

**National Interest Analysis [2023] ATNIA 3
with attachment on consultation**

**Acts of the Universal Postal Union adopted by the 2nd Extraordinary Congress:
Tenth Additional Protocol to the Constitution of the Universal Postal Union and
Second Additional Protocol to the General Regulations of the Universal Postal Union**

(Addis Ababa, 7 September 2018)

[2023] ATNIF 3

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 Australia's accession to amendments to the Constitution of the Universal Postal Union (Constitution) and the General Regulations of the Universal Postal Union (General Regulations). The Constitution and General Regulations are continuously in force. At the 2nd Extraordinary Congress of the UPU (2018 EC), member countries agreed to amendments by adopting additional protocols to both the Constitution and General Regulations.
2. These instruments were incorporated into the Acts of the UPU adopted by the 2018 EC at Addis Ababa, Ethiopia on 7 September 2018. It is proposed that Australia accede to the Acts, subject to consideration by the Joint Standing Committee on Treaties (JSCOT) and Federal Executive Council approval. Accession would occur by deposit of an instrument of accession with the Director General of the International Bureau of the UPU (IB) in accordance with what is now Article 25 [and was formerly Article 26] of the Constitution. For consistency, this NIA adopts the Article numbering that was adopted at the 27th Abidjan Congress and reflected in the latest consolidated version of the treaties. The original numbering as adopted in 2018 is reflected in square brackets where it differs.
3. The Acts entered into force generally on 1 July 2019. They will come into force for Australia on the date provided for in the instrument of accession.
4. At the 2018 EC, amendments were also made to the Universal Postal Convention (Convention) and the Final Protocol to the Convention (Final Protocol). The Convention was also amended at a 3rd Extraordinary Congress held in 2019. However, as the Convention was only in force until the 27th Congress of the UPU (Abidjan Congress), held in 2021, these have been replaced by a new Convention adopted at the 27th Congress. These amendments, as amended by the Abidjan Congress, are outlined in their current form through those Acts as documented at [2023] ATNIA 4.

Overview and national interest summary

5. The UPU is a specialised agency of the United Nations with 192 member countries. The UPU is the primary forum for international 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.

6. 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 accession to 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. Participation in the UPU also enables Australia to promote and safeguard its interests in the UPU and continue to work 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

7. A decision to accede to the Acts would ensure Australia's ongoing commitment to the UPU. It would provide clarity on Australia's obligations under the Acts of the UPU and ability to access the international postal system, and a more efficient UPU which also better supports Pacific Island countries' participation.

8. The UPU is the key international agency responsible for setting technical standards for international mail, and remuneration rates for some international mail products. 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 to have input into the conduct of the UPU and international policy, regulatory and operational frameworks governing the exchange of international mail.

9. Australia has routinely acceded to or ratified the Acts of the UPU as adopted by Congresses. The majority of amendments adopted by Congress 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 the UPU's activities and studies regulatory, administrative, legislative and legal issues. The POC consists of 48 member countries and is responsible for operational, commercial, technical and economic issues concerning the postal service. Australia is a long-standing member and active participant in both Councils, including during the most recent cycles. Australia was re-elected to the POC at the 27th Congress in 2021. 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.

10. Australia would benefit from a more efficient UPU that would result from amendments to improve internal governance arrangements. For example, amendments to Article 106 (Composition and functioning of the CA) would authorise the CA to establish taskforces to more efficiently study issues and develop proposals. In an effort to remove ambiguity, Article 107 (Functions of the CA) would add a clause to clarify that the CA shall be responsible for adopting its own rules of procedure, a position that was previously unclear. Article 104 (Rules of Procedure of Congresses) would clarify decision-making processes by including an extra clause that ensures that the Rules of Procedures of Congresses are uniform between regular quadrennial Congresses and any Extraordinary Congresses that may be held.

11. While UPU Congresses are usually held quadrennially, a decision was taken to hold an Extraordinary Congress between 2016 and 2020 to address issues of institutional reform and sustainable funding. At the 2018 EC, Australia supported improvements and amendments to the Acts, which are expected to result in the incremental refinement and improvement of the regulatory framework and operational terms of the international postal system, as well as

address membership inequalities for Small Island Developing States (SIDS) and Least Developed Countries (LDCs).

