

**Documents tabled on 9 May 2007:**

**National Interest Analysis [2007] ATNIA 13**

**with attachment on consultation**

**Instrument amending the Constitution of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998) and by the Plenipotentiary Conference (Marrakesh, 2002),  
(Antalya, 24 November 2006)**

**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) and by the Plenipotentiary Conference (Marrakesh, 2002),  
(Antalya, 24 November 2006)**

**[2006] ATNIF 31**

**Background:**

**Current Status List**

**NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY  
SUMMARY PAGE**

**Instrument amending the Constitution of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998) and by the Plenipotentiary Conference (Marrakesh, 2002),  
(Antalya, 24 November 2006)**

**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) and by the Plenipotentiary Conference (Marrakesh, 2002),  
(Antalya, 24 November 2006)**

**[2006] ATNIF 31**

**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. These amending instruments were adopted as part of the Final Acts of the Plenipotentiary Conference of the International Telecommunication Union (ITU), held in 2006 in Antalya, Turkey. The Final Acts were signed for Australia on 24 November 2006.
2. It is proposed that Australia ratify the amending instruments as soon as practicable. Both of the amending instruments will enter into force generally on 1 January 2008 (respectively, 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), and it is desirable that Australia enters its ratification prior to this date.

**Overview and national interest summary**

3. 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 radiocommunications, 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 by reducing barriers to trade through the standardisation of communications systems and the harmonisation of regulatory arrangements.
4. Ratification of the amending instruments will reinforce Australia's support for the ITU.

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

5. The ITU is a United Nations specialised agency with 191 members. The purposes of the ITU, which are laid out in Article 1 of its Constitution, include maintaining and extending international cooperation between all Members for the improvement and rational use of telecommunications of all kinds, including the radio frequency spectrum.
6. The ITU Constitution and ITU Convention are the primary instruments of the ITU, and they set out the rights and obligations of Members 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.
7. The 2006 amendments to the ITU Constitution and Convention are minor and administrative in nature, and there are no disadvantages in Australia ratifying the amending instruments.
8. Australia contributed to the discussion and development of final positions during the Plenipotentiary Conference and supported the 2006 amendments by signing the Final Acts. Ratification would be consistent with Australia's position at the Conference. Conversely, failure to ratify these minor amendments is likely to reflect poorly on Australia's standing within the ITU.
9. Pursuant to Article 55(8) of the ITU Constitution and Article 42(9) of the ITU Convention, if Australia fails to ratify either amending instrument prior to the date of their general entry into force, there is a view that Article 52 of the ITU Constitution, which sets out the procedure for ratification of the Constitution and Convention as a whole, would apply to the late ratification of the amendments. Amongst other consequences, the application of the Article 52 procedure could lead to Australia being denied voting rights within the ITU, if the amendments were not accepted within two years.
10. Given that the current amendments are acceptable to Australia, it is preferable that Australia enters its ratification prior to 1 January 2008.

## **Obligations**

11. 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.
12. The 2006 amendments to the ITU Constitution and Convention include:
  - a provision which provides Member States with additional flexibility in determining their level of financial contribution to the ITU (Article 28, ITU Constitution);
  - clarification of arrangements related to observers and elected officials within the ITU. Elected officials will only be eligible to serve two terms

- in the same post, regardless of whether or not the terms are consecutive (Article 2, ITU Convention); and
- a reduction in the frequency of World Radiocommunication Conferences from every two to three years to every three to four years (Article 13, ITU Constitution).

### **Implementation**

13. 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 *Telecommunications (International Conventions) Notification No. 1 of 1997* (the Notification) will need to be updated.

14. 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 and carriage service providers and ACMA are aware of the latest treaty action with which they must comply.

15. 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**

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

### **Regulation Impact Statement**

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

### **Future treaty action**

18. It is likely, given the rate of change in the communications industry and the ongoing process of reform within the ITU, that 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.

19. 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 one is scheduled to be held in 2010.

### **Withdrawal or denunciation**

20. 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 two treaties must be denounced simultaneously and in a single instrument, such that it is not possible to denounce only one. Such denunciation will take effect at the expiration of one year from the date of receipt of its notification by the Secretary-General of the ITU. Any denunciation by Australia would be subject to the domestic treaty process.

### **Contact details**

International Telecommunication Union and Treaties Section  
International Branch  
Department of Communications, Information Technology and the Arts.

