
The Parliament of the Commonwealth of Australia

Report 119

Treaty tabled on 5 July 2011

Instrument Amending the Constitution of the International Telecommunication Union (Geneva, 1992); and Instrument Amending the Convention of the International Telecommunication Union (Geneva, 1992)

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Canberra

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Membership of the Committee

Chair	Mr Kelvin Thomson MP	
Members	Ms Sharon Bird MP	Senator Simon Birmingham
	Mr Jamie Briggs MP	Senator Michaelia Cash (<i>until 7/7/11</i>)
	Mr John Forrest MP	Senator the Hon Helen Coonan (<i>from 1/7/11 until 23/8/11</i>)
	Ms Sharon Grierson MP	Senator David Fawcett (<i>from 23/8/11</i>)
	Ms Kirsten Livermore MP	Senator Scott Ludlam
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	The Hon Dr Sharman Stone MP	Senator Anne Urquhart

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of recommendations

2 Instrument Amending the Constitution of the International Telecommunication Union (Geneva, 1992) and Instrument Amending the Convention of the International Telecommunication Union (Geneva, 1992)

Recommendation 1

The Committee supports the *Instrument Amending the Constitution of the International Telecommunication Union (Geneva, 1992)* and the *Instrument Amending the Convention of the International Telecommunication Union (Geneva, 1992)* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the following treaty actions tabled on 5 July 2011:
 - *the Instrument Amending the Constitution of the International Telecommunication Union* (Geneva, 1992); and
 - *the Instrument Amending the Convention of the International Telecommunication Union* (Geneva, 1992).
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not be entailed.
- 1.4 Prior to tabling, treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.5 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment

for Australian business. The treaties being considered here do not require a RIS.

1.6 The Committee takes account of these documents and any other evidence gathered during the inquiry process in its examination of the treaty.

1.7 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:

<www.aph.gov.au/house/committee/jsct>

Conduct of the Committee's review

1.8 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling and in the national press on 6 July 2011. Submissions were invited by 29 July 2011, with extensions available on request.

1.9 Invitations were made to all State Premiers, Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.

1.10 Submissions received and their authors are listed at Appendix A.

1.11 The Committee examined the witnesses on each treaty at public hearings held in Canberra on 22 August 2011.

1.12 Transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:

■ **5 July 2011**

<<http://www.aph.gov.au/house/committee/jsct/5july2011/hearings.htm>>

1.13 A list of witnesses who appeared at the public hearings is at Appendix B.

Instrument Amending the Constitution of the International Telecommunication Union (Geneva, 1992) and Instrument Amending the Convention of the International Telecommunication Union (Geneva, 1992)

Introduction

- 2.1 On 5 July 2011, the *Instrument Amending the Constitution of the International Telecommunication Union (Geneva, 1992)*; and the *Instrument Amending the Convention of the International Telecommunication Union (Geneva, 1992)* were tabled in the Commonwealth Parliament.
- 2.2 The International Telecommunication Union (ITU) is a United Nations specialised agency with 192 members. The ITU maintains and extends international cooperation between Member States for the improvement and rational use of telecommunications of all kinds, including the radio frequency spectrum.¹
- 2.3 The ITU provides an international framework for the operations of the communications industries and an international forum to put forward

1 National Interest Analysis [2011] ATNIA 12 (NIA), 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, para. 6.

Australian and regional perspectives on radio communications, broadcasting and telecommunications.

- 2.4 Within the ITU, Australia promotes the development of international standards that support the development of efficient, inter-operable telecommunications networks through the standardisation of communications systems and the harmonisation of regulatory arrangements.²
- 2.5 The work of the ITU is technically complicated and not widely understood. However, its work does materially improve telecommunication services for the general public. Probably the best known example of this is the 2000 agreement establishing an international standard for third generation mobile telephony. The 2000 agreement replaced a diverse range of country based mobile telephony standards with a single international standard, enabling third generation mobile devices to operate anywhere in the world, laying the framework for international mobile roaming.³
- 2.6 The ITU funds its activities through contributions from Member States. Unlike other United Nations agencies, Member States decide their own level of contribution.⁴

