

Documents tabled on 16 September 2008:

**National Interest Analysis [2008] ATNIA 28
with attachment on consultation**

**PARTIAL REVISION OF THE 2004 RADIO REGULATIONS, AS
INCORPORATED IN THE INTERNATIONAL TELECOMMUNICATION
UNION FINAL ACTS OF THE WORLD RADIOCOMMUNICATION
CONFERENCE (WRC-07), DONE AT GENEVA ON 16 November 2007
[2008] ATNIF 14**

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Partial Revision of the 2004 Radio Regulations, as incorporated in the International Telecommunication Union Final Acts of the World Radiocommunication Conference (WRC-07), done at Geneva on 16 November 2007 [2008] ATNIF 14

Nature and Timing of Proposed Treaty Action

1. It is proposed that Australia consents to be bound by the Partial Revision of the Radio Regulations, as incorporated in the Final Acts of the World Radiocommunication Conference (WRC-07) of the International Telecommunication Union (ITU), done at Geneva on 16 November 2007. It is intended for Australia to notify its consent as soon as possible after the completion of the domestic treaty process.
2. The Radio Regulations (including their appendices) together with the International Telecommunication Regulations constitute the Administrative Regulations of the ITU. The Administrative Regulations complement the basic instruments of the ITU—the *Constitution of the International Telecommunication Union* and the *Convention of the International Telecommunication Union* [1994] ATS 28—and are binding on Member States (Article 4(3) Constitution). World Radiocommunication Conferences are empowered to partially or, in exceptional cases, completely revise the Radio Regulations (Article 13(1) Constitution). WRC-07 partially revised the Radio Regulations, as set out in the Final Acts of that conference.
3. The Head of the Australian Delegation signed the WRC-07 Final Acts on 16 November 2007. At the time of signing, Australia also made a declaration maintaining Australia's position on the use of the geostationary satellite orbit—it is intended to maintain this declaration at the time of notifying Australia's consent to be bound by the revision of the Radio Regulations.
4. The bulk of the WRC-07 revisions of the Radio Regulations will enter into force on 1 January 2009, for those Member States that have notified their consent to be bound to the ITU Secretary-General by that date (Article 54 Constitution and Article 59.9 Revised Radio Regulations). The remaining provisions will take effect from the special dates indicated in Article 59.10 of the revised Radio Regulations. For a Member State that has not notified its consent by 1 January 2009, the revisions will apply provisionally until the State notifies its decision on whether it consents to be bound and will enter into force for that State from the date it notifies its consent to be bound. If Australia fails to notify its decision by 1 January 2012, it will be deemed to have consented to be bound by the revisions.

Overview and National Interest Summary

5. The proposed treaty action would align Australia with the rest of the world in its regulation of the radiofrequency spectrum. Australia would retain its sovereign right to control transmissions within and into its territory and to protect Australian users from interference from foreign systems. Consenting to be bound by the revisions would make possible the introduction of new communication technologies and greater access to wireless networking and broadband data services. It would also continue Australia's good standing in the ITU and enable Australia to maintain its position that the geographical situation of particular countries does not enable them to claim any preferential rights to the geostationary-satellite orbit.

Reasons for Australia to Take the Proposed Treaty Action

6. The ITU is a specialised United Nations agency with 191 Member States. It is concerned with international cooperation in the use of telecommunications and the radiofrequency spectrum. To this end, it establishes treaties and recommends world standards for telecommunication and radiocommunication services, including satellite services. Australia has been a Member of the ITU and its predecessors since Federation.

7. The purpose of the Radio Regulations is to ensure the rational, efficient and equitable use of the radiofrequency spectrum. In this respect, the Radio Regulations contain allocations to over 40 radiocommunication services. They also provide technical, operational and regulatory conditions for the use of the radiofrequency spectrum and the geostationary-satellite and non-geostationary-satellite orbits. ITU members are required to ensure that the radio spectrum is used internationally in a manner that will prevent harmful interference to services.

8. The ITU divides the world into three ITU regions for the purposes of managing the global radio spectrum:

- **Region 1** - Europe, Africa, the Middle East west of the Persian Gulf and including Iraq, the former Soviet Union and Mongolia.
- **Region 2** - the Americas, Greenland and some of the eastern Pacific Islands.
- **Region 3** - most of non-former-Soviet-Union Asia, east of and including Iran, and most of Oceania. Australia is in ITU Region 3.

