

National Interest Analysis [2010] ATNIA 13
with attachment on consultation

**Universal Postal Union: Eighth Additional Protocol to the Constitution of 10 July 1964,
as amended;
Convention, and Final Protocol; First Additional Protocol to the General Regulations and
the Postal Payment Services Agreement,
done at Geneva on 12 August 2008**

[2010] ATNIF 35

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**Universal Postal Union: Eighth Additional Protocol to the Constitution of 10 July 1964,
as amended;
Convention, and Final Protocol; First Additional Protocol to the General Regulations and
the Postal Payment Services Agreement,
done at Geneva on 12 August 2008
[2010] ATNIF 35**

Nature and timing of proposed action

1. The proposed binding treaty action is accession by Australia to the Eighth Additional Protocol to the Constitution of the Universal Postal Union (UPU), the amendments to the Universal Postal Convention (the Convention), the Final Protocol to the Convention, the First Additional Protocol to the General Regulations and to the Postal Payment Services Agreement (PPSA) of the UPU.
2. These instruments were incorporated into the Acts of the 24th Congress of the UPU at Geneva on 12 August 2008. Australia has elected to accede to the Acts, subject to consideration by the Joint Standing Committee on Treaties (JSCOT), by depositing an Instrument of Accession with the International Bureau of the UPU in accordance with Article IX of the Eighth Additional Protocol.
3. Article IX(1) of the Eighth Additional Protocol requires that member countries which have not signed this Protocol may accede to it at any time. Article IX(2) of the Eighth Additional Protocol requires that the Acts renewed by the 24th Congress be acceded to by member countries as soon as possible following conclusion of the Congress. Article 25(4) of the Constitution states that approval of the Acts, other than the Constitution, shall be governed by the constitutional regulations of each signatory country and Article 31(2) provides that the Acts enter into force as from the day fixed by Congress. The Acts came into force generally on 1 January 2010. They will come into force for Australia on the date provided in the Instrument of Accession.

Overview and national interest summary

4. The UPU is a specialised agency of the United Nations. It provides the basis for the exchange of international mail by establishing a single postal territory for the reciprocal exchange of international postal articles and helps to develop and maintain international postal services. Australia has been a member of the UPU since 1907.
5. With 191 member countries, the UPU is the primary forum for cooperation between postal-sector players and helps to ensure a truly universal network of up-to-date products and services. The UPU fulfils an advisory, mediating and liaison role and provides technical assistance where needed. It establishes the rules for international mail exchanges and makes recommendations to stimulate growth in mail volumes and improve quality of service for customers.
6. The proposed accession to the Acts of the UPU will provide the basis for Australia to participate actively in the development of a more efficient and effective international postal service.

Reasons for Australia to Take the Proposed Action

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

8. The primary governing bodies of the UPU are the Council of Administration (CA) and the Postal Operations Council (POC). The CA consists of 41 member countries and meets to ensure continuity of the UPU's work between Congresses, supervises its activities and studies regulatory, administrative, legislative and legal issues. Australia has been a member of the CA on numerous occasions in the past and has been recognised as an active member state. Australia will be eligible for re-election to the CA at the 25th Congress in 2012. The membership of the POC comprises elected designated (postal) operators of member countries.

9. The proposed accession to Acts of the 24th Congress will allow Australia to continue to participate in the international postal reform process directed to the ongoing development of a more efficient and effective international postal service.

10. Not taking this treaty action would reflect negatively on Australia's commitment to the UPU, especially as Australia has been a leading advocate for reform of the international postal system.

Obligations

11. The UPU is constituted by three treaty-level instruments which are binding on all members: the Constitution, the General Regulations and the Convention. The Constitution is the basic act of the UPU. It contains the fundamental rules that provide the legal foundation of the UPU. Pursuant to Article 33, the Constitution remains in force indefinitely. Pursuant to Article 30, amendments to the Constitution are effected by means of an Additional Protocol adopted by a Congress - the Eighth Additional Protocol (done at the 24th Congress) therefore amends the Constitution.

12. The General Regulations implement the Constitution and contain provisions for the operation of the UPU. They set out the rules regarding the composition, functioning and meetings of the major bodies of the UPU. The General Regulations also remain in force for an indefinite period and amendments are effected by an Additional Protocol. The amendments to the General Regulations adopted at the 24th Congress are contained in the First Additional Protocol to the General Regulations.

13. The Convention comprises the operational rules applicable throughout the international postal service and provisions concerning the letter post and parcel post services. Technically, the UPU Convention does not constitute a continuous Agreement remaining in force indefinitely, but only remains in operation until the next Congress, at which time the Congress approves the entire Convention, including any amendments, afresh. The approval of the Convention by the

24th Congress therefore constitutes the creation of a new treaty - although its content is merely the Convention agreed to at the 23rd Congress and already in force, as amended by the changes agreed to at the 24th Congress.

