

**AMENDMENTS, ADOPTED ON 30 JUNE 2005, TO THE STATUTE OF
THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW OF
31 OCTOBER 1951**

[2005] ATNIF 25

Documents tabled on 29 November 2005

**National Interest Analysis [2005] ATNIA 22
with attachment on consultation**

**Text of the proposed treaty action
and Statute of the Hague Conference on Private International Law
incorporating the proposed amendments**

Background information: Current status list

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Amendments, adopted on 30 June 2005, to the Statute of the Hague Conference on Private International Law of 31 October 1951 [2005] ATNIF 25

Nature and timing of proposed treaty action

1. On 30 June 2005, the Twentieth Session of the Hague Conference on Private International Law adopted amendments to the *Statute of the Hague Conference on Private International Law* ([1973] ATS 29) (the Statute).
2. In accordance with Article 12 of the Statute, the Secretary General of the Hague Conference has requested that Member States notify the Permanent Bureau whether they approve the amendments before 1 April 2006. The approval of two-thirds of the present Member States (at least 44 Member States) is required before the amendments can enter into force. After 31 March 2005 and once 44 approvals are received, the Secretary General will draw up a *procès-verbal* specifying the Members that have signified approval and declaring that the amendments have entered into force.
3. Australia became a party to the Statute on 1 November 1973 without reservations or declarations. If Australia does not approve of the amendments but two-thirds of State Parties do approve, the amendments will still come into force for Australia.

Overview and national interest summary

4. The amendments to Article 2 of the Statute allow certain Regional Economic Integration Organisations (REIOs) which are constituted solely by sovereign States to seek membership of the Hague Conference. In order to be eligible to seek membership, the Member States of the REIO must have transferred to the REIO competence over a range of matters within the purview of the Hague Conference. It is in Australia's national interest to support the amendments relating to REIOs as they will facilitate productive negotiations at meetings of the Hague Conference when considering issues over which the REIO, rather than its individual Member States, has competence.
5. The amendments to Article 12 also include changes to the procedures for making future amendments to the Statute, to require adoption by consensus and to delay the entry into force of those changes for at least nine months from the date of their adoption. The amendments also include a range of procedural or consequential amendments to the Statute. In addition, the amendments to Article 15 provide that the English and French versions of the Statute will be equally authentic. Currently, the French version is the authentic version. These amended procedures are in Australia's national interest as they are more suited to Australia's treaty-making processes.
6. This is the first time that the Statute has been amended since it entered into force in 1955.

Reasons for Australia to take the proposed treaty action

7. The Statute entered into force on 15 July 1955. The Statute defines the objectives of the Hague Conference on Private International Law as being to work for the progressive unification of the rules of private international law. The goal of unification of those rules is to reduce the risks and uncertainties that result from the operation of different legal systems in situations with a trans-national dimension. This involves finding internationally agreed approaches to determine, for example, which country's courts should have jurisdiction in a particular matter, which laws should apply, the procedure for recognition and enforcement of judgments, and to establish agreed civil procedures in such areas as child protection and other family law matters.

Proposed changes to allow the admission of REIOs to membership of the Hague Conference

8. The proposed amendments to the Statute ensure that the admission of REIOs will not lead to additional voting or procedural rights (the principle of 'non-additionality') on matters within the REIO's competence. The amendments also make provision for a clear determination of the competencies of the REIO. The proposed Article 2A requires REIOs to provide a statement of their competencies when applying for membership (Article 2A(3)). Further, Articles 2A(4)-(6) introduce a presumption in favour of State competence and place responsibility for resolving disputes in relation to competence of REIOs on the REIO and its Member States.

9. The admission of REIOs will not result in an increase in membership contributions since the REIO will be required to cover additional administrative expenses arising out of its membership.

10. The EC is the only REIO seeking membership of the Hague Conference at this stage. The EC first requested admission in 2002, on the basis that external competence in relation to a number of matters covered by Hague Conventions was transferred by EC Member States to the EC as a result of the 1999 Treaty of Amsterdam.

11. Since 2002, the exact nature of EC competencies over Hague Conference issues has been a source of debate. Non-EC States have difficulty determining which circumstances properly require negotiation with EC Member States and which require negotiation with the EC. Accordingly, it is desirable for the EC's competence in private international law matters to be clarified. These amendments will assist Australia when negotiating with EC Member States on Hague Conference issues by providing clarity on issues of competence without involving the Conference in any disputes.

12. It is in Australia's interest for the issue of EC participation in the Hague Conference to be resolved as soon as possible to allow the Conference to commit resources to other areas of more immediate concern to Australia. For example, promotion and support of effective implementation of the *Convention on the Civil Aspects of International Child Abduction, 1980*, the *Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993*, the *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996* and the judicial assistance Conventions in the Asia-Pacific region are of significant importance to Australia. Any broader adoption of these Conventions would assist Australians involved in international family law and other disputes.