**Instrument amending the Constitution of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998) and by the Plenipotentiary Conference (Marrakesh, 2002)  
(Antalya, 24 November 2006)**

**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) and by the Plenipotentiary Conference (Marrakesh, 2002),  
(Antalya, 24 November 2006)**

**[2006] ATNIF 31**

## **CONSULTATIONS**

1. In the lead-up to 2006 ITU Plenipotentiary Conference (PP-06), consultation on Australian's position at the Conference occurred with a wide range of both domestic and international stakeholders.

2. As part of the preparatory process, consultation for PP-06 began a year and a half prior to the event. A series of meetings was held with the key Commonwealth Government Agencies and Australian industry as well as a series of Asia Pacific regional preparatory meetings under the umbrella of the Asia Pacific Telecommunity (APT).

3. At the domestic level, a series of three meetings were held on 1 June 2005, 31 January 2006 and 1 June 2006. Participants in these meetings included representatives of the following government agencies:

- Department of Communications, Information Technology and the Arts (DCITA);
- Australian Communications and Media Authority;
- Department of Defence;
- Department of Foreign Affairs and Trade; and
- Commonwealth Scientific and Industrial Research Organisation.

Representatives of telecommunications companies and industry bodies also participated, including:

- Telstra;
- Optus;
- Ericsson;
- PanAmSat;
- Auspace;
- Bramex;
- Australian Telecommunications Users Group;
- The Internet Society of Australia;
- the Internet Industry Association;

- Australia's Academic and Research Network (AARnet)
- Consumers' Telecommunication Network (CTN); and
- the Australian Domain Name Register (auDA)

4. At these meetings, the Australian delegation raised issues that would be discussed at PP-06. Interested stakeholders made known their views on these issues, and their views were incorporated into Australia's position for the PP-06 delegation briefing. There were no significant disagreements on the proposed policy approach.

5. The Department also provided follow-up correspondence to key industry stakeholders outlining Australia's proposed policy approach for PP-06 to:

- Telstra;
- Optus;
- Macquarie Telecommunications;
- the Internet Industry Association;
- the Internet Society of Australia;
- the Australian Telecommunications Users Group;
- the Communications Alliance.

6. States and Territories were also advised about PP-06 through the Commonwealth-State-Territory Standing Committee on Treaties.

7. Prior to finalising Australia's policy objectives, the Minister for Communications, Information Technology and the Arts wrote to and obtained approval on the proposed approach from the Treasurer, Attorney-General and the Ministers for Finance, Foreign Affairs and Trade, and Defence.

8. In order to develop common regional positions, the Asia Pacific Telecommunity, with strong encouragement from Australia, conducted three regional preparatory meetings, in Singapore on 18 June 2005; in Bangkok from 3 – 5 April 2006; and in Bangkok from 4 – 6 July 2006.

9. Participants included representatives of APT member countries and associate and affiliate members; the communications and information industry; and international organisations.

10. Six correspondence groups were created and these formed the organisational basis for the development of common regional positions. As a result of this process nineteen APT common and joint proposals were submitted to PP-06 for consideration prior to the meeting. In addition there was useful discussion prior to PP-06 of proposals from other regions. Australia's involvement in the regional preparatory process was an important element in our overall strategy to achieve PP-06 outcomes that were of benefit to Australia.

11. The final outcomes at PP-06 were consistent with Australia's objectives, and with input received from domestic and regional stakeholders during the consultation process.



## Current Status List of Parties

**Instrument amending the Constitution of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998) and by the Plenipotentiary Conference (Marrakesh, 2002),  
(Antalya, 24 November 2006)**

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) and by the Plenipotentiary Conference (Marrakesh, 2002),  
(Antalya, 24 November 2006)**

**[2006] ATNIF 31**

The following table lists all 191 Member States of the ITU, being all of the States that are Party to both the ITU Constitution and Convention. A tick next to a State's name indicates that it has also signed the Final Acts of the 2006 ITU Plenipotentiary Conference.