14. The UPU has also established a number of other treaty-level Agreements which regulate services other than those of letter-post between the countries that choose to become Parties to them. The PPSA is one such Agreement. Australia is not currently a Party to the PPSA. However, Australia will be able to become a Party to the PPSA by acceding to the Acts of the 24th Congress. The PPSA provides the basis for the implementation of a secure and accessible postal payment service adapted to the greatest number of users on the basis of systems enabling the interoperability of designated operators' networks. A more detailed explanation concerning the proposal for Australia to become a Party to the PPSA is at paragraphs 31 to 33 below.

Changes to the Constitution

15. The major change to the Constitution is the universal replacement of the term 'postal administration' with 'designated operator' and/or 'member country' in order to define more clearly the specific responsibilities of governments and designated operators in the provision of the universal postal service. The definition of 'designated operator' covers "any governmental or non-governmental entity officially designated by the member country to operate postal services and to fulfil the related obligations arising out of the Acts of the Union on its territory".

16. A definition of what constitutes a 'reservation' was also inserted at 'Article 1bis-Definitions' - to ensure a common interpretation by all stakeholders.

Changes to the General Regulations

17. The First Additional Protocol also replaces the term 'postal administration' with 'designated operator' and/or 'member country' throughout the General Regulations. The key substantive amendment in the First Additional Protocol is the insertion of a new Article 101bis in the General Regulations, which sets out the functions of the Congress. It also updates the functions of the CA and the POC and the duties of the Director-General, to include reference to their respective roles in the preparation of the four-yearly Union Strategy for consideration by the Congress and their contribution to the four-yearly report on the member countries' performance in respect of that Strategy. There are also a number of technical amendments relating to financial procedures.

18. The First Additional Protocol amends Article 135 of the General Regulations to provide that amendments to the General Regulations shall be the subject of an additional protocol and (unless Congress decides otherwise) will come into effect simultaneously with amendments to the Convention and Agreements and have the same duration.

Changes to the Universal Postal Convention and Final Protocol

19. Article 1 of the Convention has been amended to include a definition of 'designated operator' and apply the principles elaborated above in respect of the universal replacement of the term 'postal administration' with 'designated operator' and/or 'member country' in order to define more clearly the specific responsibilities of governments and designated operators in the provision of the universal postal service throughout the Convention and Final Protocol. The Article also introduces definitions for other terms to ensure common interpretations (including for 'parcel', 'small packet', 'misrouted mails' and 'missent items').

20. Article 8, which imposes obligations regarding character, purpose, subjects and designs of postage stamps and postal payment impressions and the protection of intellectual property rights, has been amended to underscore the notion of member state sovereignty in relation to issuance, administration and circulation of stamps.

21. Article 10 has been amended to revise the provisions relating to the environment and refocus the purpose of the Article to address directly the more contemporaneous issue of 'sustainable development'. The revised provisions provide clarification of member countries' responsibilities with regard to sustainable development and the need to engage strategies which focus on "environmental, social and economic action" across all aspects of postal operations. The amendments also seek to ensure the promotion of sustainable development awareness within the postal sector. Australia Post already has an environment management system and should be able to adapt its approach with little difficulty.

22. Article 14 has been amended to incorporate new cross-border interoperable 'Eproducts' and services and will serve to support postal operators in extending their trusted third Party role to the field of electronic postal services. The Article recognises that 'designated operators' may choose to enhance electronic mail by offering 'registered electronic mail'; which provides proof of sending and of delivery and a secure communication channel between authenticated users.

23. Article 15, which addresses prohibited mail items, has been expanded to provide that narcotics and psychotropic substances, as defined by the International Narcotics Control Board (INCB) or other illicit drugs which are prohibited in the country of destination are included within prohibitions, as are counterfeit and pirated articles, replica and inert explosive devices and military ordnance. While the INCB defines the types of substances under international control they do not adequately capture all of the illicit drugs or controlled substances which are prohibited in many UPU member countries, hence the need to refer to 'country of destination'. In relation to replica and inert explosive devices and military ordnance, the new provisions align the text of the UPU Regulations with those of the UN Sub-Committee of Experts on the Transport of Dangerous Goods, the International Civil Aviation Organisation (ICAO) Technical Instructions and the International Air Transport Association (IATA) Dangerous Goods Regulations.

24. Article 16, which addresses the admissibility of radioactive materials and infectious substances, has also been amended in order to ensure alignment between UPU Regulations and those of the UN Sub-Committee of Experts on the Transport of Dangerous Goods, the ICAO Technical Instructions and the IATA Dangerous Goods Regulations.

