyright Act allows certain organisations to reproduce copyrighted works in a format accessible to a person with a print disability without the permission of the copyright owner. Organisations reproducing such works pay for their use. The mechanism by which this works is as follows.
- 2.6 Only organisations declared by the Attorney-General under section 10A of the Copyright Act can reproduce copyrighted works in a format accessible to a person with a print disability.
- 2.7 A print disability is defined in the Copyright Act as blindness, severely impaired eyesight, perceptual disability, or an inability to manipulate books or move eyes for reading.⁵
- 2.8 Declared organisations have a statutory licence that allows the reproduction and communication of literary and dramatic works in certain formats (including sound recording, braille, large print, photographic or electronic formats).⁶
- 2.9 Organisations undertaking this work are required to provide a remuneration notice to the relevant Australian copyright collecting society.⁷
- 2.10 A copyright collecting society functions as a clearing house for the collection and payment of royalties to the owners of copyrighted works.⁸ A remuneration notice is a notice provided by an organisation making use of copyrighted material. It includes advice on what the organisation will pay for the use of the copyrighted material, and also acts as a mechanism for advising copyright holders that their work has been used.⁹

4 NIA, para 24.

5 Section 10 of the *Copyright Act 1968*.

6 NIA, para 26.

7 NIA, para 26.

8 Arts Law Centre of Australia, *Copyright Collecting Societies*, <<http://www.artslaw.com.au/info-sheets/info-sheet/copyright-collecting-societies/>>, accessed 3 August 2015.

9 Section 135G of the *Copyright Act 1968*.

- 2.11 The organisations making use of copyrighted material are required to attribute the licenced copy of the work, and ensure the copy is used by a person with a print disability.¹⁰
- 2.12 Organisations may also make a copy of a work using a format not specified in their statutory licence using an exemption contained in section 200AB of the Copyright Act. Section 200AB permits an accessible format to be created for a person with a visual disability where no other provisions apply.¹¹
- 2.13 The export and import of accessible format works is permitted under the Copyright Act if the activity does not unreasonably prejudice the legitimate interests of the rights holders.¹²

The Treaty

- 2.14 The proposed Treaty will create an international framework similar to the national framework that exists in Australia. That is, it will allow exemptions to international copyright law so that organisations can reproduce and distribute copyrighted material in formats that are accessible to people with a print disability.¹³
- 2.15 Under the proposed Treaty, a copyrighted work is defined as a literary or artistic work within the meaning of the *Berne Convention of Literary and Artistic Works* that takes the form of text, notation, and related illustrations, whether published or made publically available.¹⁴
- 2.16 A format accessible to people with a print disability is defined as:
... a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability...¹⁵
- 2.17 The proposed Treaty defines a person with a print disability as a person who is:

10 NIA, para 26.

11 NIA, para 27.

12 NIA, para 27.

13 NIA, para 6.

14 NIA, para 13.

15 *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* [2014] ATNIF 15 (hereafter referred to as the proposed Agreement), Article 2(b).

- blind;
 - has a visual impairment or a perceptual or reading disability which means they are unable to read printed works and which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment; or
 - otherwise unable, through physical disability to hold a book or to focus or move the eyes to the extent that would normally be needed for reading.¹⁶
- 2.18 The proposed Treaty will require parties to include exemptions in their copyright laws to permit the reproduction of defined works by identified organisations for the use of people with a print disability. The works are to be produced in such a way that they are not changed, except in such a way as to permit their intended use. The works can only be produced on a not-for-profit basis and can only be used by people with a print disability.¹⁷
- 2.19 Parties to the proposed Treaty can declare an exemption so that reproduction can only occur if the material in the desired format cannot be purchased on commercially reasonable terms. The National Interest Analysis (NIA) indicates that the Australian Government intends to lodge such an exemption.¹⁸
- 2.20 According to the Attorney General's Department:
- ...What we are trying to avoid is closing off the commercial arrangements where this can occur.¹⁹
- 2.21 A similar commercially available test already exists under section 135ZP of the Copyright Act. Vision Australia, and the Australian Libraries Copyright Committee and the Australian Digital Alliance, note in their submissions that the commercially available test in the Copyright Act may be too prescriptive to comply with the proposed Treaty.²⁰
- 2.22 In particular, the submitters note that the Copyright Act test appears to prevent reproduction of a work in DAISY (structured audio) format if the work is available in spoken word form.²¹ The DAISY format includes