Afghanistan	<input checked="" type="checkbox"/>	Bulgaria	<input checked="" type="checkbox"/>	Dominican Republic	<input checked="" type="checkbox"/>
Albania	<input checked="" type="checkbox"/>	Burkina Faso	<input checked="" type="checkbox"/>	Ecuador	<input checked="" type="checkbox"/>
Algeria	<input checked="" type="checkbox"/>	Burundi	<input checked="" type="checkbox"/>	Egypt	<input checked="" type="checkbox"/>
Andorra	<input checked="" type="checkbox"/>	Cambodia	<input checked="" type="checkbox"/>	El Salvador	<input checked="" type="checkbox"/>
Angola	<input checked="" type="checkbox"/>	Cameroon	<input checked="" type="checkbox"/>	Equatorial Guinea	<input checked="" type="checkbox"/>
Antigua and Barbuda	<input type="checkbox"/>	Canada	<input checked="" type="checkbox"/>	Eritrea	<input type="checkbox"/>
Argentina	<input checked="" type="checkbox"/>	Cape Verde	<input checked="" type="checkbox"/>	Estonia	<input checked="" type="checkbox"/>
Armenia	<input checked="" type="checkbox"/>	Central African Republic	<input checked="" type="checkbox"/>	Ethiopia	<input checked="" type="checkbox"/>
Australia	<input checked="" type="checkbox"/>	Chad	<input checked="" type="checkbox"/>	Fiji	<input type="checkbox"/>
Austria	<input checked="" type="checkbox"/>	Chile	<input checked="" type="checkbox"/>	Finland	<input checked="" type="checkbox"/>
Azerbaijan	<input checked="" type="checkbox"/>	China	<input checked="" type="checkbox"/>	France	<input checked="" type="checkbox"/>
Bahamas	<input type="checkbox"/>	Colombia	<input checked="" type="checkbox"/>	Gabon	<input checked="" type="checkbox"/>
Bahrain	<input checked="" type="checkbox"/>	Comoros	<input checked="" type="checkbox"/>	Gambia	<input type="checkbox"/>
Bangladesh	<input checked="" type="checkbox"/>	Congo (Democratic Republic)	<input checked="" type="checkbox"/>	Georgia	<input type="checkbox"/>
Barbados	<input checked="" type="checkbox"/>	Congo (Republic)	<input checked="" type="checkbox"/>	Germany	<input checked="" type="checkbox"/>
Belarus	<input checked="" type="checkbox"/>	Costa Rica	<input checked="" type="checkbox"/>	Ghana	<input checked="" type="checkbox"/>
Belgium	<input checked="" type="checkbox"/>	Côte d'Ivoire	<input checked="" type="checkbox"/>	Greece	<input checked="" type="checkbox"/>
Belize	<input type="checkbox"/>	Croatia	<input checked="" type="checkbox"/>	Grenada	<input type="checkbox"/>
Benin	<input checked="" type="checkbox"/>	Cuba	<input checked="" type="checkbox"/>	Guatemala	<input checked="" type="checkbox"/>
Bhutan	<input checked="" type="checkbox"/>	Cyprus	<input checked="" type="checkbox"/>	Guinea	<input checked="" type="checkbox"/>
Bolivia	<input type="checkbox"/>	Czech Republic	<input checked="" type="checkbox"/>	Guinea-Bissau	<input type="checkbox"/>
Bosnia and Herzegovina	<input checked="" type="checkbox"/>	Denmark	<input checked="" type="checkbox"/>	Guyana	<input type="checkbox"/>
Botswana	<input checked="" type="checkbox"/>	Djibouti	<input type="checkbox"/>	Haiti	<input type="checkbox"/>
Brazil	<input checked="" type="checkbox"/>	Dominica	<input type="checkbox"/>	Honduras	<input checked="" type="checkbox"/>
Brunei Darussalam	<input checked="" type="checkbox"/>			Hungary	<input checked="" type="checkbox"/>
				Iceland	<input checked="" type="checkbox"/>

