

**AMENDMENTS, MADE AT NEW DELHI IN 2002, TO THE  
CONSTITUTION OF THE ASIA PACIFIC TELECOMMUNITY  
(BANGKOK 1976) AS AMENDED BY THE MANAGEMENT  
COMMITTEE MEETING (COLOMBO 1991) ATNIF 05**

**Documents tabled on 22 June 2004**

**National Interest Analysis**

**Text of the Proposed Treaty Action**

*Annexures:*

**Consultations**

**Current Status List**

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

### **SUMMARY PAGE**

#### **Amendments, made at New Delhi in 2002, to the Constitution of the Asia Pacific Telecommunity (Bangkok 1976) as amended by the Management Committee Meeting (Colombo 1991) ATNIF 05**

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

1. 22 June 2004.

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

2. The proposed treaty action is accession to the 2002 New Delhi Amendments to the Asia Pacific Telecommunity (APT) Constitution. The Final Acts of the 2002 New Delhi General Assembly amend the Constitution of the Asia Pacific Telecommunity (Bangkok 1976), as amended by the 1991 General Assembly (Colombo).
3. The Constitution of the APT is a multilateral treaty-level document. Australia has been a Party to the treaty since the APT was established in 1979.
4. It is proposed that Australia accede to the 2002 Amendments as soon as practicable. Article 21 (3) of the amended Constitution states that the amendments shall enter into force on the thirtieth day after the deposit with the Depositary of instruments of ratification or acceptance of such amendments by two-thirds of the Members. The amendments are not in force with only ten APT Members having ratified them at this stage.

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

5. The Asia-Pacific Telecommunity is a regional communications development cooperation organisation established by treaty, whose membership includes most of the Governments of Asia, Oceania and the Pacific Islands. (See Annexure B). It also provides a forum through which regional governments build consensus on communications issues for coordinated input to meetings of the International Telecommunication Union (ITU).
6. Australia aims to promote adoption by APT Member Governments of policies and regulatory approaches that will enhance the development of open and competitive telecommunications markets and the spread of online services within those markets.
7. Australia supported the 2002 Constitutional amendments in order to assist in making the APT a stronger, more effective and influential regional telecommunications body.

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

8. As a financial contributor to the APT, Australia supports ongoing reform in the operation of the Telecommunity. Australia has been a driving force in APT Secretariat and Constitutional reform since the 8<sup>th</sup> General Assembly in December 1999. The 2002 amendments to the APT Constitution further advance these reforms towards greater efficiency and relevance of the APT's operations.

9. The amendments to the Constitution update and expand the APT's role to ensure a balanced development of telecommunications services and information infrastructure; to provide a structure for exchange and discussion of information on advances in telecommunication services and information infrastructure; and to ensure active participation of Members in the APT's affairs and activities.

10. The 2002 amendments to the Constitution reflect the success of Australia and other Members in advocating greater efficiency and relevance in the APT's operation.

## **Obligations**

11. The primary treaty instrument of the APT is its Constitution, which is a multilateral treaty-level document setting out the rights and obligations of Members of the APT. The Amendments to the Constitution do not substantially change these basic rights and obligations and impose no new obligations on Australia and other APT Members.

12. The General Assembly (Article 8) is the peak policy-making organ of the APT, composed of all the members and Associate Members, which meets every three years. Draft amendments to the APT Constitution were passed at the meeting of the General Assembly in New Delhi in November 2002. For the ratification process to take place, two-thirds of APT Members must respond otherwise the original provisions remain. In between General Assemblies, the Management Committee (Article 9) is the yearly meeting of Members which approves the annual budget and work plan of the APT.

13. In summary, the 2002 Amendments to the APT Constitution propose to:

- strengthen the APT's fostering of the development of telecommunication services and information infrastructure throughout the Asia-Pacific region, particularly in less developed areas (Article 1, paragraph 1);
- encourage exchange of information to ensure the balanced development of telecommunication services and information infrastructure within the region and to strengthen the region's international position (Article 2, paragraph 2);
- expand the category of Affiliate Membership to include any organisation, either private or public sector, which is active in telecommunication services or information infrastructure and is prepared to participate in the activities of the Telecommunity (Article 3, paragraph 5);

- rename the positions of Director-General and Deputy-Director-General as “Secretary General” and “Deputy Secretary General” respectively and provide for these officials to be elected and their terms and conditions of employment to be determined by the General Assembly rather than by the Management Committee (Article 8, paragraph 6(e));
- require that a simple, rather than two-thirds, majority of the Members of the Telecommunity be required for the President of the General Assembly to convene Extraordinary sessions of the General Assembly (paragraph 5); and a quorum for a meeting of the General Assembly (Article 8, paragraphs 5 & 12);
- require that, in the interval between General Assembly meetings, the Management Committee shall act as the governing body of the Telecommunity, on behalf of the General Assembly within the limits of the powers delegated to it (Article 9, paragraphs 1; 5; 7; 9); and
- create two categories of budgets of the Telecommunity: the General Budget and the Special Budget (Article 11, paragraphs 1; 3; 4)

14. Australia contributed to the discussion and development of final positions during the General Assembly and supported the 2002 amendments. There are no disadvantages in Australia taking the proposed treaty action.

