

**AMENDMENTS, MADE AT MARRAKESH 2002, TO THE CONSTITUTION  
AND CONVENTION OF THE INTERNATIONAL TELECOMMUNICATION  
UNION (GENEVA 1992) AS AMENDED BY THE PLENIPOTENTIARY  
CONFERENCE (KYOTO 1994) AND BY THE PLENIPOTENTIARY  
CONFERENCE (MINNEAPOLIS 1998)  
[2003] ATNIF 19**

**Documents tabled on 2 March 2004:**

**National Interest Analysis**

**Text of the Proposed Treaty Action**

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## **NATIONAL INTEREST ANALYSIS: CATEGORY A TREATY SUMMARY PAGE**

### **Amendments, made at Marrakesh 2002, to the Constitution and Convention of the International Telecommunication Union (Geneva 1992) as amended by the Plenipotentiary Conference (Kyoto 1994) and by the Plenipotentiary Conference (Minneapolis 1998) [2003] ATNIF 19**

#### **Date of Tabling of Proposed Treaty Action**

1. 2 March 2004

#### **Nature and Timing of Proposed Treaty Action**

2. The proposed treaty action is accession to the 2002 Marrakesh Amendments to the International Telecommunication Union (ITU) Constitution and Convention. The Final Acts of the 2002 Marrakesh ITU Plenipotentiary Conference (the Conference) amend the Constitution and Convention of the ITU (Geneva 1992), as amended by the 1994 Plenipotentiary Conference (Kyoto), and the 1998 Plenipotentiary Conference (Minneapolis). The Final Acts were signed for Australia on 18 October 2002.
3. It is proposed that Australia accede to the 2002 Amendments as soon as practicable. Article 55(6) of the Constitution and Article 42(6) of the Convention state that their respective amendments shall enter into force between Member States that have deposited an instrument of ratification, acceptance, approval, or accession before a date fixed by the Conference. The Conference set 1 January 2004 as the date for entry into force of the 2002 Amendments. The amendments are therefore now in force, although only four Member States have ratified them at this stage.
4. Articles 55(8) and 52(2) of the Constitution also provide that once the amending instrument is in force, for a period of two years a Member State shall enjoy the rights of membership conferred by the Constitution. After this period, a signatory Member State which has not deposited an instrument of ratification, acceptance or approval loses its voting rights until such an instrument is deposited.
5. Article 32B(2) of the Convention gives Member States the right to make any statements or reservations prior to depositing instruments of accession. Australia reserved this right, but it is not intended to make such a statement or reservation.

#### **Overview and National Interest Summary**

6. 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, interoperable telecommunications networks by reducing barriers to trade through the standardisation of communications systems and harmonisation of regulatory arrangements.
7. The 2002 amendments to the Constitution and Convention further advance reforms towards efficiency and relevance in the operation of the ITU. Australia was key in negotiating these reforms leading up to and during the PP-02 conference.

## **Reasons for Australia to Take the Proposed Action**

8. Australia supports ongoing reform in the operation of the ITU and of the International Telecommunications Regulations, to support Australia's liberalised telecommunications regime and the development of an efficient, export-oriented Australian communications industry. As a significant financial contributor, Australia also supports moves toward greater efficiencies in ITU budget and administrative operations.

9. Changes to the Constitution and Convention provide for greater flexibility in the working methods and procedures of the three ITU Sectors – viz. the Telecommunication Standardisation Sector; the Development Sector; and the Radiocommunications Sector. A new provision in the Constitution authorises each Sector to establish its own working methods.

10. The 2002 amendments to the Constitution and Convention further advance reforms towards efficiency and relevance in the operation of the ITU.

## **Obligations**

11. As stated in paragraph 6 above, 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, interoperable telecommunications networks by reducing barriers to trade through the standardisation of communications systems and harmonisation of regulatory arrangements.

12. The primary treaty instruments of the ITU are its Constitution and Convention, which 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 amendments to the Constitution and the 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 Constitution.

13. The Plenipotentiary Conference is the supreme ITU forum, with power to change the basic ITU treaties (under Article 55 of the Constitution and Article 42 of the Convention) and to set the budget and direction of the ITU. A Plenipotentiary Conference is normally held every four years. Between Plenipotentiary Conferences, the ITU Council governs ITU affairs, which includes administering and implementing decisions made at Plenipotentiary Conferences.

14. The ITU is a United Nations specialised agency with 189 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. In pursuing its purposes, the ITU establishes treaty agreements

and recommends world standards for telecommunications and radiocommunications (including satellite) services.

