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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSTRALIA–JAPAN FOUNDATION (REPEAL AND TRANSITIONAL
PROVISIONS) BILL 2006**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Foreign Affairs,
the Honourable Alexander Downer MP)

AUSTRALIA–JAPAN FOUNDATION (REPEAL AND TRANSITIONAL PROVISIONS BILL 2006)

OUTLINE

The purpose of the Australia–Japan Foundation (Repeal and Transitional Provisions) Bill 2006 (referred to in this Explanatory Memorandum as the “**Bill**”) is to abolish the Australia-Japan Foundation (the “**Foundation**”) as a statutory authority through the repeal of its enabling legislation, the *Australia-Japan Foundation Act 1976*.

The intention is to re-establish the Foundation as a non-statutory body within the Department of Foreign Affairs and Trade (the “**Department**”), on the same footing as other bilateral bodies established within the Department to undertake similar functions.

It is not anticipated that repeal of the Foundation’s enabling legislation will change the functions or objectives of the Australia-Japan Foundation, which are expected to be governed by Orders in Council. The Foundation will continue its role in strengthening people-to-people links between Australia and Japan through its cultural, educational and other programs. The Bill includes transitional arrangements that will ensure the governance changes do not disrupt the Foundation’s program delivery.

The changes to the Foundation’s governance structure are part of the Government’s response to Mr John Uhrig’s *Review of the Corporate Governance of Statutory Authorities and Office Holders*, which examined and reported on improving the governance arrangements of such entities.

It is anticipated the changes will improve the governance and accountability arrangements of the Australia-Japan Foundation.

FINANCIAL IMPACT STATEMENT

The Bill will have no financial impact.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

Act, unless the context indicates otherwise, means the *Australia-Japan Foundation Act 1976*;

Foundation, means the Australia-Japan Foundation as set out in section 4 of the Act;

Department, means the Department of Foreign Affairs and Trade;

Uhrig Review means the *Review of Corporate Governance of Statutory Authorities and Office Holders* as released by Mr John Uhrig AC.

NOTES ON CLAUSES

Clause 1—Short title

Clause 1 is a formal provision specifying the short title.

Clause 2—Commencement

Clause 2(1) of the Bill provides that each provision of the Bill specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 is taken to have effect according to its terms.

Item 1 of the table provides that sections 1 to 3 and anything in the Act not elsewhere covered by the table commence on the day on which the Act receives Royal Assent.

Item 2 of the table provides that Schedule 1 of the Bill commence on a single day to be fixed by Proclamation (the reference to a “single day” means that all of the provisions must be Proclaimed to commence at the same time). However, if any of the provisions do not commence within the period of 6 months beginning on the day on which the Act receives the Royal Assent, they commence on the first day after the end of that period.

Clause 3—Schedule(s)

Clause 3 provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1, Part 1 relates to the repeal of the *Australia-Japan Foundation Act 1976*.

Schedule 1, Part 2 outlines the transitional provisions once the *Australia-Japan Foundation Act 1976* has been repealed.

Schedule 1—Repeal and Transitional Provisions

Part 1—Repeal of the *Australia-Japan Foundation Act 1976*

Item 1—The whole of the Act

This item repeals the Act.

Schedule 1—Repeal and Transitional Provisions**Part 2—Transitional provisions****Division 1—Preliminary****Item 2—Definitions**

This item defines certain terms which are used in Part 2 of the Schedule relating to the transitional provisions to transfer the Foundation's assets, liabilities and legal proceedings to the Department.

Division 2—Assets, liabilities and legal proceedings**Item 3—Vesting of assets of Foundation**

This item applies to the assets of the Foundation immediately before the commencement time. At the commencement time, the assets to which this item applies cease to be assets of the Foundation and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these assets.

Item 4—Vesting of liabilities of Foundation

This item applies to the liabilities of the Foundation immediately before the commencement time. At the commencement time, the liabilities to which this item applies cease to be liabilities of the Foundation and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

Items 5—Certificates relating to vesting of land

This item facilitates the registration of the transfer of assets under any law of the Commonwealth, a State or a Territory that provides for the registration or recording of interests.

Items 6—Certificates relating to vesting of assets other than land

This item facilitates the registration of the transfer of assets other than land under any law of the Commonwealth, a State or a Territory that provides for the registration or recording of interests.

