

**UNIVERSAL POSTAL UNION: SEVENTH ADDITIONAL PROTOCOL
TO THE CONSTITUTION OF 10 JULY 1964, AS AMENDED;
CONVENTION, AND FINAL PROTOCOL; GENERAL REGULATIONS,
DONE AT BUCHAREST ON 5 OCTOBER 2004**

[2005] ATNIF 14

Documents tabled on 29 November 2005

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NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

Summary Page

Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention, and Final Protocol; General Regulations, done at Bucharest on 5 October 2004

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Nature and timing of proposed action

1. The proposed binding treaty action is the ratification of the Seventh Additional Protocol to the Constitution of the Universal Postal Union. In addition, it is proposed that the amendments to the Universal Postal Convention (the Convention), the Final Protocol and the General Regulations of the Universal Postal Union be approved.
2. These instruments were incorporated into the Acts of the 23rd Congress of the Universal Postal Union (UPU) at Bucharest, signed by Australia, subject to ratification and approval, on 5 October 2004.
3. Article 30(2) of the Constitution requires that the amendments to the Constitution in the form of the Seventh Additional Protocol, be ratified as soon as possible. Article 25(4) 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 they enter into force as from the day fixed by Congress. The Acts will enter into force generally on 1 January 2006.
4. The Final Protocol to the Convention incorporates reservations lodged by Australia and other UPU members. Australia's reservations include the following articles: II(1) regarding the collection of postal charges other than those provided in the regulations; III(2) regarding the literature for blind exemption; XIII(1) imposing additional charges for the disposal of postal items and XIII(3) allowing Australia the option of limiting the payment of delivery for letter-post items to the appropriate domestic tariff of the Final Protocol to the Convention.
5. Australia reaffirmed its declaration made in Beijing in 1999 that: Australia will apply the Acts and other decisions adopted by this Congress in full compliance with its rights and obligations under the World Trade Organisation Agreement, and in particular the General Agreement on Trade in Services.

Overview and national interest summary

6. 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. The relationship for the single territory is set forth in the Acts of the UPU.
7. The proposed ratification will assist in embracing and developing a more efficient and effective international postal service.

Reasons for Australia to Take the Proposed Action

8. The UPU remains the key international agency responsible for the regulation of the flow of international mail. The UPU provides postal administrations (in Australia's case, Australia Post), with information regarding international postal standards, technical systems, performance measures and service developments. Participation in the UPU allows Australia and Australia Post to voice its opinion concerning the conduct of the UPU's affairs and the operation of international post.

9. Australia was elected to both of the governing bodies of the UPU at Bucharest, the Council of Administration (CA) and the Postal Operations Council (POC). The CA is the government representative body of the UPU. It ensures the continuity of the Union's work between Congresses, supervises Union activities and studies regulatory, administrative, legislative and legal issues of interest to the Union.

10. The POC is the technical and operational body of the UPU. The POC is concerned with the operational, economic and commercial aspects of all services and activities of the UPU. The POC also prepares and issues recommendations to member countries concerning standards for technological, operational or other processes within its competence where uniformity of practice is essential. The representative to the POC is appointed by Australia's designated postal administration, Australia Post.

11. The 2004 Amendments of the Acts of the UPU will allow postal reform to take place with a view to a more efficient and effective international postal service.

12. Not taking this treaty action would reflect negatively on Australia's commitment to the UPU, especially as Australia is a member of both the CA and POC.

Obligations

13. The treaty status documents of the UPU include the Constitution of the UPU (the basic Act of the Union), the General Regulations, the Convention and Additional Protocol and the Postal Payment Services Agreement and Regulations (this is an optional agreement which Australia has not signed and to which it is not a party). The Constitution contains the fundamental rules of the UPU, providing for its legal foundation and is binding on all members; the General Regulations comprise provisions which ensure the application of the Constitution and the day-to-day working of the UPU and is binding on all members; and the Convention comprises the rules applicable throughout the international postal service and provisions concerning the letter post and parcel post services and is binding on all member countries.

14. The Constitution is amended by Additional Protocols. The Seventh Additional Protocol (done at Bucharest) is the most recent amendment to the Constitution.

15. 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 meeting of the major bodies of the UPU. The General Regulations have been re-enacted as a whole by the UPU Congress every five years, although new provisions included in the General Regulations at the Bucharest Congress provide that the General Regulations may remain in force for an indefinite period. The General Regulations are binding on all member countries by virtue of Article 22(2) of the Constitution. Article 30(2) of the Constitution provides that these come into force without ratification.

16. Technically, the UPU Convention does not constitute a continuous agreement. Each UPU Congress (held every four years) agrees to a new version of the Convention and the previous version lapses when the new Convention comes into force.

Changes to the General Regulations

17. Article 31 of the Constitution and article 135 of the General Regulations provide for the General Regulations to be made permanent so they do not have to be renewed at each Congress. Changes to the General Regulations will in future be in the form of Additional Protocols, the same approach as used for the Constitution. These changes allow Congress, which meets only every four years, to focus on more important international postal issues and not be tied down with small regulatory issues.

