

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Agreement on Mutual Recognition in Relation to Conformity Assessment, Certificates and Markings between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland**

*(London, 18 January, 2019)*

**[2019] ATNIA 3**

**[2019] ATNIF 3**

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

1. The proposed treaty action is the entry into force of the *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland* ('the Agreement') signed in London on 18 January 2019.
2. The Agreement will ensure that existing arrangements between Australia and the United Kingdom (UK) for mutual recognition of conformity assessments, certificates and markings – currently provided for under an existing agreement between Australia and the European Union<sup>1</sup> ('EC-Australia MRA') – continue to apply between Australia and the UK, post-Brexit.
3. Timing for the entry into force of the Agreement will depend on the terms of Brexit, which remain uncertain. The UK is set to leave the EU on 29 March 2019 (UK time). The current Withdrawal Agreement on the future EU-UK relationship proposes a Brexit transition period which would run from 29 March 2019 until 31 December 2020, possibly longer. During this transition period, the UK would remain bound by obligations stemming from EU-third country agreements as if it remained an EU Member State. Australia's treaties with the EU would continue to apply to the UK for the duration of this transition period, and the Australia-UK MRA would not enter into force until the transition period ends.
4. However, the Withdrawal Agreement has not been approved by the UK and EU Parliaments and a 'no-deal' scenario, whereby the UK leaves the EU without a Withdrawal Agreement or other measures in place, remains possible. In the event of a 'no-deal' Brexit, the Agreement will need to enter into force on the date the UK formally leaves the EU to avoid any legal gaps for Australia.

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<sup>1</sup>*Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia* including its Annex and Sectoral Annexes ([1999] ATS 2); *Agreement between Australia and the European Union amending the Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between Australia and the European Community* ([2013] ATS 2).

## **Overview and national interest summary**

5. The Agreement will ensure that the rights and obligations, provided for under the EC-Australia MRA, continue to operate between the UK and Australia, post-Brexit. The Agreement provides that the UK and Australia will continue to recognise the technical competence of each other's conformity assessment bodies (CABs) to test, inspect and certify products for compliance with each other's respective regulatory requirements. This means that Australian exporters can ensure their goods comply with the UK technical regulations before they depart Australia (as they do under the EC-Australia MRA), saving businesses time and money. UK exporters to Australia will benefit in the same way.

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

6. The UK is Australia's equal seventh largest two-way trading partner for goods and services, and ninth largest export market. The Agreement will provide continuity and certainty for Australian businesses and CABs who rely on mutual recognition arrangements, under the existing EC-Australia MRA, to facilitate their trade with the UK.
7. The Agreement will ensure that consistent rules remain in place for the following sectors: medicinal products to which good manufacturing practice (GMP) requirements apply (including veterinary medicinal products); medical devices; telecommunications terminal equipment; low voltage equipment; electromagnetic compatibility; machinery; pressure equipment; and automotive products.

## **Obligations**

8. Article 2 of the Agreement incorporates the rights and obligations provided for in the EC-Australia MRA (hereinafter referred to as 'incorporated' provisions), subject to some technical modifications provided for in this Agreement. The obligations provided for under the EC-Australia MRA are set out in the National Interest Analyses for that agreement<sup>2</sup> and its amending agreement.<sup>3</sup>
9. Article 6(1) of this Agreement confirms that CABs currently designated and recognised under the EC-Australia MRA, will continue to be recognised by the Parties under this Agreement, where those CABs are located in either Australia or the UK. As with the EC-Australia MRA, a safeguard mechanism will allow both Parties to withdraw designation from any CAB (incorporated Articles 6 and 12). Both Parties will also have the right to contest the technical competence of any CAB designated by the other Party, provided this is justified in an objective manner in writing (incorporated Article 8).
10. Under Article 6(2), attestations of conformity issued in accordance with the EC-Australia MRA, prior to the entry into force of this Agreement, will also continue to be recognised by the Parties under this Agreement, for the life of their validity, provided they were issued by CABs located in the territories of the Parties.

