

**National Interest Analysis [2023] ATNIA 4
with attachment on consultation**

**Acts of the Universal Postal Union adopted by the 27th Universal Postal Congress:
Eleventh Additional Protocol to the Constitution of the Universal Postal Union, Third
Additional Protocol to the General Regulations of the Universal Postal Union, the
Universal Postal Convention, the Final Protocol to the Universal Postal Convention,
the Postal Payment Services Agreement and the Final Protocol to the Postal Payment
Services Agreement**

(Abidjan, 26 August 2021)

[2023] ATNIF 4

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:
 - amendments to the Constitution of the Universal Postal Union (Constitution) and the General Regulations of the Universal Postal Union (General Regulations); and
 - a revised Universal Postal Convention (Convention), Final Protocol to the Convention (Final Protocol), Postal Payment Services Agreement (PPSA) and Final Protocol to the Postal Payment Services Agreement (Final Protocol to the PPSA).
2. The Constitution and General Regulations are continuously in force. Member countries at the 27th Universal Postal Congress (Abidjan Congress) agreed to amendments to both the Constitution and General Regulations by adopting additional protocols.
3. In accordance with former Article 31(2) of the Constitution, versions of the Universal Postal Convention, Final Protocol to the Convention, PPSA and Final Protocol to the PPSA (collectively, the Secondary Acts) previously adopted end upon the commencement of the versions adopted by the Abidjan Congress. At the 2nd Extraordinary Congress, 3rd Extraordinary Congress and the Abidjan Congress (collectively, the Istanbul cycle), member countries agreed to amendments to the Secondary Acts that are consolidated in the versions presented below. Following agreement by the Abidjan Congress, these Secondary Acts are now to be permanently in force.
4. These instruments were incorporated into the Acts of the Universal Postal Union (UPU) adopted by the Abidjan Congress in Cote D'Ivoire on 26 August 2021. Australia signed the Acts on 26 August 2021, subject to ratification. Ratification of the Acts is now sought, 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) in accordance with Article 25 of the Constitution.
5. The Acts entered into force between 1 January 2022 and 1 July 2022. They will come into force for Australia on the date provided for in the ratification instrument.

Overview and national interest summary

6. The UPU is a specialised agency of the United Nations with 192 member countries. The

UPU is the primary forum for international cooperation in the postal sector and provides the basis for the exchange of international mail. Australia has been a UPU member since 1907.

7. The UPU facilitates secure, safe and efficient cross-border postal exchange, which is critical to Australia's trade, national security and biosecurity interests. The proposed ratification of the Acts will reflect Australia's continual engagement 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. Ongoing participation in the UPU also enables Australia to promote and safeguard its interests in, and continue to improve, the international postal system for the benefit of Australian consumers, businesses, and Australia's designated postal operator, Australia Post.

Reasons for Australia to take the proposed treaty action

8. The Acts of the UPU provide the basis for the reciprocal exchange of international mail. Ongoing participation in the UPU allows Australia to have input into the conduct of the UPU and international policy, regulatory and operational frameworks governing these exchanges.

9. The Istanbul cycle saw a number of amendments to the Acts adopted relevant to Australia's interests. This included improving gender equality within the UPU, reforming the system of member country contributions, agreeing pathways for lifting restrictions imposed on some Small Island Developing States, establishing a permanent seat for Pacific Island countries on the UPU's two main Councils (as described in paragraph 11), and agreeing to a range of operational and remuneration adjustments.

10. A decision to ratify the Acts would provide a number of benefits for Australia. Article 12 of the Constitution (Accession of admission to the Union. Procedure) would improve the efficiency of UPU processes by allowing for postal ballots of member countries and procedural documents to be presented electronically, such as via email. Article 128 of the General Regulations (Duties of the Director General) would include gender equality principles within professional appointments by permitting gender balance within the secretariat, in addition to language and nationality, to be considered as a factor in recruitment decisions. Article 139 of the General Regulations (Procedure for submitting proposals to Congress) would improve the UPU's operational efficiency and allow for increased member engagement in developing proposals for future reform in the lead-up to Congress.

11. The majority of amendments adopted were developed by one or both of the UPU's Councils, the Council of Administration (CA) and the Postal Operations Council (POC). The CA consists of 41 member countries and supervises its activities and studies regulatory, administrative, legislative and legal issues. As of 2021, the POC consists of 48 member countries and is responsible for operational, commercial, technical and economic issues concerning the postal service. Australia was re-elected to the POC at the Abidjan Congress. Australia was ineligible to stand for the CA, having been a member for the two previous cycles (2012-2021), but will be eligible for election in the 2025-2029 cycle. Australia has routinely ratified the Acts of the UPU as adopted by Congresses.