### **Implementation**

15. The proposed changes to the Constitution 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 made in 2002.

16. The *Telecommunications Act 1997* section 336 requires that carriers or service providers comply with any Convention to which Australia is a party. The definition of ‘Convention’ includes a convention to which Australia is a party or an agreement or arrangement between Australia and a foreign country. 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. This updating will ensure that carriers and carriage service providers and the ACA are aware of the latest treaty action.

17. The Australian Government’s obligations 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**

18. The amendments to the APT Constitution do not impose extra costs on the Australian Government, the States and Territories or the Australian telecommunications industry.

## **Consultation**

19. As part of the drafting process, a Preparatory Group of APT Members, comprising Australia, the Republic of Korea, China, Japan and Hong Kong China, met in Bangkok from November 25 to 27 and then in Kuala Lumpur on 13 and 14 May 2002, to discuss amendments to the Constitution. A meeting of the APT Membership then took place in Bangkok, from 1 to 3 July 2002, to finalise the proposed amendments.

20. Within Australia, consultation was held with the Departments of Foreign Affairs and Trade, Prime Minister and Cabinet and Attorney-General as well the Australian Communications Authority. Industry consultation was held with APT Affiliate Members Telstra Corporation Limited, Macquarie Corporate Telecommunications Pty Ltd and Reach Communications.

21. The proposed treaty action was notified to the States and Territories through the treaties schedule of the Commonwealth-States-Territories Standing Committee on Treaties (SCOT).

## **Regulation Impact Statement**

22. The Office of Regulation Review has been consulted and confirms that a Regulation Impact Statement is not required for these amendments.

## **Future treaty action**

23. It is likely that, given the rate of change in the communications industry and the ongoing process of reform of the APT, changes to treaty level texts may be proposed in the future. Such proposals would need to be discussed and agreed at future General Assemblies, after which they would be considered for ratification.

24. Article 21(3) of the APT Constitution requires that any proposed modifications to this Constitution “shall require a two-thirds majority of the Members present and voting in the general Assembly.” Article 21(4) of the amended Constitution allows that future amendments will apply provisionally pending their entry into forces under Article 21(3).”

25. Ratification by Australia is subject to the domestic treaty process.

## **Withdrawal or denunciation**

26. Article 14 of the Constitution provides that Australia can denounce the Constitution or any of its annexed Protocols by withdrawal from the Telecommunity. Withdrawal shall take effect “on the last day of the same fiscal year if it is received by the Secretary-General within the first six months of the fiscal year and one year after the receipt of notification if it is received later.”

27. Withdrawal or denunciation by Australia is subject to the domestic treaty process.

**Contact details**

Regional Cooperation Section  
Telecommunications Division  
Department of Communications, Information Technology and the Arts

## **Consultations**

### **Amendments, made at New Delhi in 2002, to the Constitution of the Asia Pacific Telecommunity (Bangkok 1976) as amended by the Management Committee Meeting (Colombo 1991) ATNIF 05**

As part of the drafting process for the amendments to the Constitution, a Preparatory Group of APT Members, comprising Australia, Korea, China, Japan and Hong Kong China, met Bangkok from November 25 to 27 and in Kuala Lumpur on 13 and 14 May 2002. These meetings discussed and drafted amendments to the Constitution.

A further meeting of the APT Membership then took place in Bangkok, from 1 to 3 July 2002, to finalise the proposed amendments.

At domestic level, consultation on the proposed amendments was held during 2002 with representatives of the following government agencies:

- Departments of Foreign Affairs and Trade;
- Department of Prime Minister and Cabinet;
- Attorney-General's Department; and
- Australian Communications Authority.

Industry consultation about the amendments was also held during 2002 with representatives of the following telecommunications companies which are also APT Affiliate Members:

- Telstra Corporation Limited;
- Macquarie Corporate Telecommunications Pty Ltd; and
- Reach Communications.

The proposed treaty action was notified to the States and Territories through the treaties schedule of the Commonwealth-States-Territories Standing Committee on Treaties (SCOT).

**Amendments, made at New Delhi in 2002, to the Constitution of the Asia Pacific Telecommunity (Bangkok 1976) as amended by the Management Committee Meeting (Colombo 1991) ATNIF 05**

As at 8 June 2004, the following ten Members of the APT have deposited the Instrument of Ratification/Acceptance to the amendments of the Constitution of the APT with the Secretary General of the United Nations, New York: Brunei; DPR Korea; Lao PDR; Malaysia; Myanmar; Republic of Korea; Samoa; Sri Lanka; Tonga; and Vietnam.

***Current Status List of Member States of the Asia-Pacific Telecommunity***

Afghanistan  
Australia  
Bangladesh  
Bhutan  
Brunei Darussalam  
China, Peoples' Republic  
Fiji  
India  
Indonesia  
Iran, Islamic Republic  
Japan  
Korea, DPR  
Korea, Republic of  
Lao, PDR  
Malaysia  
Maldives  
Micronesia  
Mongolia  
Myanmar  
Nauru  
Nepal  
New Zealand  
Pakistan  
Palau  
Papua New Guinea  
Philippines  
Samoa  
Singapore  
Sri Lanka  
Thailand  
Tonga  
Vietnam