16 The proposed Agreement, Article 3.

17 NIA, para 14.

18 NIA, para 15.

19 Mr Walter, *Committee Hansard*, Canberra, 10 August 2015, p. 2.

20 Vision Australia, *Submission 10*, p 3 and the Australian Libraries Copyright Committee and the Australian Digital Alliance, *Submission 13*, p 3.

21 DAISY, or Digital Access Information System, is a digital talking book format that includes the ability to navigate a book using a table of contents, 'bookmark' the point at which you stop listening, and can store up to 50 hours of material.

helpful tools such as tables of content, section headings, and indexes. These are particularly useful for non-fiction works, where a lack of access to these tools would impair a person's ability to access the work with the same feasibility and comfort as people without a print disability.²²

2.23 In response, the Attorney General's Department advised:

...what a number of the submissions have highlighted is that those provisions are difficult and they are hard to work with. We think they are compliant with the treaty, but they are difficult for us to interpret, and we work with the act every day. The government has signalled its intention to actually spend a bit of time simplifying those arrangements. The point is that we think we are compliant, but we still think there is room for improvement.²³

2.24 The proposed Treaty permits organisations reproducing the copyrighted materials to provide them to people with a print disability in another country that is party to the Treaty.²⁴

2.25 Mr William Jolly provides an example of how this might be beneficial to Australians with a print disability:

In some fields of study audio books are very complex and therefore expensive to produce. My particular interest is modern physics and cosmology, a proper understanding of which needs knowledge of the underlying mathematical theory and analytic techniques. Many of the superior text and reference books are available to citizens of the United States, read by skilled narrators who can articulate the equations correctly and describe the diagrams clearly. But I am not an American citizen, so I cannot listen to these audio books...²⁵

2.26 The Australian Society of Authors expresses concern about how cross border exchange of copyrighted materials is implemented in each party. In particular, the Society is concerned that the definition of 'identified organisation' in the proposed Treaty is not sufficiently precise to prevent differing interpretations between parties.²⁶

2.27 In other words, organisations that would not be permitted to reproduce copyrighted works in Australia may be able to do so in other parties to the

22 Vision Australia, *Submission 10*, p 3 and the Australian Libraries Copyright Committee and the Australian Digital Alliance, *Submission 13*, p 3.

23 Mr Walter, *Committee Hansard*, Canberra, 10 August 2015, p. 3.

24 NIA, para 16.

25 Mr William Jolly, *Submission 14*, p 2.

26 Australian Society of Authors, *Submission 21*, p 2.

Treaty. The organisations will then be able to supply the works to Australians with a print disability. The Society is concerned that this would effectively circumvent Australian copyright law.²⁷

2.28 The Australian Society of Authors is also concerned about another aspect of cross border exchange. It states that copyright holders are not required to be notified or to authorise the production and export of copyright material where that production takes place in another party to the proposed Treaty.²⁸

2.29 In relation to this concern, the Attorney General's Department stated:

...the treaty allows us to use the current licensing system that we have in the act, which is set up to provide exactly that mechanism: to link rights holders through a licensing provision to the use of those provisions. I think that is a fairly broad interpretation of the act. I do not think how we give effect to it and how we will continue to give effect to it will lead to that disconnect.²⁹

2.30 A number of copyrighted works are protected by software, called technological protection measures, that prevents duplication. The proposed Treaty will permit organisations producing works for people with a print disability to circumvent technological protection measures.³⁰

2.31 The Australian Libraries Copyright Committee, and the Australian Digital Alliance and the Copyright Advisory Group of COAG, argue that the Copyright Act is not compliant with the technological protection measures obligations in the proposed Treaty.