12. While UPU Congresses are usually held quadrennially, the Abidjan Congress decided to hold an Extraordinary Congress (EC) in 2023 to discuss the opening up of the UPU operations, activities and governance to a wider set of stakeholders. Within each work cycle, ECs are becoming more frequent ways to resolve long-standing issues within the UPU. In the Istanbul cycle, two ECs were held: in 2018, which implemented a range of reforms to the UPU, and 2019, which resolved concerns around the international mail remuneration system (see below for further context). Amendments agreed at these ECs were readopted in 2021 as part of the

Abidjan Congress.

13. During the Istanbul cycle, the United States of America issued a notice of withdrawal from the UPU. The United States' action was in response to lack of progress reforming the system of 'terminal dues' (the remuneration rates paid by a sending designated operator to the receiving designated operator for letters and small packets). The system of terminal dues significantly disadvantaged net importing countries — like Australia — with Australia Post losing approximately \$81.9 million (2017-18 figures) annually under the system. At the 3rd Extraordinary Congress in Geneva in 2019, an agreement was negotiated that allowed the United States to declare its rates from 1 January 2020, with other countries, including Australia, to progressively move towards self-declared rates by 2025. This reform would allow Australia Post to move to recovering its costs for delivering inbound small packets in Australia. These amendments are outlined below in paragraphs 29-32.

Obligations

14. The UPU is governed by three treaty-level instruments that are binding on all member countries, including Australia: the Constitution, the General Regulations and the Convention. The UPU may also establish other treaty-level agreements to regulate other services offered by postal operators between the countries that choose to become parties to them. This includes the PPSA, to which Australia is a party. The Convention is supplemented by Regulations (adopted and amended by the POC) that further detail and implement their terms.

15. While the majority of the amendments relate to changes to the UPU's internal governance arrangements and therefore do not affect Australia's legal obligations, some amendments create or amend obligations on member countries, including Australia.

The Constitution

16. The Constitution contains the fundamental rules that provide the legal foundations of the UPU and remains in force indefinitely. Pursuant to Article 29, amendments to the Constitution are brought into effect by means of an Additional Protocol adopted by two-thirds of member countries having the right to vote. The Constitution was amended by way of the Eleventh Additional Protocol to the Constitution of the UPU.

17. The Preamble and articles 24, 25, 26 and 29 would be modified to better facilitate the adoption of the Acts within a member country's domestic law. This includes an amended obligation under Article 24 requiring that Acts of the UPU shall be ratified, accepted or approved as soon as possible by the signatory member countries, in accordance with their respective constitutional regulations. The amendments to definitions and operative provisions recognise that acceptance or approval of the Acts is equivalent to ratification to bring the Acts into effect in domestic law. This obligation would apply to Australia where there are changes to the Acts of the UPU, which will require Australia to act swiftly in adopting amendments of the Acts into domestic law. The approach adopted is consistent with the 1969 *Vienna Convention on the Law of Treaties*, to which Australia is a party. In practice, the *Australian Postal Corporation Act 1989* is drafted such that changes in the Acts of the UPU are unlikely to require amendments to domestic legislation.

18. Article 20 (Expenditure of the Union. Contributions of Member Countries) would facilitate amendments to the contributions system in the General Regulations (Paragraph 23 refers).

19. Article 29 (Amendment of the General Regulations, the Convention and the Agreements of the Union) would include a new obligation, that amendments to the General Regulations, the

Convention and the Agreements of the Union shall be ratified, approved, accepted or acceded to as soon as possible by member countries.

The General Regulations

20. 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 Third Additional Protocol to the General Regulations at the Abidjan Congress.

21. Amendments to Article 106 (Composition and functioning of the CA) and Article 112 (Composition and functioning of the POC) would reserve one elected seat within the CA and POC for Pacific Island member countries of the UPU to ensure Pacific representation in the UPU. While these amendments would not affect Australia's legal obligations, they would reduce the number of contested seats in the Southern Asia and Oceania region, including for Australia, in the POC and CA by one.

22. Article 141 (Consideration of proposals amending the Convention or the Agreements between Congresses) would allow for electronic submissions of proposals between Congresses. This includes an obligation to submit any documentation and observations arising from the procedure under that article by physical or secure electronic means and, in the case of member country submissions to the IB, be signed by a duly authorised representative of the governmental authority of the member country concerned. This obligation would allow Australia to vote electronically between Congresses, provided it is signed by a relevant member of the Australian Delegation.

23. Article 151 (Contribution classes) would eliminate the existing contribution classes and instead replace them with a scheme referencing the United Nations Scale of Assessments. This obligation would require Australia to choose its number of units on the basis of economic capacity while considering the United Nations Scale of Assessments, with special arrangements for Least Developed Countries and Small Island Developing States. Through the UPU's principle of solidarity, additional contributions by member countries collectively reduces the value of the contribution unit to ensure a more equitable distribution of the UPU's costs across the membership.