15. The ITU divides its operational activities into three Sectors. These are: the Radiocommunication Sector which is the forum for treaty level agreements on international use of the radio frequency spectrum and for broadcasting, radiocommunication and satellite transmission standards; the Telecommunication Standardisation Sector which establishes global agreements ('Recommendations') on standards for telecommunications; and the Telecommunication Development Sector which provides technical assistance within a strategic planning framework to developing countries.

16. The 2002 amendments to the Constitution and Convention generally reflect Australia's objectives of supporting ongoing reform and greater efficiency of the ITU. The agreed changes to the Constitution and Convention are simple and effective:

- A new provision has been inserted into the Constitution that authorises each Sector's Assembly or Conference to set up its own working methods;
- New provisions mirroring the new Constitution text have been inserted in the relevant Convention text that relates to the powers of each Sector's Assembly or Conference; and
- The text of the Convention that relates to each Sector now specifically recognises the ability of each Sector to establish groups other than Study Groups (although such other groups cannot approve Questions or Recommendations).

17. The conference also adopted a number of resolutions and decisions on communication's and administrative issues which do not amend the treaty.

18. Australia contributed to the discussion and development of final positions during the Plenipotentiary Conference and supported the 2002 amendments by signing the Final Acts. There are no disadvantages to Australia in taking the proposed treaty action. To consent to be bound by the Conference outcomes would be consistent with our position during the Conference.

## **Implementation**

19. The proposed changes to the 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 after ratification to refer to amendments to the Constitution and Convention made in 1998 and 2002. The Act requires telecommunications carriers and carriage service providers to comply with conventions specified in the Declaration including the Constitution and Convention. The Act also requires the Australian Communications Authority (ACA), in performing its telecommunications functions, to have regard to Australia's obligations under conventions specified in the Notification, which include the Constitution and Convention. This updating will ensure that carriers and carriage service providers and the ACA are aware of the latest treaty action with which they must comply.

20. 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**

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

### **Consultation**

22. As part of the preparatory process, consultation for PP-02 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).

23. Key participants in the Australian preparatory process were the Department of Communications, Information Technology and the Arts; the National Office for the Information Economy; the Australian Communications Authority; the Department of Foreign Affairs and Trade; the Department of Defence; the Department of Transport and Regional Services; Telstra; Optus; Boeing Australia and Vodafone.

24. The consultation process is further detailed in Annexure A.

### **Regulation Impact Statement**

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

### **Future Treaty Action**

26. It is likely, given the rate of change in the communications industry and the ongoing process of reform within the ITU, that changes to treaty level texts will be proposed in the future. Such proposals would need to be discussed and agreed at future Plenipotentiary Conferences, after which they would be considered for ratification. Ratification is subject to the domestic treaty process.

27. Article 55(4) of the Constitution indicates 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 Convention indicates 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.

## **Withdrawal or Denunciation**

28. Under Article 57(1) of the Constitution, Australia may denounce the ITU Constitution and Convention by notification addressed to the Secretary-General. Such denunciation shall take effect at the expiration of one year from the date of receipt of its notification by the Secretary-General of the ITU and that if such a denunciation is to be undertaken, it must be done as a single instrument, denouncing the Constitution and the Convention simultaneously. This is subject to the domestic treaty process.

## **Contact details**

International Strategy Section  
Telecommunications Division  
Department of Communications, Information Technology and the Arts

*Consultations*

Amendments, made at Marrakesh 2002, to the Constitution and Convention of the International Telecommunication Union (Geneva 1992)

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*In the lead-up to PP-02, consultation on Australian's position at the Conference occurred with a wide range of both domestic and international stakeholders.*

*At the domestic level, a series of three meetings were held on 7 May 2001, 5 April 2002 and 8 August 2002. The meetings were held in the offices of the Australian Communications Authority in Canberra and Melbourne, with a videoconference link between participants in the two locations. Participants in these meetings included representatives of the following government agencies:*

- *Department of Communications, Information Technology and the Arts*
- *National Office for the Information Economy*
- *Australian Communications Authority*
- *Department of Defence*
- *Australian Broadcasting Authority*
- *Australian Maritime Safety Authority*
- *Department of Transport and Regional Services*
- *Department of Foreign Affairs and Trade*
- *Australian Broadcasting Corporation*
- *CSIRO*
- *South Australian Government Radio Network Unit*
- *Queensland Rail*

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

- *Telstra*
- *Vodafone*
- *Optus*
- *Ericsson*
- *Teledesic Australia*
- *Deacon Communication*
- *Australian Spectrum Consultants*
- *Bramex*
- *Boeing*
- *Wireless Institute of Australia*
- *Federation of Australian Radio Broadcasters*
- *Standards Australia*
- *Wireless Institute of Australia*
- *Australian Communications Industry Forum*

***At these meetings, the Australian delegation raised issues that would be discussed at PP-02. Interested stakeholders made known their views on these issues, and their views were incorporated into Australia's position for the PP-02 delegation briefing.***

States and Territories were also advised about PP-02 through the Commonwealth-State-Territory Standing Committee on Treaties.