2.32 The Copyright Advisory Group argues that the technological protection measures circumvention is not available to organisations making use of the section 200AB copyright exemption to produce material for people with a print disability.³¹

2.33 As an example, the Copyright Advisory Council notes that section 200AB is generally used by schools to content shift material for students with a print disability. School materials are increasingly being supplied with technological protection measures, preventing schools from content shifting those materials for students with a print disability.³²

27 Australian Society of Authors, *Submission 21*, p 2.

28 Australian Society of Authors, *Submission 21*, p 2.

29 Mr Walter, *Committee Hansard*, Canberra, 10 August 2015, p. 3.

30 The proposed Agreement, Article 7.

31 The Australian Libraries Copyright Committee and the Australian Digital Alliance, *Submission 13*, p 6, and the Copyright Advisory Group of COAG, *Submission 12*, pp 2-3.

32 The Australian Libraries Copyright Committee and the Australian Digital Alliance, *Submission 13*, p 6, and the Copyright Advisory Group of COAG, *Submission 12*, pp 2-3.

2.34 Further, organisations making use of their statutory licence to circumvent technological protection measures are constrained by a prohibition on supplying another person with a circumvention device. In other words, they cannot provide material to a person with a print disability if that material contains a mechanism to overcome technological protection measures.³³

2.35 In response to concerns about technological protection measures, the Attorney General's Department advised:

We have heard this concern and it is a matter that is being actively considered by the government at this time.³⁴

2.36 Further, the Attorney General's Department stated that all that would be needed to allow those who rely on section 200AB to overcome the prohibition on circumventing technological protection measures would be a regulation to that effect. The Department confirmed that the Australian Government was considering making such a regulation.³⁵

Legislative amendment

2.37 The Attorney General's Department pointed out that the Copyright Act will not need to be amended to implement the proposed Treaty, but that consultation with stakeholders following the signing of the proposed Treaty highlighted that there was room to streamline and simplify the existing disability framework in the Copyright Act.³⁶

2.38 There are two amendments foreshadowed in the NIA:

- the existing print disability statutory licence mechanism will be replaced by a print disability exemption; and
- the existing print disability mechanism for declaring organisations will be replaced by a fair dealing exemption for disability access. This is expected to provide faster access for individuals.³⁷

33 The Australian Libraries Copyright Committee and the Australian Digital Alliance, *Submission 13*, p 6, and the Copyright Advisory Group of COAG, *Submission 12*, p 3.

34 Mr Walter, *Committee Hansard*, Canberra, 10 August 2015, p. 2.

35 Mr Walter, *Committee Hansard*, Canberra, 10 August 2015, p. 3.

36 Mr Walter, *Committee Hansard*, Canberra, 10 August 2015, p. 1.

37 NIA, paras 31–33.

Conclusion

- 2.39 The Committee supports Australia's ratification of the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* and recommends that binding treaty action be taken.

Recommendation 1

- 2.40 **The Committee supports the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* and recommends that binding treaty action be taken.**

Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations

Introduction

- 3.1 The proposed treaty action is to bring into force the *Agreement between Australia and the European Union establishing a framework for the participation of Australia in European Union crisis management operations*. The Agreement was signed on 22 April 2015 and tabled in Parliament on 16 June 2015.

Background

- 3.2 Australia and the European Union (EU) have made concurrent contributions to peace-keeping and peace-building operations, reflecting the overlapping nature of international peace and security interests. Australia has an interest in being able to make timely contributions to crisis management operations undertaken by international partners.
- 3.3 Examples of Australia-EU cooperation in responding to international crises include participation in the Libya Contact group in 2011,¹ and more

¹ The first meeting of the Libya Contact Group was held on 13 April 2011 with the participation and representation of 21 countries and various organisations. The Contact Group on Libya would support and be a focal point of contact with the Libyan people, coordinate international policy and be a forum for discussion of humanitarian and post-conflict support. Source: UK Government, <https://www.gov.uk/government/news/libya-contact-group-chairs-statement>

recently, the deployment of an Australian Civilian Corps legal expert to the EU's maritime security capacity building mission for the Horn of Africa from September 2014, for an initial 12 months. The deployment reflects Australia's long-standing support for the development of maritime security in the Indian Ocean region, including counter-piracy and maritime governance. The deployment was effected through an exchange of letters between the EU and Australia.²

- 3.4 The Department of Foreign Affairs and Trade (DFAT) explained that EU crisis management operations are independent, and not carried out under United Nations (UN) auspices:

They are very similar in their mode of operation to UN peacekeeping and peace-building operations but they are undertaken in areas where, for whatever reason, the UN has decided not to undertake an operation on its own.