The Universal Postal Convention

24. The Convention comprises the operational rules applicable to the international postal system. Under previous Congresses, the Convention expired and was renewed by each successive Congress. The approval of the Convention by the Abidjan Congress therefore constitutes the creation of a new treaty. The new Convention would replace the Convention agreed by the 26th Congress (2016) as considered at [2011] ATNIA 26 and already in force, as amended by amendments that entered into force at various times during the Istanbul cycle. The 2021 Convention also adopted new decisions taken during the Abidjan Congress. Substantive changes from the Istanbul cycle and Abidjan Congress are listed below. The Abidjan Congress also adopted amendments to the Final Protocol to the Universal Postal Convention.

25. Article 41 of the Convention (Entry into force and duration of the Convention) would establish the permanence of the Convention. Remuneration provisions of the new Convention came into force on 1 January 2022. Other amendments to the Convention agreed at the Abidjan Congress came into force on 1 July 2022. Any future amendments to the Convention would now take the form of Additional Protocols.

26. Article 14 (Quality of service standards and targets) would update the text to ‘parcel-post items’ and create a new obligation for Australia’s designated operator Australia Post, to update (in addition to an existing obligation to publish) delivery standards and targets as specified in the Regulations, to provide consistent drafting across the Acts of the UPU.

27. Article 17 (Basic services) would create a special clause for items for the blind, up to 7 kilogrammes, as well as special bags for print media items up to 30 kilogrammes. Article 18 (Supplementary services) would clarify wording regarding cumbersome parcel services. Both articles were first amended during the 2nd Extraordinary Congress in 2018.

28. Article 19 (Items not admitted. Prohibitions) would ensure that member countries or designated operators which extend or amend their list of prohibited articles shall inform the IB of these changes to improve operational efficiencies. This obligation would apply to Australia should it wish to extend or amend its list of prohibited articles; Australia should notify the IB to ensure the relevant compendium is updated.

29. There are numerous amendments to the terminal dues system which sets the remuneration for letter-post items. Article 28 (Terminal dues. General provisions) would include an additional payment of 0.4 Special Drawing Rights (SDR) per tracked delivery service item, set supplementary payments for registered and insured items, authorise the POC to supplement remuneration and impose penalties regarding the provision of barcode identifiers, and enable regulations surrounding remuneration for returned undeliverable letter-post items.

30. The new terminal dues model provides for increased flexibility in setting remuneration rates for handling the delivery of some international mail items, rates that were previously fully set by the UPU. Article 29 (Terminal dues. Self-declaration of rates for bulky (E) and small packet (E) letter-post items), [article 28bis as originally agreed in 2019], provides guidance for a system of self-declared rates.

31. Designated operators would be able to notify the IB that they will apply self-declared rates measured per item and per kilogramme, expressed in local (receiving) currency or SDR, which would apply for bulky and small packet postal items for the following calendar year. In order to maintain an affordable system for least developed countries, this would not apply to these items when sent from countries in Group IV (‘the transitional system’) to countries in Groups I, II and III (‘the target system’), other than for high volume exchanges. The groups classify each country within the UPU remuneration system – Group I being the most industrialised countries, such as Australia, with Group IV being developing countries.

32. Further amendments to Article 29 would introduce a principle of reciprocity, so that a member country can self-declare rates against a member country that self-declares rates against them (currently, the United States). These amendments further clarify the outcome from the 2019 Extraordinary Congress.

33. Articles 30 (Terminal dues. Provisions applicable to mail flows between designated operators of countries in the target system) and 31 (Terminal Dues. Provisions applicable to mail flows to, from and between designated operators of countries in the transitional system) were also amended at the 3rd Extraordinary Congress to set the remuneration rates for bulky and small packet postal items until 2025. Remuneration rates were later set for all letter-post items until 2025 at the Abidjan Congress. As a result of these changes, member countries can self-declare their rates on a graduated scale from 2021 to 2025, subject to being above certain volumes.

34. Article 32 (Quality of Service Fund) would raise revenue for the quality of service fund by levying a 0.5 per cent rate payable by member countries within groups I, II and III for the benefit of countries in group IV. Australia Post has advised that additional costs for Australian postal users are not likely to arise from this change.

35. Article 35 (Provisions specific to the settlement of accounts and payments for international postal exchanges) would include a clause which obliges designated operators to make mutual payments to support access and provision of the universal postal framework.

36. Article 39 (Conditions for approval of proposals concerning the Convention and the Regulations) would eliminate a loophole that would allow a member country to simultaneously override existing reservation approval procedures and the obligation not to invoke national legislation as a reason to derogate from the provisions of the Acts of the UPU.

