

National Interest Analysis [2011] ATNIA 12

with attachment on consultation

**Instrument amending the Constitution of the International Telecommunication Union
(Geneva, 1992)**

and

**Instrument amending the Convention of the International Telecommunication Union
(Geneva, 1992)**

**as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary
Conference (Minneapolis, 1998), by the Plenipotentiary Conference (Marrakesh, 2002)
and by the Plenipotentiary Conference (Antalya, 2006)**

**Amendments adopted by the Plenipotentiary Conference
(Guadalajara, 22 October 2010)**

[2011] ATNIF 4

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 the ratification of two instruments (the amending instruments) that respectively amend the *Constitution of the International Telecommunication Union* (ITU Constitution) and the *Convention of the International Telecommunication Union* (ITU Convention) [1994] ATS 28 and subsequent amendments. The instruments amend articles of the ITU Constitution and ITU Convention relating to the class of contribution Member States may make to the ITU.
2. It is proposed that Australia ratify the amending instruments as soon as practicable and deposit its instrument of ratification with the ITU to ensure that Australia maintains its voting rights in the ITU. Both of the amending instruments will enter into force generally on 1 January 2012 (pursuant to Article 55(6) of the Constitution and Part II of its amending instrument, and Article 42(6) of the Convention and Part II of its amending instrument, respectively).
3. These amending instruments were adopted as part of the Final Acts of the Plenipotentiary Conference of the International Telecommunication Union (ITU), held in 2010 in Guadalajara, Mexico. The Final Acts were signed for Australia on 22 October 2010.

Overview and national interest summary

4. The purposes of the proposed action are to demonstrate Australia's continuing support for the ITU and to ensure that Australia maintains its voting rights in the ITU.
5. The ITU provides an international framework for the operations of the communications industries and an international forum to put forward Australian and regional perspectives on radio communications, broadcasting and telecommunications. Australia promotes the development of timely and cost-effective global open standards that support the development of efficient, inter-operable telecommunications networks. This is achieved by reducing barriers to trade through the standardisation of communications systems and the

harmonisation of regulatory arrangements. It is therefore in Australia's national interest to reinforce its support for the ITU through the proposed treaty action to ratify the amending instruments.

Reasons for Australia to take the proposed treaty action

6. The ITU is a United Nations specialised agency with 192 members. The purposes of the ITU, which are laid out in Article 1 of its Constitution, include maintaining and extending international cooperation between all Member States for the improvement and rational use of telecommunications of all kinds, including the radio frequency spectrum.

7. The ITU Constitution and ITU Convention are the primary instruments of the ITU, and they set out the rights and obligations of Member States of the ITU. Australia has been a Member State of the ITU, and its predecessor Union, since Federation. The cooperative approach to international telecommunication issues facilitated by the ITU is beneficial to Australia.

8. The 2010 amendments to the ITU Constitution and Convention are minor and administrative in nature, and there are no disadvantages to Australia in ratifying the amending instruments.

9. Australia contributed to the discussion and development of final positions during the Plenipotentiary Conference and supported the 2010 amendments by signing the Final Acts. Ratification would be consistent with Australia's intention to continue to support the ITU and maintain its voting rights in the ITU. Failure to ratify these minor amendments may reflect poorly on Australia's standing within the ITU.

10. If Australia does not ratify either amending instrument within two years of the date of their general entry into force, that is, by 1 January 2014, Australia will lose its voting rights within the ITU (pursuant to Articles 52 and 55(8) of the ITU Constitution and Article 42(9) of the ITU Convention).

11. Given that the current amendments are essentially administrative, it is preferable that Australia deposits its instrument of ratification with the ITU prior to the date of their general entry into force on 1 January 2012.

Obligations

12. The amendments to the ITU Constitution and Convention do not substantively change the basic obligations of all ITU Member States to abide by the provisions of the ITU Constitution, the Convention and the Administrative Regulations, as indicated in Articles 3 and 6 of the ITU Constitution.

13. The 2010 amendments to the ITU Constitution and Convention comprise:

- a provision which allows Member States to reduce their contribution to the ITU at any one time by not more than 15 per cent of their prior level of contribution (Article 28, ITU Constitution), and

- a provision which increases the number of levels of contributory units from which Member States can choose their class of contribution to the ITU (Article 33, ITU Convention).

14. The greatest impact of the amended provision in Article 28 of the ITU Constitution will be to reduce the amount by which the largest financial contributors to the ITU can decrease their level of contribution at any one time. The ITU is improving its budgetary efficiency without reducing services to Member States, and the adoption of this amendment would contribute towards improving the ITU's financial stability.

Implementation

15. The proposed changes to the ITU Constitution and the Convention will not require any change to the *Telecommunications Act 1997* (the Act) or related primary legislation. However, the *Telecommunications (Compliance with International Conventions) Declaration No. 1 of 1997* (the Declaration) and the *Telecommunications (International Conventions) Notification No. 1 of 1997* (the Notification) will need to be updated to reflect the year of the amendments to the ITU Constitution and Convention.

16. The Act requires telecommunications carriers and carriage service providers to comply with conventions specified in the Declaration, including the ITU Constitution and Convention. The Act also requires the Australian Communications and Media Authority (ACMA), in performing its telecommunications functions, to have regard to Australia's obligations under conventions specified in the Notification, which include the ITU Constitution and Convention. This updating will ensure that carriers, carriage service providers and ACMA are aware of the latest treaty action with which they must comply.