...

The majority of them are in Africa. They tend to be in regions where the EU sees itself as having a particular interest.³

Overview and national interest summary

- 3.5 EU crisis management operations may involve supporting military, police, judicial and customs reforms, peacebuilding, capacity building and post-conflict recovery in countries experiencing crisis situations. EU crisis management operations may facilitate agreements ending hostilities, ensure compliance with those agreements and help ensure the security of civilians, refugees, humanitarian workers and United Nations personnel. As at May 2015 the EU was responsible for 16 such operations including policing in Afghanistan, counter-piracy in Somalia and civilian security sector reform in Ukraine.⁴
- 3.6 The National Interest Analysis (NIA) states that the Agreement will provide a legal framework to facilitate a timely deployment of Australian personnel to EU-organised and led international crisis response operations.

2 National Interest Analysis [2015] ATNIA 8 with attachment on consultation *Agreement between Australia and the European Union establishing a framework for the participation of Australia in European crisis management operations*, done at Brussels on 22 April 2015 [2015] ATNIF 17 (hereafter referred to as NIA), paras 5 and 7.

3 Mr Paul Stephens, First Assistant Secretary, Europe Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 10 August 2015, p. 6.

4 NIA, para 4.

3.7 According to the NIA, the Agreement will remove the need for Australia and the EU to negotiate arrangements each time that Australia seeks to make a contribution to such operations.⁵ As well as making deployment faster, DFAT explained that:

Having the arrangements for Australia's participation in EU operations set out in the agreement gives Australia a clear understanding of all the elements that need to be taken into account before we make a decision to deploy to an EU-led operation. These elements include: the status of Australian personnel, such as chain of command and who they will be accountable to on a day-to-day basis; and financial requirements, including who would bear the costs of particular elements of the deployment.⁶

3.8 The NIA states that the Agreement does not oblige Australia to participate in or to remain in EU crisis management operations. This was affirmed by DFAT staff in public hearings.⁷ Any decision to participate – together with the nature and timing of the contribution and decisions to withdraw, in full or part – may be determined by Australia, on a case-by-case basis, at any time, in consultation with the EU.⁸

Reasons for Australia to take the proposed treaty action

3.9 The NIA advises that the Agreement would allow Australia to make further contributions to peacekeeping and crisis management operations around the world, especially for operations in which Australian participation would otherwise be difficult. This includes scenarios where there are no multinational operations or when the operations are in regions where Australia has minimal presence (e.g. Sub-Saharan Africa).

3.10 The NIA suggests that the Agreement will strengthen the Australia-EU bilateral relationship, and enhance broad-based cooperation on security and development matters.⁹

