International Fund for Agricultural Development Amendment Bill 2012

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International Fund for Agricultural Development Amendment Bill 2012

Date introduced: 13 September 2012

House: House of Representatives

Portfolio: Foreign Affairs

Commencement: Sections 1–3 on Royal Assent; Schedule 1 on a single day to be fixed by Proclamation.¹

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The purpose of the International Fund for Agricultural Development Amendment Bill 2012 (the Bill) is to amend the International Fund for Agricultural Development Act 1977 (the Act)² to provide for Australia’s accession³ to the Agreement Establishing the International Fund for Agricultural Development (the Agreement)⁴ under Australian law.⁵

1. The Proclamation must not specify a day that occurs before the day Australia becomes a member of the International Fund for Agricultural Development again. However, if Schedule 1 does not commence within the period of six months beginning on the day that Australia becomes a member of the Fund again, it commences on the day after the end of that period. In that circumstance, the Minister must announce the commencement of the provisions by notice in the Gazette the day the provision(s) commenced: Section 2 of the Bill.


3. Where a country has not signed a multilateral treaty, it will nevertheless generally be able to become a party to it. This is typically called an act of accession—it is a single act whereby a State expresses its consent to be bound, instead of signature followed by ratification. Accession is only available if it has been provided for in the treaty, or if the consent of all the original parties to the treaty is obtained. Butterworths Concise Australian Legal Dictionary, third edition, LexisNexis Butterworths, Australia, 2004, p. 6. In this case, Article 13 of the Agreement allows for accession.


5. If new legislation is required to implement the treaty, the normal practice is to require that the legislation to be passed before seeking Executive Council approval to enter the treaty. This is because subsequent Parliamentary passage of the necessary legislation cannot be presumed, entailing a risk that Australia could find itself legally bound

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The Agreement establishes the International Fund for Agricultural Development (IFAD). Australia is seeking to rejoin the IFAD when it accedes to the Agreement. Parties to the Agreement are members of the Fund.6

Background

International Fund for Agricultural Development

The International Fund for Agricultural Development (IFAD) is a specialised agency of the United Nations which was established as a financial institution in 1977 as one of the major outcomes of the 1974 World Food Conference.7

Since it was created in 1977, IFAD has focused exclusively on rural poverty reduction, working with poor rural populations in developing countries to eliminate poverty, hunger and malnutrition; raise productivity and incomes; and improve the quality of their lives.8

Australia’s participation in the IFAD

Speaking to the International Fund for Agricultural Development Bill 1977, the then Minister for Foreign Affairs, Andrew Peacock, provided the background to Australia’s participation in the IFAD as follows:

The purpose of this Bill is to authorise an initial Australian Government contribution of $A8m, to be paid initially in the form of promissory notes, to the International Fund for Agricultural Development- IFAD- as well as to approve Australia’s membership of the Fund. As honourable members may know, the decision to set up the International Fund for Agricultural Development was one of the major initiatives taken at the 1974 World Food Conference in Rome. Australia was one of 3 developed countries, together with the Netherlands and New Zealand, which with 31 developing countries cosponsored Resolution XIII of the World Food Conference which recommended the establishment of such a Fund. The Secretary-General of the United Nations subsequently convened a conference to work out the details and size of the Fund. Following meetings of interested countries in May and October of 1975 and in February 1976, the terms of the Agreement for the establishment of the Fund were finalised at a plenipotentiary conference on 13 June of last year. The text of the Agreement is set out in the Schedule to the Bill. However, the Agreement was not opened for signature before prospective contributors to the Fund had

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6. Section 2 of Article 3 of the Agreement provides for parties to the Agreement to be original or non-original members of the Fund: the Agreement Establishing the International Fund for Agricultural Development, op. cit.

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made pledges amounting to an aggregate of $US 1000m. This was achieved in December 1976, and the Agreement was opened for signature at the United Nations on 20 December 1976. To date 40 countries have signed the Agreement and six have ratified it. Australia signed the Agreement on 30 March 1977.  

Australia’s withdrawal from the IFAD

Proposal to JSCOT

In March 2004, a proposal was put that Australia withdraw from the IFAD. In its subsequent report (the first JSCOT report), the Joint Standing Committee on Treaties (JSCOT) noted that: ‘The fundamental reasons for Australia’s proposed withdrawal from the Agreement were the IFAD’s:

- lack of focus on South-East Asia and the Pacific
- lack of comparative advantage and focus and
- shortcomings in management and donor relations.’