18. Pursuant to articles 101 and 111 of the General Regulations, the 23rd Congress adopted a term of four years as the period between Congresses (previously five years).

Changes to the Universal Postal Convention and Final Protocol

19. Article 2 now requires member countries to inform the International Bureau of the UPU the name and address of the governmental body responsible for overseeing postal affairs and of the name and address of the operator officially designated to operate postal services and fulfil the obligations arising from the Acts. The Department of Communications, Information Technology and the Arts and Australia Post have already been notified to the International Bureau.

20. Article 8 has provided a revised article on postal stamps imposing obligations regarding character, purpose, subjects and designs of postage stamps and postal payment impressions, and also covering the protection of intellectual property rights.

21. Article 9 revises the provisions relating to postal security to enhance the confidence of the general public in the postal services and to provide for the exchange of information between member countries on maintaining the safe and secure transport of mail items. Australia Post has in place a proactive security strategy to ensure the safe and secure transfer of international mail and already meets this obligation.

22. Pursuant to article 10, all member countries shall now adopt and implement a proactive environment strategy at all levels of postal operations. Australia Post already has an environment management system and therefore already meets this obligation.

23. Article 13 now also requires an outward mandatory registration service for priority and airmail letter-post items with the exception of destinations for which there is no priority or airmail service. The registration service continues to be obligatory for all inbound letter-post items, priority/airmail and non-priority surface mail. All postal administrations are, however, required to admit incoming Advice of Delivery items.

24. Article 17 provides that the acceptance of inquiries about the non-receipt of ordinary letter-post items will no longer be mandatory. Postal administrations remain bound to accept inquiries only in respect of recorded delivery, registered and insured letter-post items, as well as ordinary and insured parcels.

25. Article 20 now requires postal administrations to establish delivery standards and targets for their inward letter-post items and parcels. Postal administrations of origin are required to

establish and publish end-to-end standards for priority and airmail letter-post items as well as for parcels, both priority/air and economy/surface.

26. Pursuant to article 23, senders are now liable for damage that prohibited articles sent through the post cause to other postal items. They are also liable for injuries caused to postal officials and damage to postal equipment.

27. Terminal dues are the payments made between UPU member countries to compensate for the delivery of international letter-post items in a destination country. Articles 28, 29 and 30 of the Convention establish a new transitional terminal dues system which 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.

28. Article 31 introduces an improved Quality of Service Fund (QSF). The QSF is a fund designed to help developing nations improve their postal infrastructure and quality of service. The new system ensures that the countries and territories most in need of funds receive them.

29. Article 34 provides that parcel post inward land rates shall be structured by a base rate per parcel and a base rate per kilogram laid down in the Parcel Post Regulations. The rates are laid down in the Parcel Post Regulations and the POC has been granted the authority to fix the rates and charges payable by postal administrations in accordance with conditions in the Parcel Post Regulations.

Reservations to the Acts of the Union

30. Article 22 of the Constitution provides that the Constitution and General Regulations shall not be subject to any form of reservation. In effect, the General Regulations and the Constitution shall remain binding on all UPU member nations.

31. Article 37 of the Convention introduces the general principles of reciprocity in applying reservations and the scope of reservations. As a general rule, reservations applied to one country will be applied on a reciprocal basis to other member countries.

32. 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 the legislation of their countries; III(2) allows Australia to collect the charges for special services which are applied to literature for blind in the internal service; XIII(1) reserves the right of Australia to impose a charge, equivalent to the cost of the work it incurs, on any administration which under the provisions of article 27.4, sends to it items for the disposal of postal items in the country of destination; and XIII(3) allowing 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.

33. Pursuant to article 21(10) of the Convention, Congress decided not to allow reservations concerning the basis of indemnity to postal administrations except on the basis of bilateral agreement. Congress also decided to delete existing reservations regarding liability in the Convention. This includes liability for terminal dues and internal air-conveyance dues. Australia currently applies an internal air-conveyance charge to incoming priority letter-post items from developing countries.

Implementation

34. The amendments to the Acts of the UPU can be implemented administratively by Australia Post as the present legislation is broad enough to allow Australia Post to do this. They will not require any change to the *Australian Postal Corporation Act 1989* or related primary legislation.

35. 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 through Australia Post has constitutional responsibility for postal services.

Costs

36. As required by Article 21(3) of the UPU Constitution, Australia provides approximately \$840,000 per annum to the UPU budget of approximately \$40 million. This amount is paid by Australia Post.

37. In addition to Australia's contribution to the UPU expenses by way of the mandatory contribution mentioned above, Australia Post incurs expenses for a range of mandatory and voluntary participatory activities for the Telematics Cooperative, the (Electronic Mailing Service) EMS Cooperative, the Direct Mail Advisory Board and fees for publications and English translation services. These expenses amount to around \$220,000 per annum.

38. Under Article 3 of the Convention, Australia is obliged to meet a universal service obligation (USO) to ensure all customers enjoy basic postal services to all points in their territory at affordable prices and that this service is provided on a viable basis. Australia Post, as the designated authority 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.