17. The Australian Government's role will not change as a result of the proposed treaty amendments and no action needs to be taken at State or Territory Government level.

Costs

18. The amendments to the Constitution and Convention do not impose extra costs on the Australian Government, the States and Territories or the Australian telecommunications industry.

Regulation Impact Statement

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

Future treaty action

20. The Australian delegation to the 2010 Plenipotentiary Conference reserved the right for Australia to make reservations or declarations before or at the time of depositing its instrument of ratification of the Final Acts of the Conference, in accordance with Article 32B of the Convention. No reservations or declarations are contemplated by Australia.

21. It is likely that, given the rate of change in the communications industry and the ongoing process of reform within the ITU, amendments to the ITU Constitution and ITU Convention will be proposed in the future. Any such proposals would need to be discussed and approved at future Plenipotentiary Conferences, as detailed in the next paragraph. Approved amendments would then be considered by Australia for ratification, including being subject to the domestic treaty process.

22. Article 55(4) of the ITU Constitution provides that any proposed modification to the Constitution needs to be approved at a Plenipotentiary Conference by at least two-thirds of the delegations accredited to the Conference and which have the right to vote. Article 42(4) of the ITU Convention provides that any proposed modification to the Convention needs to be approved at a Plenipotentiary Conference by more than half of the delegations accredited to the Conference and that have the right to vote. The Plenipotentiary Conferences are held every four years and the next Conference is scheduled to be held in 2014.

23. The 2010 Plenipotentiary Conference adopted a proposal on stabilising the ITU Constitution. This proposal was put forward by an organisation representing the Asia-Pacific region, including Australia. The resolution adopted by the Plenipotentiary Conference, Resolution 163, provided for the establishment of a working group that will be open to all ITU Member States. The group's mandate will be to examine the provisions of the current ITU Constitution and Convention, and to consolidate the provisions that are unlikely to require change in the future into a draft stable Constitution. The rest of the provisions of the current Constitution and Convention (which may require amendment in the future) are to be consolidated in another document that would not be subject to ratification. It is anticipated that, depending on the outcome of this process, the need for ratification of amendments to the ITU Constitution and Convention every four years may be removed or diminished.

Withdrawal or denunciation

24. Under Article 57(1) of the Constitution, Australia may denounce both the ITU Constitution and ITU Convention by notification addressed to the Secretary-General. The Constitution and Convention must be denounced simultaneously in a single instrument. Such denunciation will take effect at the expiration of one year from the date of receipt of the notification by the Secretary-General of the ITU (Article 57(2) of the Constitution). Any denunciation by Australia would be subject to the domestic treaty process.

Contact details

ITU & Treaties Section
Digital Economy Services Division
Department of Broadband, Communications and the Digital Economy

ATTACHMENT ON CONSULTATION

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CONSULTATION

25. In the lead-up to 2010 ITU Plenipotentiary Conference (PP-10), consultation on Australia's position at the Conference occurred with a wide range of both domestic and international stakeholders.

26. As part of the preparatory process, consultation for PP-10 began 18 months prior to the event. Meetings were held with the key Commonwealth Government agencies and Australian industry, and a series of Asia-Pacific regional preparatory meetings were held under the umbrella of the Asia-Pacific Telecommunity (APT).

27. At the domestic level, a series of three meetings for Australian stakeholders were held on 31 July 2009, 16 December 2009 and 2 September 2010. Participants in these meetings included representatives of key Commonwealth Government agencies. Representatives of telecommunications companies and industry bodies also participated, including:

- Telstra
- Optus
- NTEC Australia
- Intelsat (Bramex)
- Internode
- Free TV
- Asia Pacific Network Information Centre (APNIC)
- the Australian Domain Name Register (auDA).

28. At these meetings, the Australian delegation raised issues that would be discussed at PP-10. Interested stakeholders made known their views on these issues, and their views were incorporated into Australia's position for the PP-10 delegation briefing. There were no significant disagreements on the proposed policy approach.

29. Prior to finalising Australia's policy objectives, the Minister for Broadband, Communications and the Digital Economy wrote to and obtained approval on the proposed approach from the Treasurer, Attorney-General and the Ministers for Finance and Deregulation, Foreign Affairs and Trade, and Defence.

30. In order to develop common regional positions, the APT conducted four regional preparatory meetings in:

- Kuala Lumpur, 8 May 2009
- Bangkok, 1 – 4 December 2009
- Cairns, 21 – 25 June 2010
- Bangkok, 22 – 24 August 2010.

31. Participants included representatives of APT member countries and associate and affiliate members, the communications and information industry, and international organisations. Australia chaired the regional preparatory process.

32. Five correspondence groups were created to form the organisational basis for the development of common regional positions. As a result of the preparatory process 54 APT common proposals were submitted to PP-10 for consideration prior to the meeting. In addition there was useful discussion prior to PP-10 on proposals from other regions. Australia's involvement in the regional preparatory process was an important element in our overall strategy to achieve PP-10 outcomes that would benefit Australia.

33. The final outcomes at PP-10 were consistent with Australia's objectives and with the input received from domestic and regional stakeholders during the consultation process.