

**THE INTERNATIONAL INSTITUTE FOR DEMOCRACY AND
ELECTORAL ASSISTANCE STATUTES
(AS AMENDED AT THE EXTRAORDINARY COUNCIL MEETING OF
INTERNATIONAL IDEA ON 24 JANUARY 2006)**

[2006] ATNIF 11

Documents tabled on 10 May 2006:

National Interest Analysis [2006] ATNIA 19

with attachment on consultation

Text of the proposed treaty action

Background information:

Current status list

**NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY
SUMMARY PAGE**

**The International Institute for Democracy and Electoral Assistance Statutes (as amended at
the Extraordinary Council meeting of International IDEA on 24 January 2006)
[2006] ATNIF 11**

Nature and timing of proposed treaty action

1. Australia is a Party to the *Agreement Establishing the International Institute for Democracy and Electoral Assistance* [1997] ATS 16 ('the Agreement') which was endorsed by the Institute's Founding Conference in Stockholm on 27 February 1995. The Agreement entered into force for Australia on 9 May 1997 pursuant to Article XVII(3).

2. In 2003, Article VII of the Agreement was amended in accordance with Article XV. The 2003 amendments entered into force for all Members (including Australia) on 17 July 2003. The work area responsible for the International Institute for Democracy and Electoral Assistance ('International IDEA') believed that as the amendments did not constitute a material change to Australia's obligations they were not captured by the domestic treaty process. New procedures within the work area will ensure that the domestic treaty process is followed for any future amendments.

3. On 24 January 2006 a decision was taken by the Members of International IDEA, in accordance with Article XV of the Agreement, to make further and more substantial changes to the Agreement. As a result of the 2006 amendments the Agreement will become the *International Institute for Democracy and Electoral Assistance Statutes (as amended at the Extraordinary Council meeting of International IDEA on 24 January 2006)*. Pursuant to Article XV(2) of the Agreement the 2006 amendments will enter into force and be binding on all members thirty days after the date on which two-thirds of Parties have ratified them.

4. It is proposed that Australia ratify the 2003 and 2006 amendments in accordance with Article XV of the Agreement. The Government proposes to notify the Depository that Australia has fulfilled all domestic formalities with respect to the amendments as soon as practicable after the end of the domestic treaty review process.

Overview and national interest summary

5. The 2003 amendments were made in connection with International IDEA's application for United Nations General Assembly observer status and affected the rights of observer and associate members of International IDEA. The 2006 amendments largely supersede the 2003 amendments as they will change membership criteria and remove observer and associate member categories. The 2006 amendments will increase Member States' control over International IDEA by making the Council the main decision-making body. International IDEA has a mandate to support democracy worldwide and is a key contributor globally to governance issues. Political governance is a priority for Australia's overseas aid program. Ratification of the amendments would demonstrate Australia's continued support for International IDEA and its mandate.

Reasons for Australia to take the proposed treaty action

6. The Government's White Paper on Australia's aid program, *Australian Aid: Promoting Growth and Stability* (April 2006), highlighted political governance as an avenue to promote economic growth and development. Political governance is the process by which a country's management decisions are made. Support for improved political governance is about helping to develop leadership and decision-making skills as well as building the demand from within countries for improved governance performance. This is also important in combating corruption.

7. International IDEA was established in 1995 by fourteen national governments to promote democracy and assist electoral processes throughout the world. Australia is a founding member. International IDEA is now a key contributor to the work being done globally on addressing political governance and democracy concerns. Strategically it is well recognised that Australia's national interest is intrinsically linked to the Asia-Pacific region. Helping states function more effectively in the Asia-Pacific region benefits Australia as it should lead to greater stability and security, and also enhance Australia's regional leadership role. Whilst only a relatively small proportion of International IDEA's field operations are concentrated on the Asia-Pacific region, its contributions to the global intellectual landscape are constructive and worthwhile, and are of value to our region.

8. Efforts to improve political governance through the multilateral system are an important part of Australia's aid program. For example, Australia is playing a leading role in the development of the new United Nations Democracy Fund. The aid program also works with International IDEA and Australia's own Centre for Democratic Institutions to build and strengthen democratic institutions and facilitate democratic governance in new, emerging and consolidated democracies. The Government has encouraged that strong links be developed between International IDEA, the United Nations Democracy Fund and the Centre for Democratic Institutions.

