



Australia-Japan Foundation (Repeal and Transitional Provisions) Bill 2006

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Law and Bills Digest Section

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Australia-Japan Foundation (Repeal and Transitional Provisions) Bill 2006

Date introduced: 10 May 2006

House: House of Representatives

Portfolio: Foreign Affairs

Commencement: The machinery provisions of the Bill commence on Royal Assent. The substantive provisions commence on proclamation.

Purpose

To repeal the *Australia-Japan Foundation Act 1976*, abolishing the [Australia-Japan Foundation](#)¹ as a statutory body and bringing it under the aegis of the Department of Foreign Affairs and Trade.

Background

The establishment of an Australia-Japan Foundation was first mooted publicly by Prime Minister Gough Whitlam in a speech to a parliamentary luncheon for the Japanese Prime Minister, Kakuei Tanaka, on 1 November 1974:

For all that we share in common, it must be acknowledged that we have profoundly contrasting traditions and cultures. For all the growth in co-operation of the past generation, for all the growing closeness in our relations in that time it must be said that all too often we look at each other with a stare of mutual incomprehension and mutual ignorance. It is therefore very important that we should create a framework within which well motivated and competent Australians and Japanese who wish to build understanding and goodwill between our two countries can operate more effectively. With this in mind we are proposing to establish a foundation as a vehicle to promote and foster a continuing program to build and widen mutual contacts at all levels—Business, Academic, Cultural, Scientific, Trade Unions. We all recognise our great community of interest, equally we have to recognise that there are great barriers—language, tradition, culture, distance—in the way of making that community even closer and warmer. Let us begin to break these barriers down.²

An ad hoc committee was appointed in December 1974 to consider how to proceed, and its February 1975 report, recommending the establishment of a foundation as a statutory body, was accepted by Cabinet on 24 July 1975.³ The Australia-Japan Foundation Bill 1976 was introduced by Prime Minister Malcolm Fraser on 19 February 1976, and received Royal Assent on 7 April 1976.

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The functions of the Foundation are set out in subsection 5(1) of the Act. They are:

to encourage a closer relationship between the peoples of Australia and Japan and to further the mutual knowledge and understanding of those peoples and, in particular, but without limiting the foregoing:

(a) to promote the study by the people of each of those countries of the language, culture and traditions, the social and political institutions, and the economic and industrial organization, of the people of the other country;

(b) to promote the study by the people of each of those countries of the physical features, climate and ecology of the other country;

(c) to encourage people of each of those countries to visit the other country ...

The intended purpose of the Foundation in broadening the relationship between the two countries beyond an economic one is clearly evidenced in the debate of the (then) Bill.

The Foundation is governed by its members, of whom there are currently six. The members are appointed by the Minister for Foreign Affairs. The Minister may issue general directions to the Foundation regarding the performance of its functions: subsection 5(3).

As the second reading speech indicated, there are currently eight bilateral bodies in the Department of Foreign Affairs and Trade that undertake similar functions to the Australia-Japan Foundation. These are:

1. [Australia-China Council](#), established by an Order-in-Council of the Governor-General on 17 May 1978⁴
2. [Australia-Indonesia Institute](#), established by an Order-in-Council of the Governor-General on 27 April 1989⁵
3. [Australia-Korea Foundation](#), established by an Order-in-Council of the Governor-General on 7 May 1992, replaced on 8 April 2004⁶
4. [Australia-India Council](#), established by an Order-in-Council of the Governor-General on 21 May 1992⁷
5. [Council on Australia Latin America Relations](#), established in March 2001⁸
6. [Council for Australian-Arab Relations](#), established in December 2002⁹
7. [Australia-Malaysia Institute](#), established on 29 June 2005, and formally launched on 28 March 2006, and¹⁰
8. [Australia-Thailand Institute](#), established on 29 June 2005.¹¹

There is also an [Australia International Cultural Council](#).¹² None of these nine bodies is a statutory authority. However, the Australia-Japan Foundation's annual expenditure—