25. Article 17 provides that the acceptance of inquiries about the non-receipt of ordinary letter-post items will no longer be mandatory. The amendments to this Article provide that postal administrations remain bound to accept inquiries only in respect of parcels, registered, insured or recorded delivery items. Such inquiries are also required to be made by priority mail, Express Mail Service or by electronic means within a period of six months from the day after the day the item was posted.

26. Article 21, which addresses designated operator liability in relation to lost, totally or partially 'rifled', or totally or partially damaged postal items, has been expanded to provide for the refund of charges for unexplained non-delivery of parcels or registered or insured items. Such charges can include expenses occasioned by the return of the parcel from the country of destination. Additionally, reservations concerning the exceeding of deadlines for inquiries and indemnity payments are not permitted except in the event of bilateral agreement.

27. Article 26 of the Convention as agreed at Bucharest in 2004 - Reciprocity applicable to reservations concerning liability - has been deleted as a result of the changes made to Article 21.

28. Articles 27, 28 and 29, which address the matter of terminal dues, have been further amended to reflect the continuing development of the terminal dues system. Terminal dues are the dues which one national postal service provider collects from another for the delivery of its international letter-post mail (items up to 2kg in mass).

29. The current terminal dues system has two subsystems: a target system applicable to industrialised countries and a transition system intended for developing countries. The aim is to develop a country-specific terminal dues system before the end of the transition period in 2014. Ten new countries will join the target system in 2010 and a further 22 in 2012. Rates applying for both systems will increase marginally and a previous pricing anomaly which provided the basis for arbitrage has been removed. Based on 2009 volumes and mail characteristics but allowing for foreign exchange movements, the revised terminal dues rates will result in a net cost increase to Australia Post of approximately \$1.5 million in 2010 over 2009.

30. In line with changes to the provisions addressing terminal dues, changes have also been made to Article 30 - Quality of Service Fund (QSF). The QSF is a fund designed to help developing nations improve their postal infrastructure and quality of service.

Postal Payment Services Agreement

31. The UPU 24th Congress adopted the PPSA, which comprises one of the Acts of the 24th Congress and is only binding on member countries which become a Party to it (Article 22 of the Constitution and Article V(4) of the Eighth Additional Protocol). The PPSA establishes a multilateral framework to facilitate the exchange of money transfers between postal operators (including international funds transfers), especially electronically.

32. Australia Post has tested the revised technical elements of the funds transfer system embodied within the PPSA framework on a bilateral basis between Australia Post and China Post and the system has proved market competitive. However, before being granted access internationally, Australia must be a Party to the PPSA which it is not currently. Australia Post currently provides international funds transfers by way of its agency service for Western Union. However, access to the PPSA framework would increase the services Australia Post could provide and introduce an element of product competition. Accordingly, it is likely that any new postal funds transfer service offered internationally with other posts by way of the UPU service would be offered at different price points and service levels to that provided by the Western Union service. This is the case in France, where La Poste, which played a central role in the realisation of the new PPSA, offers both Western Union and postal international payment services.

33. Australia Post wishes to continue to exercise its power to supply funds transfer services in the international sphere and commends the accession of Australia to the Eighth Additional Protocol to the Constitution of the UPU as a member country of the PPSA. This will enable Australia Post to choose the most effective commercial means of fulfilling its funds transfer powers, allowing it to consider closely the use of UPU-based postal services alongside those of the private sector in meeting the needs of the Australian people and businesses for funds transfer services. It is also possible that the UPU application may provide a practical and economic solution to the transfer of domestic postal money orders to an electronic platform.

Reservations to the Acts of the Union

34. Article 22 of the Constitution provides that the Constitution and General Regulations shall not be subject to any form of reservation. Reservations may be made to the Convention, subject to Article 36, which includes the general principles of reciprocity in applying reservations and the scope of reservations. As a general rule, reservations must be applied on a reciprocal basis between the reserving country and other member countries.

35. The Final Protocol to the Convention incorporates reservations lodged by Australia and other UPU members. Australia's reservations include the following Articles: II(1) authorises Australia to collect postal charges other than those provided in the Regulations, when such charges are consistent with Australia's legislation; III(2) allows Australia to collect charges for special services which are applied to literature for the blind in Australia's internal service; XIII(1) reserves the right of Australia to impose a charge, equivalent to the cost of the work it incurs, on any designated operator which under the provisions of Article 26.4, sends items to Australia for disposal which were not originally dispatched as postal items in the country of origin; and XIII(3) allows Australia the option to limit the payment of delivery for letter-post items to the appropriate domestic tariff for equivalent items in the country of destination.