5 NIA, paras 3 and 6.

6 Mr Stephens, DFAT, *Committee Hansard*, 10 August 2015, p. 5.

7 Mr Stephens, DFAT, *Committee Hansard*, 10 August 2015, p. 6.

8 NIA, para 7.

9 NIA, para 9.

Obligations

- 3.11 Obligations only arise if Australia accepts an EU invitation to contribute to a specific crisis management operation. The obligations relate to:
- preparation of personnel for involvement in an EU crisis management operation **Article 5(2)**;
 - the place of Australian personnel within EU crisis management operations' chain of command **Articles 6 and 10**; and
 - privileges and immunities that will apply to Australian personnel (**Article 3**).¹⁰
- 3.12 In terms of the day-to-day management of the operation, Australia would have the same rights and obligations as any contributing EU Member State (**Article 10(4)**).¹¹
- 3.13 The proposed Agreement also obliges Australia to inform, in due time, relevant EU operation leaders of any change to its contribution to an EU crisis management operation (**Article 9(2)**).¹²
- 3.14 Under the proposed Agreement, where Australia decides to contribute to an EU crisis management operation, Australia is required to provide the EU with information on its proposed contribution, including information on the composition of any contingent of Australian personnel. Such personnel may include military forces, Australian Government employees and other persons engaged to work on behalf of Australia (**Article 1(3)**).¹³
- 3.15 Under **Articles 6(3) and 10(3)** of the proposed Agreement, Australia must seek to ensure that any Australian personnel who contribute to a civilian or military operation carry out their duties and conduct themselves in full conformity with the objectives of the operation, under the supervisory authority and direction of the Head of Mission or Operation Commander. Under **Article 2(1)**, Australia is also required to respect the terms of the Council of the EU Decision to conduct the operation and with any EU Council Decision extending the operation.¹⁴
- 3.16 Under **Article 3(5)** of the proposed Agreement, Australia is also responsible for responding to any claims linked to its participation in an EU crisis management operation, from or concerning any Australian personnel, in accordance with Australian law.¹⁵
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10 NIA, para 10.

11 NIA, para. 10.

12 NIA, para. 11.

13 NIA, para. 12.

14 NIA, para. 13.

15 NIA, para. 14.

Supervision and command

- 3.17 **Section II** of the proposed Agreement relates to civilian operations and **Section III** to military operations. While the effect of these sections is very similar, they differ in describing the chain of command. In particular, the leader of the operation is the Head of Mission for a civilian activity, and the Operation Commander for a military activity.¹⁶
- 3.18 Any personnel contributed to a military mission will remain under the full command of Australia, but under the operational command of the EU Operation Commander (**Article 10(1)-(2)**). Personnel contributed to a civilian operation will operate under the overall command of Australia (or in the case of military personnel, will operate under the overall command of Australia), but the Head of Mission exercises ‘supervisory authority’ (**Article 6 (1)-(2)**).¹⁷
- 3.19 Under **Articles 6(6) and 10(6)** of the proposed Agreement, Australia will be responsible for taking any action, including legal or disciplinary action, against any of its personnel in accordance with its laws, regulations and policies.¹⁸
- 3.20 DFAT staff confirmed that:
- under the terms of the proposed treaty, Australian personnel would be under the operational command of the leader of the mission but subject to Australian law ... and not subject to European legal processes or law.¹⁹

Status of personnel

- 3.21 Under **Article 3(1)** of the proposed Agreement, the status of Australian personnel contributed to an EU crisis management operation, including any privileges and immunities, will be governed by any agreement or arrangement on the status of the forces or mission concluded between the EU and the State(s) in which the operation is conducted.
- 3.22 If no such agreement or arrangement is concluded at the time Australia decides to participate in the EU operation, Australia will have the opportunity to examine the proposed draft agreement or arrangement prior to its conclusion (**Article 3(2)**).²⁰
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16 NIA, para. 15.

17 NIA, para. 16.

18 NIA, para. 17.

19 Mr Stephens, DFAT, *Committee Hansard*, 10 August 2015, p. 7.

20 NIA, para 18.

Implementation

- 3.23 The NIA states that no new Australian legislation or policy changes are required. Any arrangements that might be required to implement the Agreement (technical, logistic or administrative) would be negotiated on a case-by-case basis between the relevant EU and Australian authorities (**Article 13**).²¹

Costs

- 3.24 There are no fixed costs associated with the Agreement. DFAT confirmed that the Agreement would not place any requirements on Australia, such as maintaining a level of readiness or instituting an ongoing liaison officer position.²²
- 3.25 Costs will only be incurred if Australia accepts an EU invitation to participate in a crisis management operation. The costs will be borne by the relevant Australian Government agency that contributes personnel to the EU operation, or under other arrangements as appropriate.²³
- 3.26 Australia's contribution would include both the costs associated with deployment of Australian personnel, and a portion of the operation's operational budget. Australia's portion of the operational budget would be calculated as:
- ...the lower of: the proportion of Australia's Gross National Income (GNI) compared to the total GNI of all countries participating; or the proportion of the number of Australian personnel being contributed compared to the total number contributed to the operation.²⁴
- 3.27 There is also scope under the Agreement for the EU to exempt Australia from contributing to the costs of operation, if the EU decides that Australia's participation is providing a significant contribution.²⁵