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<sup>2</sup> Available at: <http://www.austlii.edu.au/au/other/dfat/ATNIA/1998/20.html>

<sup>3</sup> [2012] ATNIF 7, available at: <http://www.austlii.edu.au/au/other/dfat/ATNIA/2012/7.html>

11. Article 4 provides that all references to EU laws and regulations in this Agreement will be read as references to the substance of those laws, as transposed into UK law at the time the UK leaves the EU or at the end of any Brexit transition period.
12. Under Article 7, transitional periods included in the EC-Australia MRA that have not yet ended will be recognised, along with any ongoing rights or obligations relating to transitional periods under the EC-Australia MRA that have already ended before the Agreement enters into force.
13. A Joint Committee will be established to ensure the Agreement functions effectively (Article 8, incorporated Article 12). Article 8(2) provides that any decisions adopted by the Joint Committee established under the EC-Australia MRA prior to the entry into force of this Agreement, will be deemed to have been adopted, where applicable to Australia and the UK. However, it will be open to the Joint Committee to make decisions which are different to, revoke or supersede such deemed decisions (Article 8(3)).
14. The incorporated Sectoral Annexes form the administrative arrangements for the implementation of the Agreement and have less-than-treaty status. These Sectoral Annexes outline the scope of products covered by the Agreement, the applicable legislative, regulatory and administrative requirements of each Party, the designating authorities of each Party and their respective procedures for designation. It is the intention of the Parties to consider appropriate updates to the Sectoral Annexes after the Agreement enters into force.

## **Implementation**

15. Australia will be able to give effect to its obligations under the Agreement within the existing legislative and regulatory framework. However, some future legislative or regulatory changes may be required, including if, post-Brexit, the UK adopts technical standards that substantially diverge from those it currently conforms to under EU laws and regulations.
16. State and Territory Governments are responsible for regulating the low voltage equipment, machinery and pressure equipment sectors covered by the Agreement. An Inter-Governmental Cooperation Agreement between the Commonwealth and the States and Territories signed in 1998 commits the States and Territories to mutual recognition.

## **Costs**

17. There will be minimal financial and regulatory costs associated with the Agreement, noting it replicates existing arrangements between Australia and the UK, under the EC-Australia MRA, in the bilateral UK-Australia context.
18. Administrative costs under the current EC-Australia MRA, including meetings of the Joint Committee, are covered within the normal appropriations for the Department of Industry, Innovation and Science, the lead implementing agency and Australian member of the Joint Committee. As per Article 8 of the Agreement, the same arrangements would be expected to apply to the Joint Committee formed to administer the Agreement.

19. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future treaty action**

20. The Agreement may be amended with the approval of each Party in writing, and would be subject to Australia's domestic treaty making requirements. Amendments would enter into force on a date the Parties mutually decide.

21. The eight incorporated Sectoral Annexes will continue to have less-than-treaty status, as they do under the EC-Australia MRA. Any changes to these Annexes would be a decision for the Joint Committee (comprised of Australian and UK representatives), in consultation with relevant government and industry bodies.

### **Termination**

22. Under incorporated Article 14(2) of the EC-Australia MRA, either Party may terminate the Agreement by giving the other Party six months' notice in writing.

### **Contact details**

Trade Facilitation Section  
Strategic Policy Division  
Department of Industry, Innovation and Science

## **ATTACHMENT ON CONSULTATION**

### **Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland**

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#### **CONSULTATION**

23. Consultation for the Agreement has focused on Australia's peak national standards and conformance technical infrastructure bodies. The States and Territories were closely involved in consultations for the EC-Australia MRA and its 2012 amendment, the substance of which will be carried across to the bilateral UK-Australia context under the new Agreement.
24. Australia's peak national standards and conformance technical infrastructure bodies were consulted during negotiations, including: Standards Australia, the National Association of Testing Authorities (NATA), the National Measurement Institute (NMI), and the Joint Accreditation System of Australia and New Zealand (JAS-ANZ).
25. No significant objections to the Agreement were raised during consultations. No major issues were expected to result from carrying the current arrangements under the EC-Australia MRA over into the bilateral UK-Australia context, particularly given our two countries' comparable legal structures and mature accreditation frameworks.