In order to develop common regional positions, the Asia Pacific Telecommunity, with strong encouragement from Australia, conducted three regional preparatory meetings, in Bangkok from 1 – 2 June 2002; in Tehran from 6 – 7 May 2002; and in Sydney from 29 – 30 October 2001. Australia chaired the Sydney and Tehran meetings. Participants included representatives of APT member countries and associate and affiliate members; the communications and information 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 this process nineteen APT common and joint proposals were submitted to PP-02 for consideration prior to the meeting. In addition there was useful discussion prior to PP-02 of proposals from other regions. Australia's involvement in the regional preparatory process was an important element in our overall strategy to achieve PP-02 outcomes that were of benefit to Australia.

The final outcomes at PP-02 were consistent with Australia's objectives, and with input received from domestic and regional stakeholders during the consultation process.



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*As of 28 January 2004, Denmark, Czech Republic, Sweden and Viet Nam are the only countries to have ratified the 2002 Final Acts.*

*Current Status List of Member States of the International Telecommunications Union*

<i>Afghanistan</i>	<i>Congo</i>	<i>India</i>
<i>Albania</i>	<i>Costa Rica</i>	<i>Indonesia</i>
<i>Algeria</i>	<i>Cote d'Ivoire</i>	<i>Iran</i>
<i>Andorra</i>	<i>Croatia</i>	<i>Iraq</i>
<i>Angola</i>	<i>Cuba</i>	<i>Ireland</i>
<i>Antigua and Barbuda</i>	<i>Cyprus</i>	<i>Israel</i>
<i>Argentine Republic</i>	<i>Democratic People's</i>	<i>Italy</i>
<i>Armenia</i>	<i>Republic of Korea</i>	<i>Jamaica</i>
<i>Australia</i>	<i>Democratic Republic of</i>	<i>Japan</i>
<i>Austria</i>	<i>the Congo</i>	<i>Jordan</i>
<i>Azerbaijani Republic</i>	<i>Denmark</i>	<i>Kazakhstan</i>
<i>Bahamas</i>	<i>Djibouti</i>	<i>Kenya</i>
<i>Bahrain</i>	<i>Dominica</i>	<i>Kiribati</i>
<i>Bangladesh</i>	<i>Dominican Republic</i>	<i>Korea</i>
<i>Barbados</i>	<i>Ecuador</i>	<i>Kuwait</i>
<i>Belarus</i>	<i>Egypt</i>	<i>Kyrgyz Republic</i>
<i>Belgium</i>	<i>El Salvador</i>	<i>Lao People's Democratic</i>
<i>Belize</i>	<i>Equatorial Guinea</i>	<i>Republic</i>
<i>Benin</i>	<i>Eritrea</i>	<i>Latvia</i>
<i>Bhutan</i>	<i>Estonia</i>	<i>Lebanon</i>
<i>Bolivia</i>	<i>Ethiopia</i>	<i>Lesotho</i>
<i>Bosnia and Herzegovina</i>	<i>Fiji</i>	<i>Liberia</i>
<i>Botswana</i>	<i>France</i>	<i>Liechtenstein</i>
<i>Brazil</i>	<i>Gabonese Republic</i>	<i>Lithuania</i>
<i>Brunei Darussalam</i>	<i>Gambia</i>	<i>Libya</i>
<i>Bulgaria</i>	<i>Georgia</i>	<i>Luxembourg</i>
<i>Burkina Faso</i>	<i>Germany</i>	<i>Madagascar</i>
<i>Burundi</i>	<i>Ghana</i>	<i>Malawi</i>
<i>Cambodia</i>	<i>Greece</i>	<i>Malaysia</i>
<i>Cameroon</i>	<i>Grenada</i>	<i>Maldives</i>
<i>Canada</i>	<i>Guatemala</i>	<i>Mali</i>
<i>Cape Verde</i>	<i>Guinea</i>	<i>Malta</i>
<i>Central African Republic</i>	<i>Guinea-Bissau</i>	<i>Marshall Islands</i>
<i>Chad</i>	<i>Guyana</i>	<i>Mauritania</i>
<i>Chile</i>	<i>Haiti</i>	<i>Mauritius</i>
<i>China</i>	<i>Honduras</i>	<i>Mexico</i>
<i>Colombia</i>	<i>Hungary</i>	<i>Micronesia</i>
<i>Comoros</i>	<i>Iceland</i>	<i>Moldova</i>

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*Ukraine*  
*United Arab Emirates*  
*United Kingdom of Great  
Britain and Northern  
Ireland*  
*United States of America*  
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*Zambia*  
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