Proposed amendments

- 2.7 The proposed treaty action involves the ratification of two instruments that respectively amend the Constitution of the ITU (ITU Constitution) and the Convention of the ITU (ITU Convention) as amended. Specifically, the instruments amend articles relating to the class of contribution Member States may make to the ITU.⁵ Both of the amending instruments will enter into force generally on 1 January 2012.⁶

2 NIA, para. 5.

3 International Telecommunications Union, *All About the Technology*, <<http://www.itu.int/osg/spu/ni/3G/technology/index.html#Cellular Standards for the Third Generation>>, viewed on 29 August 2011.

4 Ms Caroline Greenway, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, p. 2.

5 NIA, para. 1.

6 NIA, para. 2.

- 2.8 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; 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.⁷
- 2.9 Aside from the above provisions, the obligations of ITU Member States will not change.⁸
- 2.10 The greatest impact of the amendment 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. Although the ITU is not financially unstable,⁹ the adoption of this amendment would contribute towards improving the ITU's financial stability.¹⁰

Impact on Australia

- 2.11 The Department of Broadband, Communications and the Digital Economy (the Department) claims that the 2010 amendments to the ITU Constitution and Convention are minor and administrative in nature, and there will be no disadvantages to Australia in ratifying the amending instruments.¹¹ Conversely, 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.¹²
- 2.12 The Department explained that the changes required to Australian legislation arising from ratifying these treaties will also be minor:

The amendments to the constitution and convention will not require any change to the *Telecommunications Act 1997* or related primary legislation. However, two minor related instruments will

7 NIA, para. 13.

8 NIA, para. 12.

9 Mr Andrew Maurer, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, p. 2.

10 NIA, para. 14.

11 NIA, para. 8.

12 NIA, para. 10

need to be updated to reflect the updated title of the ITU's constitution and convention. These are the *Telecommunications (Compliance with International Conventions) Declaration No. 1 of 1997* and the *Telecommunications (International Conventions) Notification No. 1 of 1997*—the notification. A minor change will need to be made to ensure the instruments refer to the most recent versions as amended in Guadalajara, Mexico, in 2010. This will ensure that carriers, carriage service providers and the Australian Communications and Media Authority are aware of the latest version of the treaty that applies. There are no disadvantages to Australia in taking the proposed treaty action.¹³

- 2.13 Finally, 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.¹⁴

Financial costs

- 2.14 The Department confirmed that although Australia's contribution to the ITU is 4.725 million Swiss Francs (approximately A\$5.1 million¹⁵), this sum is entirely recouped through industry contributions. Consequently, the Australian Government has no net costs.

The cost of Australia's contribution is fully recovered from the Australian radio-communications and telecommunications industries, so a portion of the contributions recouped from telecommunications carriers is part of an annual charge levied by the ACMA and the radio-communications component of Australia's contribution is recovered from radio-communications licence fees.¹⁶

- 2.15 Previous advice from the Department of Foreign Affairs and Trade through the National Interest Assessment indicated that the amendments do not impose extra costs on the Australian Government, the States and Territories or the Australian telecommunications industry.¹⁷ In other

13 Mr Andrew Maurer, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, p. 1.

14 NIA, para. 17.

15 As calculated using the exchange rate of 12 September 2011.

16 Mr Andrew Maurer, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, p. 3.

17 NIA, para. 18.

words, ratification of these treaties will not result in an increase in contributions from the industry.