21 NIA, para 19.

22 Mr Stephens, DFAT, *Committee Hansard*, 10 August 2015, p. 7.

23 NIA, para 24.

24 Department of Foreign Affairs and Trade, *Submission 26*, p.2.

25 Department of Foreign Affairs and Trade, *Submission 26*, p.2.

Conclusion

- 3.28 The Committee supports the *Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations* and recommends that binding treaty action be taken.

Recommendation 2

- 3.29 **The Committee supports the *Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations* and recommends that binding treaty action be taken.**

Ratification of the Decisions of the 2012 Doha Congress: Universal Postal Union: General Regulations of the Universal Postal Union, Universal Postal Convention, Final Protocol of the Universal Postal Convention and Postal Payment Services Agreement

Introduction

- 4.1 The Universal Postal Union (UPU) is a specialised agency of the United Nations. It provides the basis for the system of international mail by establishing a regime for the exchange of international post.¹
- 4.2 In addition, the UPU fulfils an advisory, mediation and liaison role and provides technical assistance. It establishes the rules for international mail exchanges and makes recommendations to stimulate growth in mail volumes and improve quality of service for customers.²
- 4.3 The UPU has 192 member countries. It is the primary forum for cooperation between postal sector participants and helps to ensure a

1 National Interest Analysis [2015] ATNIA 11, Ratification of the Decisions of the 2012 Doha Congress: *Universal Postal Union: General Regulations of the Universal Postal Union, Universal Postal Convention and Final Protocol of the Universal Postal Convention and Postal Payment Services Agreement*, (hereafter referred to as the NIA), para 5.

2 NIA, para 6.

universal network of up to date products and services.³ Australia has been a member of the UPU since 1907.⁴

- 4.4 Australia is currently a member of two governing bodies of the UPU; the Council of Administration and the Postal Operations Council.⁵ Participation in the UPU allows Australia and Australia Post to have input into the conduct of the UPU and the international policy, regulatory and operational frameworks governing the exchange of international mail.⁶

The proposed Treaty

- 4.5 The proposed Treaty concerns the ratification of the Decisions of the 25th UPU Congress, held in Doha in 2012, including amendments to the *Universal Postal Union General Regulations* (the General Regulations), the *Universal Postal Convention* (the Convention), and the *Final Protocol to the Convention* (Final Protocol) and the *Postal Payment Services Agreement* (PPSA).⁷
- 4.6 The General Regulations and the Convention are two of the three governing instruments of the UPU. (The third governing instrument is the UPU Constitution. It exists in perpetuity and was not amended at the 25th Congress.)⁸
- 4.7 The PPSA is one of a number of treaty level agreements which regulate services, other than those of letter post, between the states that are party to the agreements. The PPSA is the only instrument of this type amended at the 25th Congress.⁹
- 4.8 The Decisions of UPU Congresses are implemented through the legal systems of each party. The Decisions generally enter into force on a date fixed by the Congress. For the Acts of the 25th Congress, the date of entry into force was 1 January 2014. The Acts will come into force for Australia when the Australian Government advises the UPU of ratification.¹⁰

3 NIA, para 6.

4 NIA, para 5.

5 Dr Simon Pelling, First Assistant Secretary, Consumer and Content Division, Department of Communications, *Committee Hansard*, 17 August 2015, p. 2.