39. Additional costs for the implementation of the new UPU Acts as from 1 January 2006 include: the introduction of new terminal dues system and price increases, the proposed changes to procedures for internal air conveyance charging and the reimposition of liability provisions for uninsured parcels. In total, these are expected to add some \$AUD 2 to 3 million to Australia Post's costs in 2006, an amount which Australia Post will be able to cover from existing sources of income.

Regulation Impact Statement

A Regulation Impact Statement is attached.

Future Treaty Action

40. The UPU Congress meets every four years. Any treaty status amendments arising from future UPU Congress meetings will be subject to the domestic treaty process.

41. 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 at the same time as the Acts that are renewed in the course of Congress, unless the Congress decides otherwise.

42. 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 Union with a right to vote do so. Entry into force provisions can be determined by the same voting procedure.

43. Neither the General Regulations nor the Constitution will allow for reservations.

44. 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.

45. Where the proposals are submitted between Congresses, two thirds of the votes of those member countries who have a right to vote and did in fact do so is required. The entry into force provisions are determined by the same voting procedure. It is possible to declare that an amendment is unacceptable. Reservations are also allowable but only where absolutely necessary and only these are not incompatible with the objects and purpose of the Union.

Withdrawal or denunciation

46. 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.

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

Contact Details

Postal Policy Section
Telecommunications Division
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Consultation

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 Australian Customs Service; and the Department of Foreign Affairs and Trade) and externally with Australia Post and the Major Mail Users of Australia.

Australia Post was involved in the development of policy positions and was part of the Australian delegation at Congress. As a consequence, as an organisation it understood the new obligations created by the treaty and agreed to any amendments to the treaties of the UPU when the new articles were signed at Congress.

Consultation with other stakeholders was extensive, and each agency received Congress documents and proposals. On consideration of this information no government departments or the Major Mail Users of Australia had objections to the approach taken by the Australian delegation.

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

BACKGROUND INFORMATION

CURRENT STATUS LIST

Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention, and Final Protocol; General Regulations, done at Bucharest on 5 October 2004

As of 15 April 2005 no countries have ratified the 2004 Acts. Below is the list of Parties to the Universal Postal Union.

Afghanistan	Brazil	Czech Republic
Albania	Brunei Darussalam	Denmark
Algeria	Bulgaria	Djibouti
Angola	Burkina Faso	Dominica
Antigua and Barbuda	Burundi	Dominican Republic
Argentine Republic	Cambodia	Ecuador
Armenia	Cameroon	Egypt
Australia	Canada	El Salvador
Austria	Cape Verde	Equatorial Guinea
Azerbaijani Republic	Central African Republic	Eritrea
Bahamas	Chad	Estonia
Bahrain	Chile	Ethiopia
Bangladesh	China	Fiji
Barbados	Colombia	Finland
Belarus	Comoros	France
Belgium	Congo, Democratic Republic of the	Gabonese Republic
Belize	Congo, Republic of	Gambia
Benin	Costa Rica	Georgia
Bhutan	Cote d'Ivoire	Germany
Bolivia	Croatia	Ghana
Bosnia and Herzegovina	Cuba	Greece
Botswana	Cyprus	Grenada
		Guatemala

Guinea	Lesotho	Niger
Guinea-Bissau	Liberia	Nigeria
Guyana	Liechtenstein	Norway
Haiti	Lithuania	Oman
Honduras	Libya	Pakistan
Hungary	Luxembourg	Panama
Iceland	Madagascar	Papua New Guinea
India	Malawi	Paraguay
Indonesia	Malaysia	Peru
Iran	Maldives	Philippines
Iraq	Mali	Poland
Ireland	Malta	Portugal
Israel	Mauritania	Qatar
Italy	Mauritius	Romania
Jamaica	Mexico	Russian Federation
Japan	Micronesia	Rwandese Republic
Jordan	Moldova	Saint Christopher and Nevis
Kazakhstan	Monaco	Saint Lucia
Kenya	Mongolia	Saint Vincent and the Grenadines
Kiribati	Morocco	Samoa
Korea	Mozambique	San Marino
Korea, Democratic People's Republic of	Myanmar	Sao Tome and Principe
Kuwait	Namibia	Saudi Arabia
Kyrgyz Republic	Nauru	Senegal
Lao People's Democratic Republic	Nepal	Serbia and Montenegro
Latvia	Netherlands	Seychelles
Lebanon	Netherlands Antilles and Aruba	Sierra Leone
	New Zealand	
	Nicaragua	

Singapore	Uganda
Slovak Republic	Ukraine
Slovenia	United Arab Emirates
Solomon Islands	United Kingdom of Great Britain and Northern Ireland
Somali Democratic Republic	
South Africa	United States of America
Spain	
Sri Lanka	Uruguay
Sudan	Vanuatu
Suriname	Vatican City State
Swaziland	Venezuela
Sweden	Vietnam
Switzerland	Yemen
Syrian Arab Republic	Zambia
Tajikistan	Zimbabwe
Tanzania	
Thailand	
The Former Yugoslav Republic of Macedonia	
Timor Leste	
Togolese	
Tonga	
Trinidad and Tobago	
Tunisia	
Turkey	
Turkmenistan	
Tuvalu	