The Postal Payment Services Agreement

37. The PPSA is a treaty that provides the basis for a secure and accessible international postal payment service between designated operators. Under previous Congresses, the PPSA remained in operation until the entry into force of the Acts adopted by the next Congress. The approval of the PPSA by the Abidjan Congress therefore constitutes the creation of a new treaty. The new PPSA would replace the PSSA agreed by the 26th Congress (2016), as amended by amendments that entered into force at various times during the Istanbul cycle and decisions taken during the Abidjan Congress.

38. Australia does not currently offer services covered by the PPSA, however, being a party to the PPSA provides Australia with the option to commence offering PPSA services.

39. In accordance with Article 31 of the Constitution (see above), PPSA Article 29 would establish the permanence of the PPSA by enabling the Agreement to remain in force for an indefinite period. Future amendments to the PPSA will take the form of Additional Protocols.

40. New Article 5 (Exceptional provision of postal payment services by authorised wider postal sector players) would enable member countries to authorise wider postal sector players (WPSP) to participate in certain provisions of postal payment services, subject to national laws in both origin and destination member countries, and contains a number of obligations on member countries.

41. These include WPSP compliance with relevant provisions of the PPSA relating to postal payment services and any relevant UPU requirement for licensing arrangements and that member countries guarantee the continued fulfilment of their obligations under the PPSA. Other obligations include that any authorisation formally granted by a member country to a WPSP shall be limited in time and without prejudice to the possibility for the member country to revoke such an authorization should the relevant conditions no longer be met, and that member countries shall inform the IB of their policies with regard to postal payment orders transmitted through and/or received from WPSP.

42. Member states must also make any authorisations to WPSP conditional on a requirement that the WPSP consent that their activities relevant to the PPSA may be subject to periodic audits to be conducted by the IB. Article 6 (Operational functions) would enable accommodation of this inclusion of WPSP into the operations of the PPSA and provides additional oversight obligations on member countries.

Reservations to the Acts of the UPU

43. Article 21(1) and (2) of the Constitution provide that the Constitution and General Regulations shall not be subject to reservations. Reservations may be made to the Convention subject to the terms outlined in Article 39 of the Convention. Australia made 15 reservations to the Convention which are recorded in the Final Protocol to the Convention. All of these

renew existing reservations made in previous iterations of the Convention.

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, as UPU standards are built into the Act and are implemented by Australia Post.

45. The Australian Government's role in the UPU would 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 offences related to Australia's obligations to ensure the security of the postal system, such as offences related to the unauthorised opening of mail.

Costs

46. Article 21 of the UPU Constitution provides that member countries choose their contribution class and requires member countries to jointly bear the UPU's expenses. Australia contributes 20 units which for 2021 meant that Australia paid CHF 920,000 (approximately AUD 1.4 million) in contributions. This amount is paid by Australia Post. Following amendments to the system of contributions, Australia's membership contribution would remain at 20 units for the Abidjan Cycle, until the next Congress in Dubai in 2025. However, this amount is expected to slightly decrease as a result of increased voluntary contributions from a number of other member countries.

47. Article 145 (Fixing of the expenditure of the Union) of the General Regulations would raise the annual expenditure cap for the UPU to CHF 38,890,030 from 2022 to 2025. This would provide additional capacity for the UPU to repay debt through reduced operating expenses. Australia would not be impacted by this change as a result of reforms to the system of membership contributions to better align with the United Nations' Scale of Assessment.

48. 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, IT systems and fees for publications and English translation services. These expenses amount to around \$0.4 million per annum.

Future treaty action

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

50. In accordance with Article 28, changes to the Constitution must be approved by two-thirds of the member states with a right to vote and will enter into force on the date specified as decided by the same Congress (generally at the same time as the Acts). Amendments are ratified as soon as possible by member countries in accordance with procedures provided for in Article 25. Pursuant to Article 157, 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.

51. The Convention can be changed both at and between Congresses. 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.

52. Australia will participate in the Fourth Extraordinary Congress scheduled for October 2023.

Withdrawal or denunciation

53. Article 13 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

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ATTACHMENT ON CONSULTATION

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CONSULTATION

1. The Acts of the Universal Postal Union impose obligations on member countries and their designated operator or operators. Prior to and during the 3rd Extraordinary Congress (2019 EC) and 27th Congress, the Government worked closely with Australia's designated operator, Australia Post, on the development of policy and operational positions. Australia Post was an integral part of the Australian Delegation at Congress and actively participated in all negotiations. Through this engagement, Australia Post was consulted on all new obligations created by the treaty amendments.
2. The Departments of Prime Minister and Cabinet, Foreign Affairs and Trade, Attorney-General, Agriculture and Home Affairs were consulted as part of this process.
3. Prior to the 2019 EC, Australian Government officials also met with the Chief Executive Officer of USPS, and consulted significantly with international partners and other like-minded member countries.
4. States and Territories were advised of preparations for the 27th Congress through the Standing Committee on Treaties ahead of its meeting in February 2021.