6 NIA, para 8.

7 NIA, para 1.

8 NIA, para 12.

9 NIA, para 12.

10 NIA, para 4.

- 4.9 In accordance with usual practice, Australia Post has been operating under the revised procedures in anticipation of ratification.¹¹ The ratification of the Acts will provide the basis for Australia to continue its active participation in the development of a more efficient and effective international postal service.¹²
- 4.10 Failure by Australia to ratify the Acts would affect the flow of international mail to and from Australia, as well as reflect negatively on Australia's commitment to the UPU.¹³

Specific amendments

General Regulations

- 4.11 The General Regulations implement the UPU Constitution and contain provisions for the operation of the organisation. They set out the rules regarding the composition, functioning and meetings of the major bodies of the UPU.
- 4.12 While the General Regulations are usually amended through an Additional Protocol, the 25th Congress recast the General Regulations as a whole, including amendments made at the Congress.¹⁴
- 4.13 The substantive changes included:
- inserting a new article establishing rules for the admission of observers to meetings of the Council of Administration (CA),¹⁵ Postal Operations Council (POC)¹⁶ and Congress, and sets out which observers may be allowed to participate;
 - amending the article covering the functions of the CA to align the UPU business plan with the available resources and the prioritisation process carried out by the Congress;

11 Dr Pelling, Department of Communications, *Committee Hansard*, 17 August 2015, p. 1.

12 NIA, para 7.

13 NIA, para 11.

14 NIA, para 14.

15 The CA consists of 41 member countries and meets to ensure continuity of the UPU's work between Congresses. The CA also supervises the activities of the UPU and studies regulatory, administrative, legislative and legal issues.

16 The POC consists of 40 member countries and is responsible for the operational, commercial, technical and economic questions concerning the postal service.

- amending the article concerning the preparation of documents for UPU bodies to allow the documents to be distributed over the internet;
- amending the article concerning the provision of information or advice by the UPU International Bureau to ensure the confidentiality and security of commercial data provided by parties to the UPU;
- inserting a new article allowing for the creation of user funded subsidiary bodies by the POC to enable it to undertake new operational, commercial and technical activities; and
- substantially overhauling the arbitration procedure.¹⁷

The Universal Postal Convention

4.14 The Convention contains the operational rules for international letter and parcel postal services. The Convention is renewed at each Congress to include new amendments.¹⁸

4.15 The substantive changes made at the 25th Congress included:

- inserting a definition of personal data;
- expanding the type of material for the blind exempt from postal charges from 'literature for the blind' to 'items for the blind'. Australia has lodged a reservation on this amendment specifying that Australia will only accept incoming international mail as items for the blind if those items are exempt from postal charges under its domestic service;
- requiring UPU parties to advise the organisation about the compatibility with mail processing machines of new materials or technology used in stamp manufacture. Australia has lodged a reservation in relation to this amendment that it will only process incompatible postage stamps after prior agreement with the relevant operator of origin ;
- amending the article related to postal security to require UPU parties to observe the security requirements defined in the UPU security standards;
- also amending the security article to require that parties apply security measures commensurate with the risks the measures address so that they do not hinder worldwide mail flows;
- inserting a new article establishing rules for the protection of personal data, which are generally similar to the personal privacy provisions extant in Australia;

17 NIA, paras 16-21.

18 NIA, para 22.

- inserting a new article introducing a classification system for letters based on their format, in addition to the usual classifications on size, speed of delivery, contents and weight;
- amending the supplementary services article to include a registration service for inbound registered letter post and, should an operator wish, a merchandise return service;
- inserting a requirement that the merchandise return service rates are to be calculated according to the Parcel Post Regulations provisions. Australia has lodged a reservation in relation to this insertion to permit Australia to apply rates calculated by other means, including under bilateral arrangements for merchandise return service rates;
- inserting a new article enabling the exchange of electronic postal services between operators who wish to provide this service;
- amending the article relating to prohibitions on items for postage to reflect the fact that the list of dangerous goods that are permitted to be posted is now contained in the Regulations to the Convention;
- also amending this article to permit the transport of live animals through the postal system where such transport is permitted by national legislation, in addition to where such transport is permitted by the postal regulations;
- amending the article related to customs controls to permit a postal service to clear items through customs in the name of the postal service, as well as in the name of the postal customer; and
- amending the article relating to the liability of an operator for damage to goods to remove 'moral damage' as one of the matters to be considered in determining liability.¹⁹

Postal Payment Services Agreement

4.16 The PPSA is one of a number of treaty level agreements administered by the UPU. It provides the basis for the international postal payment service, a service that facilitates the transfer of funds between national postal organisations to pay for international postal services.²⁰

4.17 Two significant amendments have been made to the PPSA across several of the PPSA's articles. The first is to allow cash on delivery money orders

¹⁹ NIA, paras 23-40.