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\$3,159,338 in 2004–05—also appears to be much larger than that of the non-statutory bodies; for example:

Australia-China Council:	\$752,131
Australia-Indonesia Institute	\$1,033,817
Australia-Korea Foundation (2003-04)	\$743,229
Council on Australia Latin America Relations	\$399,973
Council for Australian-Arab Relations	\$492,030 ¹³

Basis of policy commitment

In the 2001 election campaign, the government undertook to review the structures and governance practices of all its statutory authorities.¹⁴ The review was set up in November 2002 and reported in July 2003: [*Review of the Corporate Governance of Statutory Authorities and Office Holders*](#) ('Uhrig Report').¹⁵ The report was released in August 2004, along with a [government response](#), in which the government further undertook to analyse around 160 statutory bodies against the two governance templates put forward in the Uhrig Report.¹⁶

This Bill is one of a number of Bills that have resulted from the review process.¹⁷ In most of those cases, the outcome has meant a change in the *way* in which a statutory body is managed or governed. In the case of the Australia-Japan Foundation, the change is more fundamental, from statutory body to non-statutory body. There is no hard-and-fast rule as to whether a body should be statutory or not. In 1987, the Hawke Government issued policy guidelines which stated:

1. Consistent with its policy of using Departments of State where possible, the Government will make sparing use of the statutory authority form of administration when new responsibilities relating to the normal business of government are undertaken or existing functions are upgraded.
2. Occasions may nevertheless arise where the desirable and sensible course will be to establish a statutory authority. Those proposals which do come forward will accordingly be rigorously examined to guard against unnecessary fragmentation of the machinery of government, to ensure consistency in structure and in relationships with Parliament and the Government, to provide an appropriate degree of direction and scrutiny, and to ensure there are avenues and opportunities for full and effective accountability to the Parliament and the Government.
3. This approach will not preclude creation within the departmental framework of distinct organisations for specialist purposes and ready public identification. There is already widespread use of this method, exemplified by the various research bureaux which combine the advantages of distinctive organisational identity without

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derogation from the principle of Ministerial responsibility for administration or circumvention of the regular machinery for resource allocation, management and administrative control.¹⁸

The question of whether a function should be carried out by a statutory or non-statutory body was also considered very briefly in the Uhrig Report:

The powers and functions of statutory authorities and office holders are generally specified in significant detail in the enabling legislation. While this is a feature of statutory authorities, it also has the effect of limiting the flexibility in responding to changing government and community priorities. Legislation may become dated and can be difficult to change.

Consideration should be given to whether functions can be accommodated successfully within a departmental structure or an executive agency, reducing the need for the creation of a separate authority and the associated costs and demands placed on the public sector.

As government remains accountable for the performance of statutory authorities, careful thought needs to be given to any decision to create bodies that will operate with a higher level of independence than departments of state, as this will impact on ministerial ability to supervise directly the performance of such bodies. The value of a centrally located coordination function to assist government in this regard is canvassed later in this chapter.¹⁹

In terms of the specific rationale for repealing the Act, the Minister said in the second reading speech that:

It is anticipated that revoking the foundation's statutory status and bringing it into the Department of Foreign Affairs and Trade will better align the foundation's activities with the government's foreign and trade policy objectives in Japan, one of our most important and productive bilateral relationships. It is also expected to improve the foundation's administrative efficiency. The foundation will continue its important work in delivering programs in support of those objectives while promoting contemporary Australia as a culturally diverse and technologically sophisticated society.²⁰

According to the Explanatory Memorandum, the objectives and functions of the Foundation will be governed by Orders in Council.²¹

Position of significant interest groups/press commentary

There has been no media nor political-party comment on the proposed repeal. The Senate Selection of Bills Committee decided on 13 June not to refer the Bill to a committee.

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Financial implications

According to the Explanatory Memorandum, this Bill will have no financial implications for the Commonwealth.²²

Main provisions

Part 1 of Schedule 1 contains the repeal of the *Australia-Japan Foundation Act 1976*.