India	<input checked="" type="checkbox"/>
Indonesia	<input checked="" type="checkbox"/>
Iran	<input checked="" type="checkbox"/>
Iraq	<input checked="" type="checkbox"/>
Ireland	<input checked="" type="checkbox"/>
Israel	<input checked="" type="checkbox"/>
Italy	<input checked="" type="checkbox"/>
Jamaica	<input checked="" type="checkbox"/>
Japan	<input checked="" type="checkbox"/>
Jordan	<input checked="" type="checkbox"/>
Kazakhstan	
Kenya	<input checked="" type="checkbox"/>
Kiribati	
Korea (Democratic People's Republic)	
Korea (Republic)	<input checked="" type="checkbox"/>
Kuwait	<input checked="" type="checkbox"/>
Kyrgyzstan	<input checked="" type="checkbox"/>
Laos	<input checked="" type="checkbox"/>
Latvia	<input checked="" type="checkbox"/>
Lebanon	<input checked="" type="checkbox"/>
Lesotho	<input checked="" type="checkbox"/>
Liberia	
Libya	
Liechtenstein	<input checked="" type="checkbox"/>
Lithuania	<input checked="" type="checkbox"/>
Luxembourg	<input checked="" type="checkbox"/>
Madagascar	<input checked="" type="checkbox"/>
Malawi	<input checked="" type="checkbox"/>
Malaysia	<input checked="" type="checkbox"/>
Maldives	<input checked="" type="checkbox"/>
Mali	<input checked="" type="checkbox"/>
Malta	<input checked="" type="checkbox"/>
Marshall Islands	<input checked="" type="checkbox"/>
Mauritania	<input checked="" type="checkbox"/>
Mauritius	
Mexico	<input checked="" type="checkbox"/>
Micronesia	<input checked="" type="checkbox"/>
Moldova	<input checked="" type="checkbox"/>
Monaco	<input checked="" type="checkbox"/>
Mongolia	<input checked="" type="checkbox"/>
Montenegro	<input checked="" type="checkbox"/>
Morocco	<input checked="" type="checkbox"/>
Mozambique	<input checked="" type="checkbox"/>
Myanmar	<input checked="" type="checkbox"/>
Namibia	<input checked="" type="checkbox"/>
Nauru	
Nepal	<input checked="" type="checkbox"/>
Netherlands	<input checked="" type="checkbox"/>
New Zealand	<input checked="" type="checkbox"/>

Nicaragua	<input checked="" type="checkbox"/>
Niger	<input checked="" type="checkbox"/>
Nigeria	<input checked="" type="checkbox"/>
Norway	<input checked="" type="checkbox"/>
Oman	<input checked="" type="checkbox"/>
Pakistan	<input checked="" type="checkbox"/>
Panama	<input checked="" type="checkbox"/>
Papua New Guinea	<input checked="" type="checkbox"/>
Paraguay	<input checked="" type="checkbox"/>
Peru	
Philippines	<input checked="" type="checkbox"/>
Poland	<input checked="" type="checkbox"/>
Portugal	<input checked="" type="checkbox"/>
Qatar	<input checked="" type="checkbox"/>
Romania	<input checked="" type="checkbox"/>
Russian Federation	<input checked="" type="checkbox"/>
Rwanda	<input checked="" type="checkbox"/>
Saint Kitts and Nevis	
Saint Lucia	
Saint Vincent and the Grenadines	
Samoa	<input checked="" type="checkbox"/>
San Marino	<input checked="" type="checkbox"/>
Sao Tome and Principe	<input checked="" type="checkbox"/>
Saudi Arabia	<input checked="" type="checkbox"/>
Senegal	<input checked="" type="checkbox"/>
Serbia	<input checked="" type="checkbox"/>
Seychelles	
Sierra Leone	
Singapore	<input checked="" type="checkbox"/>
Slovakia	<input checked="" type="checkbox"/>
Slovenia	<input checked="" type="checkbox"/>
Solomon Islands	
Somalia	<input checked="" type="checkbox"/>
South Africa	<input checked="" type="checkbox"/>
Spain	<input checked="" type="checkbox"/>
Sri Lanka	
Sudan	<input checked="" type="checkbox"/>
Suriname	<input checked="" type="checkbox"/>
Swaziland	<input checked="" type="checkbox"/>
Sweden	<input checked="" type="checkbox"/>
Switzerland	<input checked="" type="checkbox"/>
Syria	<input checked="" type="checkbox"/>
Tajikistan	
Tanzania	<input checked="" type="checkbox"/>
Thailand	<input checked="" type="checkbox"/>
The Former Yugoslav Republic	

of Macedonia	
Togo	<input checked="" type="checkbox"/>
Tonga	
Trinidad and Tobago	<input checked="" type="checkbox"/>
Tunisia	<input checked="" type="checkbox"/>
Turkey	<input checked="" type="checkbox"/>
Turkmenistan	
Tuvalu	
Uganda	<input checked="" type="checkbox"/>
Ukraine	<input checked="" type="checkbox"/>
United Arab Emirates	<input checked="" type="checkbox"/>
United Kingdom	<input checked="" type="checkbox"/>
United States of America	<input checked="" type="checkbox"/>
Uruguay	<input checked="" type="checkbox"/>
Uzbekistan	<input checked="" type="checkbox"/>
Vanuatu	
Vatican City	<input checked="" type="checkbox"/>
Venezuela	<input checked="" type="checkbox"/>
Viet Nam	<input checked="" type="checkbox"/>
Yemen	<input checked="" type="checkbox"/>
Zambia	<input checked="" type="checkbox"/>
Zimbabwe	<input checked="" type="checkbox"/>