9. To ensure that the Radio Regulations facilitate the introduction of new technical advances, they are periodically reviewed (and may be revised) by a World Radiocommunication Conference. WRC-07 (held in Geneva from 22 October to 16 November 2007) was such a conference and resulted in the revisions under consideration.

Benefits to Australia

10. Consenting to be bound by the revisions to the Radio Regulations will benefit Australia, as alignment to international regulations will allow for continued international compatibility.

11. The substantive benefits arising from the WRC-07 revisions of the Radio Regulations include:

- International regulations relating to the maritime mobile service being brought into line with current maritime communications technology, including distress and safety transmissions within the Global Maritime Distress and Safety System (GMDSS);
- The enhancement of aeronautical security and modernisation of civil aviation telecommunication systems through changes aimed at alleviating spectrum congestion and making additional spectrum available for aeronautical and air traffic management applications; and
- The extension of existing primary frequency allocations for the Earth-exploration satellite service (EESS) to facilitate research and exploration of Earth resources and environmental elements.

12. If Australia takes no action, the WRC-07 revision will automatically enter into force on 1 January 2012. However, inaction by Australia may have a negative effect on Australia's standing within the ITU and on Australia's negotiating position at future reviews of the Radio Regulations. In contrast, notification to the ITU Secretary-General of Australia's consent to be bound by the WRC-07 revision would maintain Australia's good standing in the ITU and would place Australia's administration of the radiofrequency spectrum in line with the rest of the world.

Domestic Preparations for WRC-07

13. ACMA consulted key stakeholders in the preparation of the Australian Delegation Brief in the four year cycle leading up to WRC-07. This work led to the development of Australian positions for each agenda item considered at WRC-07 which were incorporated into the Australian Delegation Brief.

14. The former Minister for Communications, Information Technology and the Arts approved the Australian Delegation Brief prior to WRC-07. Consistent with the Minister's views, the Australian Delegation remained silent at WRC-07 during discussions relating to proposals to identify the 470-862 MHz and 3400-4200 MHz bands for advanced wireless communications systems such as 3G mobile services. The Delegation also adhered to the caretaker conventions for the duration of the Conference.

Resolutions and Recommendations in the Final Acts

15. In addition to revising the Radio Regulations, a World Radiocommunication Conference is empowered to 'deal with any other question of a worldwide character within its competence' (Article 13 Constitution and Article 7 Convention). To this end, WRC-07 deleted, adopted and revised a range of resolutions and recommendations, which are also set out in its Final Acts. Resolutions and recommendations do not bind Member States. Rather, they provide guidance to Member States on the implementation of the Radio Regulations and to the various organs of the ITU on administrative matters. As such, the only part of the Final Acts that is legally binding—and therefore constituting a treaty action that is subject to Australia's domestic treaty process—is the Partial Revision of the Radio Regulations.

Reservations and declarations

16. The ITU Constitution permits a Member State to make reservations at the time of signing revisions to the Radio Regulations and to maintain such reservations at the time of notifying its consent to be bound (Article 54). Pursuant to the Vienna Convention on the Law of Treaties, a reservation 'purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State'. It is also accepted international practice for States to be able to make declarations at the time of signing or ratifying a treaty—a declaration differs from a reservation in that it does not purport to exclude or modify the legal effect of the treaty, but merely sets forth the State's interpretation of the treaty. There is often a fine line between whether a statement is a reservation or a declaration, with the assessment made on the substance of the statement rather than on what it is called.

17. Member States made a series of statements at WRC-07 in response to the Partial Revision of the Radio Regulations, which are set out in the Final Acts under the heading 'Declarations and reservations'. The statements appearing under this heading are not expressly categorised as either reservations or declarations—this reflects the fact that it is up to other Member States to decide individually whether they regard the statement as a reservation or declaration. Australia made two such statements:

Number 29 (General Reservation):

The delegation of Australia at the 2007 World Radiocommunication Conference hereby declares that it reserves for its Government the right to make declarations or reservations before or at the time of depositing an instrument of ratification for the Final Acts of the 2007 World Radiocommunication Conference of the International Telecommunication Union held in Geneva from 22 October to 16 November 2007, in accordance with Article 32B of the

Convention of the International Telecommunication Union (Geneva, 1992), as amended by the Plenipotentiary Conference (Minneapolis, 1998).

