

Instruments amending the International Telecommunication Union Constitution & Convention

Introduction

- 4.1 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).¹

Background

- 4.2 The International Telecommunication Union (ITU) is a United Nations specialised agency with 191 members. The ITU provides an international framework for the operations of the communications industries. It is an important international forum through which

¹ [1994] ATS 28.

Australian and regional perspectives on broadcasting, radiocommunications and telecommunications may be put forward.²

- 4.3 The ITU Constitution and the ITU Convention are the primary instruments of the ITU, setting out the rights and obligations of Member States. Australia has been a Member State of the ITU since Federation.³
- 4.4 The amending instruments were adopted as part of the Final Acts of the Plenipotentiary Conference of the International Telecommunication Union, held in Antalya, Turkey in 2006 (PP-06). Australia contributed to the discussion and development of the amending instruments, and supported the amendments by signing the Final Acts on 24 November 2006.⁴

Obligations

- 4.5 The changes contained in the amending instruments to the ITU Constitution and Convention are minor and administrative in nature.⁵ The changes include:

- A reduction in the frequency of World Radiocommunication Conferences from every two-three years to every three-four years (Article 13, ITU Constitution). This is a cost reduction measure.⁶
- Provision of additional flexibility for Member States in deciding their level of financial contribution to the ITU (Article 28, ITU Constitution):

the ITU is relatively unusual ... among UN agencies with a voluntary contribution system. In other words, it is not set by formula based on GDP and the like ... The ITU has a voluntary system that is framed in terms of member states adopting to pay a certain number of contributory units, so there is a scale in the convention ... setting out the number of contributory units.⁷

2 National Interest Analysis (NIA), para. 3.

3 NIA, para. 6

4 NIA, paras 1 and 8.

5 NIA, para. 7.

6 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

7 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, pp 13-14.

- Clarification of arrangements related to observers and elected officials within the ITU. For instance, 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).⁸
- The changing of references to official and working languages of the ITU to refer to official languages alone:

This revision removes any implied differences between the six languages used within the ITU to establish them on an equal footing in line with the general United Nations practice.⁹

- 4.6 The conference also adopted a number of resolutions and decisions on communications and administrative issues which do not amend the treaty.¹⁰

Effect of failure to ratify the amending instruments

- 4.7 There are no disadvantages for Australia in ratifying the amending instruments,¹¹ and ratification would be consistent with Australia's position at the Conference.¹² The NIA states that failure to ratify these minor amendments is likely to reflect poorly on Australia's standing within the ITU,¹³ and failure to ratify either amending instrument prior to the date of their general entry into force could lead to Australia being denied voting rights within the ITU:¹⁴

This is a longstanding rule in the ITU ... Members are required to ratify changes to treaties which include not only the constitution and convention of the ITU but also the administrative regulations ... It is part of the structure of the ITU that members who fail to commit to those treaties lose the right to vote in the sense that they are no longer committed to the kinds of obligations that may be established.¹⁵

8 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

9 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

10 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

11 NIA, para. 7.

12 NIA, para. 8.

13 NIA, para. 8.

14 NIA, para. 9.

15 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 14.

Implementation

4.8 The proposed changes to the ITU Constitution and Convention will not require any change to the *Telecommunications Act 1997* (the Act) or related primary legislation. However, the following will need to be updated:

- the *Telecommunications (Compliance with International Conventions) Declaration No. 1 of 1997* (the Declaration). Under the Act, telecommunications carriers and carriage service providers must comply with conventions specified in the Declaration, including the ITU Constitution and Convention.
- the *Telecommunications (International Conventions) Notification No. 1 of 1997* (the Notification). Under the Act, the Australian Communications and Media Authority (ACMA) must have regard to Australia's obligations under conventions specified in the Notification, including the ITU Constitution and Convention.¹⁶

4.9 Updating the Declaration and the Notification will ensure that carriers and carriage service providers and the ACMA are aware of the latest treaty action with which they must comply.¹⁷

Costs

4.10 Ratification of the amending instruments will not impose any extra costs on the Australian Government, the States and Territories, or the Australian telecommunication industry.¹⁸

Consultation

4.11 The Department of Communications, Information Technology and the Arts was responsible for the consultation process:

As part of the preparatory process for the 2006 plenipotentiary conference, consultation began a year and a

16 NIA, paras 13 and 14.

17 NIA, para. 14.

18 NIA, para. 16.

half prior to the event. A series of meetings was held with key Australian government agencies and Australian industry. The key participants in this process were the Department of Communications, Information Technology and the Arts, the Australian Communications and Media Authority, the Department of Foreign Affairs and Trade, the Department of Defence, Telstra, Optus, Boeing Australia and Ericsson.¹⁹

- 4.12 Follow-up correspondence outlining Australia's proposed policy approach was provided to key industry stakeholders.²⁰
- 4.13 The Asia Pacific Telecommunity (APT) conducted three regional preparatory meetings, with strong encouragement from Australia. Participants included representatives of APT member countries, the communications and information technology industry, and international organisations. Six correspondence groups were created and these formed the organisational basis for the development of common regional positions. As a result of the process, nineteen common and joint proposals were submitted to PP-06 for consideration.²¹

Entry into force and withdrawal

- 4.14 Both of the amending instruments will enter into force generally on 1 January 2008, and it is desirable that Australia ratifies the instruments prior to this date.²²
- 4.15 Australia may denounce both the ITU Constitution and the ITU Convention by notification addressed to the Secretary-General. The two treaties must be denounced simultaneously and in a single instrument – it is not possible to denounce one only.²³

19 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

20 NIA, Consultations, paras 1-7.

21 NIA, Consultations, paras 8-10.

22 NIA, para. 2.

23 NIA, para. 20.

Future treaty action

- 4.16 Any proposed modification to the Constitution needs to be approved at a Plenipotentiary Conference by at least a two-third vote. Any proposed modification to the Convention needs to be approved at a Plenipotentiary Conference by at least half the vote. The Plenipotentiary Conference is held every four years, with the next one scheduled for 2010.²⁴

Recommendation

Recommendation 3

The Committee supports the *Instrument amending the Constitution of the International Telecommunication Union (Antalya, 24 November 2006)* and the *Instrument amending the Constitution of the International Telecommunication Union (Antalya, 24 November 2006)* and recommends that binding treaty action be taken in both instances.

²⁴ NIA, para. 19.