

## NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

### SUMMARY PAGE

**Exchange of Notes, done at Canberra on 7 April – 27 May 2003, Amending the Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America for the Financing of Certain Educational and Cultural Exchange Programmes of 28 August 1964 [2003] ATNIF 12**

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

1. 17 June 2003.

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

2. The treaty action proposed will amend an existing treaty: the *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America for the Financing of Certain Educational and Cultural Exchange Programmes* (done at Canberra on 28 August 1964) - [1964] ATS 15 - (“the Fulbright Agreement”).
3. Only one provision of the Fulbright Agreement will be amended: Article 5. The treaty action (“the Amendment”) is based on an exchange of notes in Canberra between the Department of Foreign Affairs and Trade (“DFAT”) and the United States Embassy.
4. The exchange of notes constituting the Amendment took place on 7 April – 27 May 2003. The Amendment provides that it will enter into force on a date to be advised by the Government of Australia through the diplomatic channel. Following consideration of JSCOT’s recommendation and the expiration of the tabling period, it is proposed that the Amendment be brought into force before the next round of appointments to the board of directors of the Australian-American Educational Foundation. (These appointments are currently expected to take place no earlier than December 2003.)

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

5. The Fulbright Agreement makes an important contribution to Australian-American bilateral relations by strengthening educational ties between the two countries. The Fulbright Agreement establishes the Australian-American Educational Foundation to carry out the Agreement and a board of directors to run this Foundation.
6. The proposed amendment to the Fulbright Agreement provides for an extension of the term of the members of the board of directors for the Australian-American Educational Foundation. This extension will mean that the directors shall serve from the time of their appointment until two years (rather than one year) from the following 31 December. This will increase the efficiency of the Foundation’s

operations, which in turn will increase the Foundation's capacity to enhance Australia-US educational linkages.

### **Reasons for Australia to Take the Proposed Treaty Action**

7. The Fulbright Agreement was signed at Canberra on 28 August 1964 and came into force on that date. Article 1 of the Fulbright Agreement established a foundation to be known as the Australian-American Educational Foundation. This foundation is now commonly called the Australian-American Fulbright Commission ("AAFC"). The AAFC was recognised by the Governments of Australia and the United States of America as a bi-national organisation created and established to facilitate the administration of an educational and cultural programme. (Similar programmes exist between the United States and other countries.) The Australian Fulbright programme was to be financed by funds made available to the AAFC.

8. The Australian Fulbright programme makes an important contribution to strengthening the cultural and educational ties between Australia and the USA. Details of the programme (and awards made under it) appear at Annexure 5.

9. Article 5 of the Fulbright Agreement established a board of directors of the AAFC ("the Board") and provided that its members should serve from the time of their appointment until one year from the following 31 December. The Board consists of five American directors (appointed by the US Ambassador to Australia) and five Australian directors (appointed by the Prime Minister).

10. The annual appointment of Board members usually involves:

- Consultation with the Executive Director of the AAFC concerning renewal of members' appointments and/or new appointments.
- Briefing the Minister for Education, Science and Training, and recommending his approval for the appointments or re-appointments.
- Letters from the Minister for Education, Science and Training to individuals inviting membership of the Board to 31 December of the following year, and seeking confirmation of acceptance.
- Letters from Board members to the Minister for Education, Science and Training accepting the appointment.
- A letter from the Minister for Education, Science and Training to the Prime Minister advising of the appointments.

11. Article 5 also provides for *re*-appointment of Board members. Reasonably extensive use of this provision has been required by both parties. The range of academic and governmental agencies that the Fulbright Commission deals with, the complexity of the issues involved, and the frequent need to take a longer term perspective, have made the re-appointment of Board members by Australia and the USA a more practical alternative to *new* annual appointments.

12. With re-appointments, experienced Board members are able to perform their duties more effectively and efficiently, and there is more continuity across issues.

Nonetheless, under the current arrangements, Board members are uncertain about their re-appointment from year to year.

13. The proposed Amendment to the Fulbright Agreement provides for an extension of the term of the Board. This extension will mean that the directors shall serve from the time of their appointment until two years (rather than one year) from the following December 31.

14. A two-year term would enhance the efficient functioning of the Board for the reasons described above. It would also create greater certainty of appointment for Board members, thus encouraging greater interest and involvement. Administratively, it would be a more practical and less time-consuming alternative to annual reappointments.

### **Obligations**

15. No new rights or obligations are imposed on Australia by the extension of the term of appointments of Board members. Australia's right to nominate appointees remains; it simply will not be exercised as frequently.

### **Implementation**

16. The Foundation is established as a body corporate under a law of the Australian Capital Territory: the *Australian-American Educational Foundation Act 1966*. No changes are needed to this ACT law or any other Australian law for the Amendment to take effect. Moreover, no changes to the existing roles of the Commonwealth Government or the State and Territory governments will occur due to the Amendment.

### **Costs**

17. There will be some minor savings in administrative costs to the Department of Education, Science and Training due to the appointments to the Foundation being less frequent. There will be no foreseeable additional financial costs due to the Amendment taking effect.

### **Consultation**

18. The recommendation to extend the appointment of AAFC Board members from a period of one to two years was first raised by the Board itself at its May 1999 meeting. There was then a series of communications between the then Department of Education, Training and Youth Affairs and DFAT regarding the proposal for the Amendment. The final terms of the Amendment were approved by the Hon Dr Brendan Nelson, Minister for Education, Science and Training, in a letter to the Hon Alexander Downer, Minister for Foreign Affairs and Trade, of 13 November 2002. The matter was raised with the US Embassy (and through the Embassy with the US Department of State) by the *ex officio* Board member from the US Embassy. On 8 May 2002, the US Embassy in Canberra notified Legal Branch, DFAT, that it agreed in principle to the proposal to arrange the Amendment.

19. On 16 July 2002 the Legal Adviser, Legal Branch, DFAT wrote to the Cabinet Office of the Chief Minister's Department of the ACT requesting the ACT Government's views on the Amendment. This was considered necessary because – as noted above in paragraph 16 – the Foundation was established under an ACT law. On 31 July 2002 the Cabinet Office advised it had no views on the Amendment. Notification of the Amendment was made to the States and Territories in October 2002 through the Schedule of Treaties circulated to the Commonwealth-States-Territories Standing Committee on Treaties. None of the states and territories indicated any opposition to the Amendment. (See Annexure 1.)