Number 92 (Maintenance of Australia's Position on Use of Geostationary Orbit):

For the Federal Republic of Germany, Australia, the Republic of Bulgaria, the Republic of Cyprus, the Republic of Croatia, Denmark, the United States of America, France, Greece, the Republic of Hungary, Ireland, Japan, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, Luxembourg, Malta, the Republic of the Marshall Islands, Norway, New Zealand, the Kingdom of the Netherlands, the Republic of Poland, Portugal, the Slovak Republic, the Czech Republic, the United Kingdom of Great Britain and Northern Ireland, the Republic of Slovenia, Sweden, the Confederation of Switzerland, Turkey, Ukraine:

The delegations of the above-mentioned States, referring to the declaration made by the Republic of Colombia (No. 74), inasmuch as these and any similar statements refer to the Bogota Declaration of 3 December 1976 made by equatorial countries and to the claims of those countries to exercise sovereign rights over segments of the geostationary-satellite orbit, and to any related claims, consider that the claims in question cannot be recognized by this Conference.

The above-mentioned delegations also wish to state that reference in Article 44 of the Constitution to the 'geographical situation of particular countries' does not imply recognition of a claim to any preferential rights to the geostationary-satellite orbit.

18. Statement 29 allowed Australia to make further reservations or declarations upon notifying its consent to be bound. It is not intended for Australia to make any further reservations or declarations, and therefore there is no need to maintain this statement. Statement 92 was made by Australia, together with other like minded countries, to counter claims by equatorial countries, such as Columbia, concerning preferential rights to geostationary-satellite orbit slots. This statement was made at WRC meetings in 1995, 1997, 2000 and 2003. It is intended for Australia to maintain statement 92 when it notifies its consent to be bound.

Obligations

19. The WRC-07 revisions of the Radio Regulations made several changes that impact on the international allocation and use of the radiofrequency spectrum. As part of the Radio Regulations, these changes will become binding upon Australia. The following provides a brief outline of some of the key changes arising out of the WRC-07 revision of the Radio Regulations.

Identification of new bands for International Mobile Telecommunications

20. The WRC-07 revisions expanded the frequency range identified for International Mobile Telecommunications (IMT).¹ The previous IMT identification was expanded from the frequency range 806–862 MHz to 698–862 MHz in ITU Region 2 and nine countries in ITU Region 3; and 790–862 MHz in ITU Regions 1 and 3. However, because Australia has no close neighbours, spectrum arrangements for broadcasting services in Australia in this band are a national regulatory issue that have no significant impact on Australia's international obligations in the context of the Radio Regulations.

21. Additional bands identified for use by IMT include 450–470 MHz and 2.3–2.4 GHz.

¹ IMT refers to the family of advanced mobile technologies that will support for example third generation wireless broadband services such as WiMAX.

Maritime procedures

22. International regulations related to the maritime mobile service were updated to reflect current maritime communications technology, including distress and safety transmissions within the Global Maritime Distress and Safety System:

- The 156.525 MHz band (156.4875–156.5625 MHz) was made the international distress frequency for digital selective calling.
- The frequencies 161.975 MHz and 162.025 MHz, which are the aeronautical identification system (AIS) frequencies, were also made available to the mobile-satellite service for reception of AIS information.

23. The changes agreed to at WRC-07 will improve global maritime navigation and provisions for maritime distress and safety.

Aeronautical services

24. Aeronautical security has been enhanced and civil aviation telecommunication systems modernised through:

- upgrading the radiolocation service to primary allocation status in the bands 9000–9200 MHz and 9300–9500 MHz;
- allocating additional spectrum for aeronautical telecommand and high bit-rate aeronautical telemetry; and
- adding new allocations for the aeronautical mobile (R) service.

25. The changes agreed to at WRC-07 will improve global civil aviation safety.

Earth-exploration satellite service (EESS)

26. The primary frequency allocations for EESS (which monitor the natural emissions of the planet, with consequent applications such as predicting and monitoring natural disasters, meteorology and climate change) were extended, facilitating research and exploration of Earth resources and environmental elements. The WRC-07 revisions also approved proposals concerning the use and further development of satellite systems using highly inclined orbits, high altitude platforms, as well as the compatibility and sharing between different space and terrestrial services.

Other Matters

27. The WRC-07 revisions also approved proposals concerning the use and further development of satellite systems using highly inclined orbits and high altitude platform stations (HAPS), as well as the compatibility and sharing between different space and terrestrial services. The 135.7-137.8 kHz band was made available for low-power secondary amateur use. The WRC-07 outcome for satellites in highly inclined orbits, HAPS, sharing compatibility studies and amateur service allocations are viewed as ongoing and necessary initiatives that may benefit the Australian community in the longer term.