²⁰ NIA, para 41.

to be used as an allowable postal payments service, and the second is to permit urgent money orders as an allowable postal payment service.²¹

Implementation and costs

- 4.18 No changes to legislation will be required should the proposed Treaty be ratified.²² No action needs to be taken at state or territory government level.²³
- 4.19 The amendments made by the Treaty are expected to result in additional income for Australia Post of an estimated \$12m per annum by 2016.²⁴

Conclusion

- 4.20 The Committee supports the Ratification of the Decisions of the 2012 Doha Congress: *Universal Postal Union: General Regulations of the Universal Postal Union, Universal Postal Convention, Final Protocol of the Universal Postal Convention and Postal Payment Services Agreement* and recommends that binding treaty action be taken.

Recommendation 3

- 4.21 **The Committee supports the Ratification of the Decisions of the 2012 Doha Congress: *Universal Postal Union: General Regulations of the Universal Postal Union, Universal Postal Convention, Final Protocol of the Universal Postal Convention and Postal Payment Services Agreement* and recommends that binding treaty action be taken.**

21 NIA, para 42.

22 NIA, para 46.

23 Dr Pelling, Department of Communications, *Committee Hansard*, 17 August 2015, p. 2.

24 NIA, para 48.

Mr Wyatt Roy MP
Chair



Appendix A - Submissions

Treaties tabled on 16 June 2015

- 1 Australian Human Rights Commission
- 2 Australian Cross Disability Alliance (ACDA)
- 3 Copyright Agency Limited
- 4 Australian Copyright Council
- 5 The Royal Society for the Blind
- 6 Australian Maritime Safety Authority
- 7 Department of Infrastructure and Regional Development
- 8 Blind Citizens Australia
- 9 National Disability Services
- 10 Vision Australia
- 11 Ms Robyn Gaile (This is an example of 2 form submissions with similar content)
- 12 Copyright Advisory Group, (COAG) Education Council
- 13 Australian Libraries Copyright Committee and Australian Digital Alliance
- 14 Mr William Jolley
- 15 Mr Greg Madson
- 16 Ms Erika Webb
- 17 Australian Blindness Forum
- 18 Pirate Party Australia
- 19 Griffin Press
- 20 Ms Coral Arnold
- 21 Australian Society of Authors
- 22 Ms Susan Thompson

- 23 Australian Publishers Association
- 24 ReadHowYouWant.com Pty Ltd and Accessible Publishing Systems
- 25 Vision 2020 Australia
- 26 Department of Foreign Affairs and Trade



Appendix B – Witnesses

Monday, 10 August 2015 – Canberra

Attorney-General's Department

Ms Kirsti Haipola, Principal Legal Officer, Civil Law Division, Commercial and Administrative Law Branch, Copyright Section

Ms Grace Stripeikis, Policy Officer, Civil Law Division, Commercial and Administrative Law Branch, Copyright Section.

Mr Andrew Walter, Assistant Secretary, Civil Law Division, Commercial and Administrative Law Branch

Department of Foreign Affairs and Trade

Mr David Mason, Executive Director, Treaties Secretariat, International Legal Branch

Mr Paul Stephens, Assistant Secretary, European Union and Western Europe Branch, Europe Division

Monday 17 August 2015 – Canberra

Australia Post

Mr Siva Somasundram, Head of International Regulatory Affairs

Department of Communications

Ms Melanie Conn, Assistant Director, Post Transformation

Dr Simon Pelling, First Assistant Secretary, Consumer and Content Division

Department of Foreign Affairs and Trade

Mr David Mason, Executive Director, Treaties Secretariat, International Legal Branch