- 2.16 Furthermore, the Department of Broadband, Communications and the Digital Economy also indicated that Australia's contribution was within the middling range of contributors¹⁸ and noted that all of the ITU's 192 member states made contributions – even if only a small amount – as they recognised the importance of the ITU's work.¹⁹

Australia's interest in passing the amendments

- 2.17 According to the NIA, ratification of these treaties would demonstrate Australia's continuing support for the ITU and ensure that Australia maintains its voting rights in the ITU.²⁰
- 2.18 Further, the Department argued that because Australia contributed to the discussion and development of final positions and supported the amendments by signing the Final Acts during the 2010 Plenipotentiary Conference, ratification would be consistent with Australia's position during the debates about the amendments.
- 2.19 In addition, the Department indicated that a failure to ratify these minor amendments may reflect poorly on Australia's standing within the ITU.²¹
- 2.20 The Department identified the following consequences of not agreeing to the amendments and the benefits of doing so:

It would effectively take us off the council of the ITU [if we did not agree]. If we did not ratify this particular arrangement, it would mean that we would not be able to access the flexibility in payments either... But something we have been doing within the ITU is pushing for better financial management and more administrative regularity, and this is a step towards that... Being on the ITU council has been very useful for Australia in terms of getting airtime for radio spectrum standards that work well for us and allow us to participate in the region. I think the main downside of not agree to this, though, would be that we have been

18 Mr Andrew Maurer, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, p. 4.

19 Mr Andrew Maurer, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, p. 3.

20 NIA, para. 4.

21 NIA, para. 9.

trying to improve the stability of ITU funding and the transparency of its administration and this is a step towards that. It seems quite useful.²²

Industry support

2.21 The Department believes the Australian telecommunication industry supports the amendments and recognises the importance of being part of the ITU:

Industry thinks it is important that Australia have a voice at the ITU, partly because it comes back to the standards that they are going to be applying in the domestic market. So we have this feedback loop with Australian industry in terms of whether they think it is valuable that we should be there. The answer to that is yes. Are they willing to make a contribution that Australia is putting forward to the ITU? Again, the answer is yes, because they see it as fairly critical to the way they operate.²³

2.22 On a broader level, Australian involvement in the ITU means that the Australian telecommunication industry receives other benefits, primarily to do with technology and standardisation of services.

It means that our mobile phones will work in other countries when we visit them and theirs will work in ours. Anything we can do to facilitate that sort of cross-utility of equipment when we travel or when they come here and anything that improves the access of our markets to standard technologies so that people do not have to pay for special arrangements in Australia reduces the cost threshold, which is useful. So it is partly about being a good community member, but there are flow-on benefits more generally from that.²⁴

Conclusion

2.23 The Committee supports the adoption of the proposed amendments as they will provide further stability of ITU funding. Moreover, there will be

22 Mr Andrew Maurer, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, p. 4.

23 Mr Andrew Maurer, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, pp. 3-4.

24 Mr Andrew Maurer, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 22 August 2011, p. 4.

no net cost to the Australian Government, and the Australian telecommunications industry is supportive of the changes.

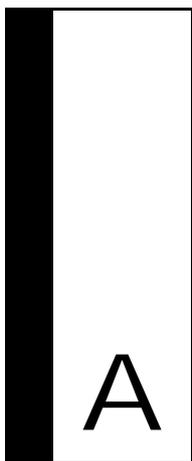
- 2.24 The combination of lack of net cost, industry support, and the loss of potential influence by Australia should the Government not support the amendments draws the Committee towards the conclusion that these amendments should be supported with binding treaty action.

Recommendation 1

The Committee supports the *Instrument Amending the Constitution of the International Telecommunication Union (Geneva, 1992)* and the *Instrument Amending the Convention of the International Telecommunication Union (Geneva, 1992)* and recommends that binding treaty action be taken.

Senator Simon Birmingham

Deputy Chair



Appendix A — Submissions

Treaty tabled on 5 July 2011

- 1 Australian Patriot Movement
- 2 Western Australian Government



Appendix B — Witnesses

Monday, 22 August 2011 - Canberra

Department of Broadband, Communications and the Digital Economy

Ms Caroline Greenway, Director ITU & Treaties Section, Spectrum and Wireless Services Branch, Digital Economy Services Division

Mr Andrew Maurer, Assistant Secretary, Digital Economy Services Division, Spectrum and Wireless Services Branch

Department of Sustainability, Environment, Water, Population and Communities

Dr Phillip Tracey, Senior Policy Officer, Australian Antarctic Division, Strategies Branch, Territories, Environment & Treaties Section