28. The WRC-07 revisions also advocated the development of spectrum management guidelines for radiocommunications in emergency and disaster relief, as well as identification and maintenance of available frequencies for use in the early stages of humanitarian assistance in the aftermath of a disaster. The ITU will develop a database for frequency management in disaster situations.

Implementation

29. Australia's obligations under the Radio Regulations are implemented through the *Australian Radiofrequency Spectrum Plan (ARSP)*, which is prepared by the Australian Communications and Media Authority (ACMA) in accordance with sections 30 and 34 of the *Radiocommunications Act 1992*. The existing ARSP will be updated by ACMA to take account of the WRC-07 revision.

Costs

30. There are no identifiable direct costs to Commonwealth, State or Territory Governments arising from the proposed treaty action.

Regulation Impact Statement

31. The Office of Best Practice Regulation, Department of Finance and Deregulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

32. Under Article 13 of the ITU Constitution, a World Radiocommunication Conference may partially or completely revise the Radio Regulations. The next World Radiocommunication Conference will be held in 2011. The framework for the WRC-11 agenda was agreed at WRC-07. Based on the results of lead-up studies, further changes to the Radio Regulations will be considered at that meeting. Future revisions will be subject to Australia's domestic treaty process, including tabling and consideration by the Parliamentary Joint Standing Committee on Treaties.

Withdrawal or Denunciation

33. In order to withdraw from the Radio Regulations, it would be necessary for Australia to denounce the ITU Constitution and Convention by notification to the Secretary-General of the ITU. Any denunciation would be subject to Australia's domestic treaty process.

34. Under Article 57 of the ITU Constitution, such denunciation would take effect at the expiration of one year from the date of receipt of its notification by the Secretary-General of the ITU and would have to be done as a single instrument, denouncing the Constitution and the Convention simultaneously.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

35. Australian industry and government representatives were invited to participate in the preparation of the Australian brief for WRC-07 through the International Radiocommunications Advisory Committee (IRAC PG) convened by the former Australian Communications Authority (ACA) in July 2003. IRAC-PG met regularly over the four-year cycle to develop Australian positions to take to WRC-07.

36. Note: the ACA and the Australian Broadcasting Authority merged on 1 July 2005 to form ACMA. The IRAC-PG was continued by ACMA to facilitate Australian preparations for WRC-07. The former Department of Communications, Information Technology and the Arts became the Department of Broadband, Communications and the Digital Economy after the November 2007 Federal election.

37. Those organisations and agencies that contributed to the Australian Brief for WRC-07 included ACMA, Free TV Australia, Commercial Radio Australia, the Australian Maritime Safety Authority, the Department of Broadband, Communications and the Digital Economy, Telstra Corporation Ltd, SingTel Optus Pty Ltd, Vodafone Australia, Siemens Australia, Bramex Pty Ltd, AsiaSpace Ltd, the Department of Defence, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), Commonwealth Bureau of Meteorology, Airservices Australia, Raytheon Australia Pty Ltd, Motorola Australia Ltd, Canberra Deep Space Communications Complex, Australian Spectrum Consultants, Cemdia-Asia Ltd, Worldspace Asia Ltd, Emergency Management Australia and the Wireless Institute of Australia.

38. Most of the above-mentioned groups were represented at the Conference. Upon return from WRC-07, ACMA held a debriefing session on the outcomes with industry and government representatives on 28 February 2008.

39. Australia's obligations under the Radio Regulations are implemented through the *Australian Radiofrequency Spectrum Plan (ARSP)*, which is prepared by ACMA in accordance with sections 30 and 34 of the *Radiocommunications Act 1992*. The existing ARSP will be updated by ACMA to accord with the WRC-07 revision and include some revisions of a purely domestic nature. A draft revised ARSP is expected to be released by ACMA in the second half of 2008 for public comment, as required by section 33 of the *Radiocommunications Act 1992*. ACMA anticipates the revised ARSP will commence on 1 January 2009.

40. The States and Territories were consulted on the proposed ratification of the WRC-07 Final Acts in January 2008 through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) schedule of treaties under negotiation, consideration or review by the Australian Government. In addition, the Department of Foreign Affairs and Trade (DFAT) arranges twice a year to table in Parliament a list of multilateral treaties under negotiation, consideration or review.

41. There is general support for the proposed treaty action from relevant stakeholders and acknowledgment of the benefits of the WRC-07 revision to Australia.