9. International IDEA has a close working relationship with the Australian Electoral Commission ('AEC'). Consultants from the AEC have worked with International IDEA on a range of projects. For example, the AEC, International IDEA and the United Nations Electoral Assistance Division developed the BRIDGE Project (Building Resources in Democracy, Governance & Elections) in 1999 as a comprehensive professional development course in election administration.

10. The 2003 amendments to the Agreement were made in connection with the preparations for International IDEA to gain United Nations General Assembly observer status. The substance of the change was that associate members and observers of International IDEA would have no right to vote or otherwise participate in the Council's decision-taking. As a full member of International IDEA, the 2003 amendments had no major implications for Australia. Pursuant to Article XV, the changes were adopted by the requisite two-thirds of Members and came into force generally on 17 July 2003. (The 2006 amendments will largely supersede the 2003 amendments, and the associate membership category will be modified into an arrangement for consultative partnerships in the new Article III).

11. The 2006 amendments seek to improve the governance arrangements of International IDEA. Australia was an active contributor to the negotiations and proposals that led to the 2006 amendments. Under new Article VII, the Council will become the overall decision-making body of International IDEA. For instance, it will approve the budget and work plan and appoint the Secretary-General, tasks which had formerly been delegated to a Board of Directors. The Council is comprised of Member States and the change means that Members (such as Australia) will have greater executive authority and more direct involvement in the governance of International IDEA. Under new Article VII(8), the Council will appoint a Steering Committee to prepare meetings and further the interests of International IDEA. The Board of Directors will become the Board of Advisors, made up of eminent personalities and experts. Members of the Board may be invited to represent or perform tasks to strengthen International IDEA (new Article VIII). Board members will advise on matters of substance rather than being burdened with tasks related to management and funding.

12. Increased decision-making power in the Council, whilst allowing Australia to have a greater say in International IDEA's program direction, may lead to greater pressure on Australia to actively participate in working groups and other aspects of International IDEA governance. However, participation beyond the Council remains a voluntary matter for Members, and the greater burden of management will be handled by the Steering Committee.

13. In the event Australia fails to take the proposed treaty action, the amendments are likely to come into force generally sometime in 2006 and would be binding on Australia as a Member of International IDEA. Article XV of the Agreement provides that amendments will enter into force and be binding on *all members* thirty days after the date on which two-thirds of the parties have ratified the amendments [emphasis added]. If it was determined that Australia should not take the proposed treaty action, then Australia would need to consider withdrawing as a Member of International IDEA and withdrawing as a Party to the Agreement.

14. A decision against Australia taking the proposed treaty action (which would require withdrawal of membership) may damage International IDEA's standing in the international development assistance community. This would not serve Australia's interest in supporting political governance initiatives in international development cooperation.

Obligations

15. The 2006 amendments include stronger language on criteria for membership of International IDEA (new Article IV). This includes a requirement that Members subscribe to the objectives of International IDEA (including, "to promote and advance sustainable democracy worldwide") and assist the Institute to carry out its work program. Also, Members would need to demonstrate by example their commitment to "the rule of law, human rights, the basic principles of democratic pluralism and strengthening democracy". Members would also need to undertake "to engage in the governance of the Institute and share in the financing responsibility, in accordance with Article V." Membership may be suspended for Members who do not meet these requirements.

16. New Article V of the 2006 amendments states that International IDEA is to "obtain its financial resources through such means as voluntary contributions and donations by governments and others; programme sponsorship or project funding; publications and other revenue; interest

income from trusts; endowments and investments.” This may result in pressure on donors, like Australia, to make financial contributions to International IDEA. However it is clear from new Article V(2) that the provision of financial support by Members would not be mandatory. It states: “Members are *encouraged* to support the Institute by annual contributions, programme sponsorship, project funding and/or other means” [emphasis added].

17. New Article X of the 2006 amendments would oblige Australia to negotiate an agreement with International IDEA providing status, privileges and immunities to the Institute and its officials which are comparable to those under the *Convention on the Privileges and Immunities of the United Nations 1946*. However, this obligation would only arise if and when International IDEA seeks to perform functions in Australia that require an agreement of this kind.

Implementation

18. At this point in time, no domestic legislation is required to give effect to the amendments. If, at some point in the future, Australia concludes a privileges and immunities agreement with International IDEA, the *International Institute for Democracy and Electoral Assistance (Privileges and Immunities) Regulations 1997* may then need to be amended to reflect all of the obligations arising under that privileges and immunities agreement.