Obligations

12. 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 services other than those of letter-post items and postal parcels between the countries that choose to become parties to them. The Convention is supplemented by separate regulations (adopted and amended by the POC) that further detail and implement their terms.

13. While the majority of the amendments relate to changes to the UPU's internal governance arrangements and therefore would not affect Australia's legal obligations, one amendment to the Constitution and one amendment to the General Regulations would impact Australia's legal obligations. These are set out below.

The Constitution

14. The Constitution contains the fundamental rules that provide the legal foundations of the UPU and remains in force indefinitely. Pursuant to Article 29 [Article 30], 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 the 2018 EC by way of the Tenth Additional Protocol to the Constitution of the UPU.

15. Relevantly, Article 18 (Postal Operations Council) would be amended to include a requirement that 'Members of the Postal Operations Council shall carry out their functions in the name and in the interests of the Union'. This obligation would apply to Australia at any time that Australia is a member of the POC – including at present – and requires such members to act in that role in the interests of the UPU, rather than in their national interests. This amendment ensures consistency with the language used for the CA.

The General Regulations

16. 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. Pursuant to Article 29 of the Constitution [formerly Articles 156 and 158 of the General Regulations], amendments to the General Regulations are effected by means of an Additional Protocol adopted by a majority of Congress. The General Regulations were amended by the Second Additional Protocol to the General Regulations at the 2018 EC. While these amendments would not impose any legal obligations on Australia, one would increase Australia's financial contributions to the UPU.

17. Article 151 [Article 150] (Contribution classes) would include a range of new unit of contribution classes. This includes a 0.1 unit class 'reserved for countries which are recognised by the United Nations as Small Island Developing States with a population of under 200,000'. This class would allow SIDS and LDCs to better align their contributions with their economic capacity. The amendments would reduce the contributions paid by SIDS and LDCs and increase other countries' membership fees by around 1.3 per cent. As a result, Australia's contributions grew in 2020 to CHF 920,000 (approximately AUD 1.4 million) and remained at this level for 2021. This reform was furthered by the Abidjan Congress that abolished the listing of specific classes of contribution units in favour of a graduated scheme that seeks to align with the United Nations Scale of Assessments.

Implementation

18. The amendments to the Acts of the UPU require no legislative implementation, as they concern the UPU's internal governance arrangements or can be implemented through policy. No change to the *Australian Postal Corporation Act 1989* (the Act) or related primary legislation is required, as UPU standards are built into the Act and are implemented by Australia Post.

19. 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 relevant 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

20. Article 20 [Article 21] of the Constitution provides that member countries choose their contribution class and requires member countries jointly bear the UPU's expenses. For many decades, Australia has contributed 20 units, which for 2017-2019 meant Australia contributed CHF 870,520 (approximately AUD 1.3 million). As stated above, the changes to the contribution system by the 2018 EC, which reduce the contributions paid by SIDS and LDCs, increased other countries' membership fees by around 1.3 per cent. Australia's contributions grew in 2020 to CHF 920,000 (approximately AUD 1.4 million). It remained at this level for 2021. Australia Post pays this contribution.

Future treaty action

21. These amendments formed part of the work of the 26th UPU Congress cycle, which concluded with the Abidjan Congress held from 9-27 August 2021. Further amendments to the Convention were adopted at the Third Extraordinary Congress in 2019, with further amendments to the Constitution, General Regulations and Convention adopted at the Abidjan Congress to conclude the work cycle, both of which are outlined at [2023] ATNIA 4.

Withdrawal or denunciation

22. Article 13 [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

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 Communications Services and Consumer Division
 Department of Infrastructure, Transport, Regional Development, Communications and the Arts

ATTACHMENT ON CONSULTATION

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CONSULTATION

1. The Acts of the Universal Postal Union impose obligations on member countries and their designated operators. Prior to and during the 2nd Extraordinary 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, and Home Affairs were consulted as part of this process.
3. States and Territories were advised of preparations for the 2nd Extraordinary Congress through the Standing Committee on Treaties ahead of its meeting in July 2018.