Part 2 of Schedule 1 contains transitional provisions. **Items 3–8** vest the assets, liabilities, court proceedings and records of the Foundation in the Commonwealth, effectively meaning the Department of Foreign Affairs and Trade. **Item 11** allows the transfer of appropriated money from the Foundation to the Department of Foreign Affairs and Trade (the 2006–07 Budget appropriated \$2.373 million to the Foundation, and this will not be fully spent before the commencement of this Bill).²³ **Item 12** requires a final annual report to be provided for the Foundation by the Department of Foreign Affairs and Trade.

Concluding comments

The Bill removes the status of the Australia-Japan Foundation as a statutory body and enables it to be placed on the same standing as several similar executive agencies under the umbrella of the Department of Foreign Affairs and Trade.

Endnotes

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1. <http://www.ajf.australia.or.jp/english/aboutajf/>
 2. Hon. Gough Whitlam, Prime Minister, ‘Speech at parliamentary luncheon for Mr Tanaka’, 1 November 1974, in National Archives of Australia: Cabinet Office; A5915, Whitlam Ministries—Cabinet Submissions 1972–75; 1918, Australia-Japan Foundation—Decision 3851; Attachment—Report of the Committee on the proposed Australia-Japan Foundation.
 3. *ibid.*, The Committee on the Proposed Australia-Japan Foundation was comprised of Sir John Crawford, K. B. Myer, Professor E. S. Crawcour, D. J. Munro (Dept. of Prime Minister and Cabinet) and J. R. Rowland (Dept. of Foreign Affairs).
 4. <http://www.dfat.gov.au/acc/>
 5. <http://www.dfat.gov.au/aii/>
 6. <http://www.dfat.gov.au/akf/>

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7. <http://www.dfat.gov.au/aic/>
8. <http://www.dfat.gov.au/coalar/>
9. <http://www.dfat.gov.au/caar/>
10. <http://www.dfat.gov.au/ami/>
11. <http://www.dfat.gov.au/ati/>
12. <http://www.dfat.gov.au/aicc/>
13. Expenditure figures are taken from their Annual Reports 2004–05 (but 2003–04 for the Australia-Korea Foundation).
14. Liberal–National Coalition, *Backing Australia's industry for the future*, election policy issued 1 November 2001, http://pandora.nla.gov.au/pan/22107/20011109/www.liberal.org.au/policy/Industry_policy.pdf.
15. John A. Uhrig, *Review of the corporate governance of statutory authorities and office holders*, Canberra, Commonwealth of Australia, 2003, http://www.finance.gov.au/GovernanceStructures/docs/The_Uhrig_Report_July_2003.pdf.
16. Senator the Hon. N. Minchin, *Australian Government Response to Uhrig Report*, media release, Canberra, 12 August 2004, <http://www.finance.gov.au/scripts/Media.asp?Table=MFA&Id=550>.
17. The other Bills are: Human Services Legislation Amendment Bill 2005, Superannuation Legislation Amendment (Trustee Board and Other Measures) Bill 2006, Australian Trade Commission Legislation Amendment Bill 2006, National Health and Medical Research Council Amendment Bill 2006, Australian Research Council Amendment Bill 2006 and Defence Housing Authority Amendment Bill 2006.
18. Department of Finance, *Policy guidelines for Commonwealth statutory authorities and government business enterprises: a policy information paper*, Canberra, AGPS, 1987, p. 7.
19. John A. Uhrig, *op. cit.*, p. 58.
20. Hon. A. Downer, Minister for Foreign Affairs, '[Second reading speech: Australia-Japan Foundation \(Repeal and Transitional Provisions\) Bill 2006](#)', House of Representatives, *Debates*, 10 May 2006, p. 1.
21. [Explanatory Memorandum](#), p. 2.
22. *ibid.*
23. Department of Foreign Affairs and Trade, *Portfolio Budget Statements 2006–07*, Canberra, 2006, p. 219, http://www.dfat.gov.au/dept/budget/2006_2007_pbs/pbs_2006_2007_ajf.pdf.

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