13. Although there may be future applications from other REIOs, none have so far been identified as likely to seek admission.

Proposed changes to the procedures for making future amendments to the Hague Conference Statute

14. The second main purpose of the proposed amendments is to improve the procedure for amending the Statute. Instead of simply requiring the approval of two-thirds of the Members, as provided for by the existing Article 12, future amendments would first be adopted by the consensus of Members present at a General Affairs meeting (held annually). The changes would enter into force three months after approval by two-thirds of the Members in accordance with their domestic procedures, but not earlier than nine months from the date of adoption of those changes. This would allow greater opportunity for Members to comply with their domestic treaty-making processes. The amended procedures are clearly more suited to Australia's treaty-making processes.

Obligations

15. As these amendments are essentially procedural in nature, no new obligations will result from Australia's acceptance of them.

Implementation

16. Implementation of the amendments to the Statute requires no change to domestic laws or policy.

Costs

17. Australia's contribution to the 2005-2006 (Regular) Budget of the Conference was assessed at 96,229 euros (AUD\$154,625 when it was paid). REIO membership will have no effect on Australia's contribution to Hague Conference funding because any admitted REIO will be required to cover additional administrative expenses. Changes to the amendment process will not result in an increase in costs to Australia.

Regulation Impact Statement

18. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

19. If the proposed amendments come into force, future amendments to the Statute will be negotiated by the two-step process described above. Changes to the Statute would be first adopted by consensus of all Members present at a meeting, and then by two-thirds majority of all Members. If Australia is present at the meeting initiating any future change, it would not be possible for amendments to come into force without Australia's consent. If Australia is not present at the meeting, and does not approve the amendments, then Australia may be able to defeat the two-thirds majority required for the entry into force of the amendments. If Australia was unable to obtain sufficient support to defeat the amendments at that time, they would enter into force for Australia, notwithstanding our objection, three months after a two-thirds majority is recorded, but not earlier than nine months from the date of their adoption.

20. If the proposed amendments do not enter into force, the current amendment procedure under the Statute will continue to apply, that is, following a two-thirds majority approval of any

proposed amendments, those amendments will automatically enter into force for all Members of the Conference.

21. Membership of the Hague Conference does not bind Australia to any other Conventions. Separate treaty action is required for Members of the Conference, as well as non-Members, to become parties to individual Hague Conventions.

22. The Statute is silent on the issue of declarations and reservations being made. Although there are currently no reservations, several Members have made declarations to the Statute.

23. Future treaty action would be subject to Australian treaty-making processes, including tabling and consideration by JSCOT.

Withdrawal or denunciation

24. The Statute provides in Article 15 for denunciation after a period of five years from the date of its entry into force. Notice of denunciation is to be given to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the budgetary year, and will take effect from the end of that year.

25. A decision for Australia to withdraw or denounce would be subject to the usual domestic treaty-making process.

Contact details

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CONSULTATION

1. The Australian position on the proposed amendments to the Hague Conference Statute was prepared prior to a series of meetings in the Hague, culminating in the Diplomatic Conference held on 14-30 June 2005 which adopted the current proposed amendments. The Australian position was prepared primarily by the Department of Foreign Affairs and Trade, in consultation with the Private International Law Section and the Office of International Law of the Attorney-General's Department. The Department of Prime Minister and Cabinet and the Office of Regulatory Review, Productivity Commission, were also consulted on aspects of Australia's position on the proposed amendments.

2. Because the amendments are procedural in nature, this proposed action will not have an impact on the States or Territories. The States and Territories have nonetheless been advised of the amendments through the processes of the Standing Committee on Treaties.

BACKGROUND INFORMATION

Current status list for the *Statute of The Hague Conference on Private International Law* (ATS 1973 No. 29)

The following 65 States are Members of the Hague Conference on Private International Law. It is not yet known which of these states have accepted the amendments to the Hague Conference Statute.

Albania	Greece	Portugal
Argentina	Hungary	Republic of Korea
Australia	Iceland	Romania
Austria	Ireland	Russian Federation
Belarus	Israel	Serbia and Montenegro
Belgium	Italy	Slovak Republic
Bosnia and Herzegovina	Japan	Slovenia
Brazil	Jordan	South Africa
Bulgaria	Latvia	Spain
Canada	Lithuania	Sri Lanka
Chile	Luxembourg	Suriname
People's Republic of	Malaysia	Sweden
China	Malta	Switzerland
Croatia	Mexico	The former Yugoslav
Cyprus	Monaco	Republic of Macedonia
Czech Republic	Morocco	Turkey
Denmark	Netherlands	Ukraine
Egypt	New Zealand	United Kingdom of Great
Estonia	Norway	Britain and Northern
Finland	Panama	Ireland
France	Paraguay	United States of America
Georgia	Peru	Uruguay
Germany	Poland	Venezuela