Item 7—Substitution of Commonwealth as a party to pending proceedings

This item substitutes the Commonwealth for the Foundation as the appropriate party in any pending proceedings from the commencement time.

Item 8—Transfer of custody of Foundation records

This item requires the transfer of any record or documents in the custody of the Foundation or a committee of the Foundation to be transferred into the custody of the Commonwealth at or after the commencement time.

Division 3—Reference to, and things done by or in relation to, Foundation

Item 9—References in instruments

This item provides for instruments made before the commencement time that refer to the Foundation (including references to staff of the Foundation) to continue to have effect after the commencement time, as if the reference to the Foundation or the member of staff of the Foundation were a reference to the Commonwealth or to a member of the staff of the Department.

9(3) empowers the Minister to determine that subitems (1) and (2) do not apply to a specified reference contained in an instrument, and that a determination under these subitems have effect accordingly.

If the Minister makes a determination under subitem (3) in relation to a specified reference, 9(4) permits regulations to be made after the commencement time in relation to that instrument containing the reference specified where the reference were a reference to a specified person or body other than the Commonwealth, or the reference were a reference to a specified person or body other than a member of the staff of the Foundation.

9(5) provides that determinations made by the Minister under subitem (3) are not legislative instruments. In the majority of cases a determination of this kind would not be legislative within the meaning of section 5 of the *Legislative Instruments Act 2003*. If any determination of this kind is arguably legislative within the meaning of that section (for example, because it changes such a reference in a legislative instrument), the determination has been declared not to be legislative as it is transitional and will only be required for a limited period of time.

Item 10—Operation of laws

Item 10(1) attaches responsibility for things done by, or in relation to, the Foundation to the Commonwealth.

Item 10(2) empowers the Minister to make a determination providing that item 10(1) does not apply in a particular case.

If the Minister makes a determination under subitem (2) in relation to a specified thing, 10(3) permits that regulations can be made in relation to that thing providing that after the commencement time the thing is taken to have been done by, or in relation to, a specified person or body other than the Commonwealth.

10(4) clarifies the meaning of doing a thing.

10(5) is included to assist readers, as the determination is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 11—Appropriation of money

Item 11(1) clarifies that for the purposes of the operation of an Appropriation Act after the commencement time, references to the Foundation are to be read as references to the Department.

Item 11(2) is included as the current Australia-Japan Account will be abolished by repeal of the Act and is expected to be replaced with another Special Account which the Finance Minister will be requested to establish under section 20 of the *Financial Management and Accountability Act 1997*. The new Special Account will have similar purposes to the Australia-Japan Account. 11(2) allows the Department to credit an amount equal to the balance of the Australia-Japan Account immediately before its abolition to the new Special Account. It does this by increasing the departmental item for the Department in the *Appropriation Act (No. 1) 2005-2006*. Under section 14 of that Act, the Department can then debit that amount against the appropriation for that item and credit it to the new Special Account.

Item 12—Financial Statements and other reporting requirements

This item is intended to enable the efficient and effective discharge of reporting obligations of the Foundation after the commencement of this Act.

12(1) transfers any lawful obligation to comply with reporting requirements ending after the commencement time to the Secretary of the Department.

12(2) transfers any lawful obligation to comply with a reporting requirements not met by the Foundation to the Secretary of the Department.

Division 4—Miscellaneous**Item 13—Exemption from stamp duty and other State or Territory taxes**

This item ensures that the operation of transitional provisions in Schedule 1, including the transfer of assets and liabilities affected by items 3 and 4, do not result in a liability to pay State or Territory stamp duty or tax.

Item 14—Compensation for acquisition of property

Item 14 sets out the standard Constitutional compensation provision for acquisition of property from a person otherwise than on just terms.

Item 15—Certificates taken to be authentic

To avoid ambiguity, certificates, including those relating to matters covered in item 5 and 6 of this Schedule, are to be taken as authentic unless the contrary is established.

Item 16—Delegation by Minister

This item allows the Minister to delegate his or her powers and functions under this Part to the Secretary of the Department of Foreign Affairs and Trade. 16(2) provides

that, in exercising powers or functions under a delegation, the Secretary must comply with any directions of the Minister.

Item 17—Regulations

This item permits the Governor-General to make regulations in relation to the Bill.