Implementation

36. The amendments to the Acts of the UPU can be implemented administratively by Australia Post. They will not require any change to the *Australian Postal Corporation Act 1989* or related primary legislation.

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

Costs

38. As required by Article 21(3) of the UPU Constitution, Australia provides approximately \$0.83 million per annum to the UPU regular budget which totals approximately \$38.1 million annually. This amount is paid by Australia Post.

39. In addition to Australia's mandatory contribution mentioned above, Australia Post incurs expenses for a range of mandatory and voluntary participatory activities within the framework of the UPU. Such activities include the Telematics Cooperative, the Express Mail Service Cooperative, the Direct Mail Advisory Board and fees for publications and English translation services. These expenses amount to around \$0.37 million per annum.

40. Under Article 3 of the Convention, Australia is obliged to provide a universal postal service to ensure all customers enjoy basic postal services to all points in Australia at affordable prices and that this service is provided on a viable basis. Australia Post, as the designated operator for meeting the obligations arising from the UPU Acts, already meets this obligation through its Community Service Obligation (CSO) pursuant to section 27 of the *Australian Postal Corporation Act 1989*. The cost of meeting the CSO is considered sustainable given the business structure of Australia Post.

41. Additional costs for the implementation of the new UPU Acts as from 1 January 2010 include: the introduction of new terminal dues system and price increases, the proposed changes

to the parcel inwards land rates, procedures for internal air conveyance charging and the reimposition of liability provisions for uninsured parcels. In total, these are expected to add some \$2 to 3 million to Australia Post's costs in 2010, an amount which Australia Post will be able to cover from existing sources of income.

Regulation Impact Statement

42. It has been determined that a Regulation Impact Statement is not required in relation to the proposed treaty action (Office of Best Practice Regulation reference ID9973).

Future Treaty Action

43. The UPU Congress meets every four years. Pursuant to Article 30 of the Constitution, proposals to change the Constitution must be approved by two thirds of the member states with a right to vote. Any such change will enter into force generally at the same time as the Acts that are renewed in the course of Congress, unless the Congress decides otherwise.

44. Pursuant to Article 133 of the General Regulations, proposals relating to the Regulations shall be accepted if a majority of those represented at Congress with the right to vote agree, provided that at least two thirds of the members of the UPU with a right to vote are present at the time of voting. Entry into force provisions can be determined by the same voting procedure.

45. 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 Congress and having the right to vote are present at the time of voting.

46. Article 35(3) of the Convention provides that to become effective 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. The entry into force provisions are determined by the same voting procedure. If a proposed amendment is incompatible with the domestic legislation of a member country it may declare by written declaration that an amendment is unacceptable within 90 days of notification of the amendment. Reservations are also allowed but only where absolutely necessary and only if these are not incompatible with the objects and purpose of the UPU.

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

Withdrawal or denunciation

48. 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 International Bureau 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.

49. Withdrawal by Australia would be subject to the domestic treaty process including tabling and consideration by JSCOT.

Contact Details

Postal Policy Section
Digital Economy Services Division
Department of Broadband, Communications and the Digital Economy.

ATTACHMENT ON CONSULTATION

**Universal Postal Union: Eighth Additional Protocol to the Constitution of 10 July 1964,
as amended;
Convention, and Final Protocol; First Additional Protocol to the General Regulations and
the Postal Payment Services Agreement,
done at Geneva on 12 August 2008
[2010] ATNIF 35**

CONSULTATION

50. Prior to Congress, the Government consulted both internally (with the Department of The Treasury; the Attorney-General's Department, the Australian Customs Service, the Department of Finance and Administration; the Australian Quarantine and Inspection Service; the Department of Foreign Affairs and Trade, the Australian Agency for International Development, the Department of Environment, Water, Heritage and the Arts, the Department of Infrastructure, Transport, Regional Development and Local Government, the Department of the Prime Minister and Cabinet and the Department of Families, Housing, Community Services and Indigenous Affairs) and externally with Australia Post and Major Mail Users of Australia Ltd.

51. Australia Post was involved in the development of policy positions and was part of the Australian Delegation at Congress. As a consequence, Australia Post was involved directly with those processes which amended previously agreed provisions and/or adopted new provisions of the Acts of the UPU. Through such engagement Australia Post was well aware of any new obligations created by the treaty making process and implications thereof in relation to its business operations overall as well as its statutory service obligations.

52. Consultation with other stakeholders was extensive and each agency received Congress documents and proposals. On consideration of this information no government departments or Major Mail Users of Australia Ltd had objections to the approach taken by the Australian delegation. Comments made by departments consulted were given due consideration in developing pertinent policy positions.

53. Given the Commonwealth's sole responsibility in this area, State and Territory consultation was not undertaken.