Costs

19. Ratification of the amendments will not result in any additional costs to the Commonwealth, State or Territory governments, business or industry. Financial contributions to International IDEA (core funding, project funding and administration costs) are made on a voluntary basis (new Article V). Under the new membership criteria, Australia will need to “engage in the governance of the Institute and share in the financing responsibility” (new Article IV(2)(c)). Current Australian policy is to consider funding specific International IDEA projects which coincide with the objectives of Australia’s aid program in Asia and the Pacific, rather than to provide core funding.

20. There is likely to be some small administrative costs to the Australian Government to support Australia’s work in the Council and potentially the Steering Committee of International IDEA. It is anticipated that the majority of Australia’s engagement in the Council and potentially the Steering Committee would be conducted by the Australian Embassy based in Stockholm, and therefore such costs are likely to be relatively low.

Regulation Impact Statement

21. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

22. Pursuant to new Article XIV of the 2006 amendments, further amendments will enter into force thirty days after the date on which two-thirds of the Parties have notified the Depository that they have fulfilled the formalities required by national legislation with respect to the amendments. Those amendments shall then be binding on all Members.

23. The Agreement may only be amended by a two-thirds majority vote of all the Parties, with a proposal for such an amendment to be circulated at least eight weeks in advance.

24. The Council of International IDEA intends to decide upon and adopt Guidelines and Rules of Procedure to supplement the amended Agreement. Whilst these Guidelines are still under consideration it is anticipated they will be adopted during 2006. The intention of the Guidelines and Rules of Procedure, which will be of less than treaty status, will be to provide guidance on the application of the Statutes.

25. Any future treaty action, such as further amendments to the Statutes of International IDEA, will be subject to Australia's domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

26. The 2006 amendments will alter the provisions dealing with withdrawal from the Agreement. Article XVI of the Agreement currently addresses the withdrawal of any Party to the Agreement. It provides that a Party may withdraw from the agreement and that such withdrawal becomes effective three months after the date on which this has been notified to the Depository.

27. New Article XV, to be inserted by the 2006 amendments, provides new requirements for the withdrawal of any Party. A Party wishing to withdraw from the Agreement will be required to provide written notice to the Depository six months in advance of its formal notification, to enable International IDEA to inform the other Parties and to initiate discussions as required. A formal decision to withdraw shall become effective six months after the date on which this has been notified to the Depository. As a result twelve months would pass before withdrawal could be finalised.

28. Current Article XVI of the Agreement would be the applicable provision in the event that Australia decides to withdraw its membership of International IDEA prior to entry into force of the 2006 amendments. However once the 2006 amendments come into force, the new Article XV will apply and the longer period for withdrawal will be required. Any proposed Australian withdrawal would be subject to Australia's domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties.

Contact details

Political Governance & Human Rights Section
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Australian Agency for International Development (AusAID)

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CONSULTATION

The Australian Agency for International Development (AusAID) consulted with the Attorney-General's Department and the Department of Foreign Affairs and Trade seeking their agreement to Australia ratifying the amendments and they agreed with this position.

AusAID also consulted the Australian Electoral Commission and the Centre for Democratic Institutions. The Australian Electoral Commission saw no difficulty with Australia's proposed ratification of the Amended Statutes. The Centre for Democratic Institutions advised their support for the proposal to ratify the Amended Statutes.

Both the Centre for Democratic Institutions and the Australian Electoral Commission noted their strong and productive working relationships with International IDEA.

BACKGROUND INFORMATION – CURRENT STATUS LIST

List of Parties to the Agreement: (Member States of International IDEA)

Australia
Barbados
Belgium
Botswana
Canada
Cape Verde
Chile
Costa Rica
Denmark
Finland
Germany
India
Mauritius
Mexico
Namibia
The Netherlands
Norway
Peru
Portugal
Spain
South Africa
Sweden
Switzerland
Uruguay

The 2003 amendments are in force for all Parties to the Agreement.

The 2006 amendments have not entered into force for any of the Parties to the Agreement. Chile and Switzerland have notified their approval of the 2006 amendments to the Depository of the Agreement.

Associate member organisations:

International Press Institute
Parliamentarians for Global Action
Transparency International
Inter-American Institute for Human Rights

Observer States:

Japan