The first JSCOT report canvassed three possible options for Australia to address its concerns regarding the IFAD.

First, it could continue as a contributing member. However, Australia’s concerns about the IFAD’s performance in relation to the Australian aid program and its priorities militated against this option.

Second, it could become a non-contributing member (and reassess Australia’s position following the completion of an independent external evaluation (IEE) of IFAD). However the Committee was advised that ‘remaining a non-contributing member of the IFAD would involve a level of engagement, monitoring and support by Australia that would not be an efficient use of resources’.

Its third option was to withdraw from the Agreement.

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12. Ibid., p. 37.
13. Ibid., p. 36.

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JSCOT Recommendation

Ultimately the majority recommendation of JSCOT was ‘that Australia should withdraw from the IFAD and utilise the ongoing savings on overseas development assistance in South-East Asia or the Pacific’. The basis for this decision was:

... that the lack of focus on South-East Asia and the Pacific by IFAD is contrary to Australia's policy of focussing on the immediate region. Given evidence that IFAD focuses principally on small projects and in areas which are performed by other multilateral organisations it is reasonable to ask whether this is the best use of our aid dollar.

The recommendation was only supported by the Coalition members of JSCOT. The dissenting Committee members noted that ‘most of the evidence gathered during the Committee’s inquiry supports Australia remaining a Member of the Agreement’ and recommended that Australia ‘remain a non-contributing Member until the completion of the current Independent External Evaluation in the first half of 2005, and that Australia’s position, including the merits of making future financial contributions to the IFAD, be reassessed at that time’.

Process for withdrawal

Australia lodged an instrument of denunciation with the UN Secretary-General on 6 August 2004, as required by the terms of the Agreement. The withdrawal took effect from 31 July 2007. However, the original domestic legislation which implemented the Agreement was not repealed subsequent to the withdrawal.

Review of Australia’s engagement with the IFAD

In 2011, Australia, as the only OECD country, and one of only two G20 countries, that was not a member of the IFAD, considered resuming its membership. That being the case, AusAID was tasked with conducting a comprehensive review of the IFAD to inform a decision on whether Australia

14. Ibid., p. 44.
15. Ibid.
16. That is, six Australian Labor Party members and one Democrat member.
17. Ibid., p. 55.
18. Section 1(a) of Article 9 of the Agreement, op. cit., p. 15.
20. The original domestic legislation was the International Fund for Agriculture Development Act 1977, op. cit.
21. The other G20 country is Russia.
should re-join. The review found that since Australia’s decision to withdraw, the IFAD has implemented significant reforms and is now considered by donors and developing countries to be an increasingly effective, results-focussed, value-for-money partner.\textsuperscript{23}

The review report concluded that there was a strong business case for Australia to re-join the IFAD, supported by eight key arguments:

1. IFAD’s work contributes directly to Millennium Development Goal 1 (MDG1) to halve the proportion of the hungry and extremely poor people in the world by 2015. IFAD’s work also contributes to improving gender equality (MDG3), environmental protection and climate change mitigation and adaptation (MDG7).

2. Despite its relatively small size, IFAD is widely seen as a developmentally effective, results-focused, value for money partner in the increasingly important rural development sector.

3. There is now close alignment between IFAD and Australia’s priorities for food security and rural development as a vehicle for economic growth and poverty reduction.

4. IFAD offers partnerships in regions and sectors where Australia wishes to expand but lacks deep technical or country knowledge and presence.

5. IFAD works with rural poor people in fragile and conflict-affected areas, sometimes in areas where Australia cannot go.

6. IFAD works to address large poverty concentrations in rural areas of emerging and middle income countries, all of which are members of the G20.

7. IFAD offers the opportunity for strong Australian influence and profile.

8. IFAD is a multilateral partner of choice that complements Australia’s global investments in rural development, food security and poverty reduction more effectively than the alternatives.\textsuperscript{24}

As a result, the IFAD was the subject of an Australian Multilateral Assessment (AMA).\textsuperscript{25} An AMA provides comprehensive evidence of the effectiveness of an Australian aid program’s multilateral partners and their relevance to Australia’s interests.\textsuperscript{26} The AMA measured the performance of the IFAD against seven criteria and found, amongst other things, that:

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\textsuperscript{23} Ibid., p. 5.
\textsuperscript{24} Ibid., p. iv.


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• it was rated as ‘strong’ in respect of its capacity to deliver results on poverty and sustainable development in line with its mandate

• it was rated as ‘strong’ in respect of its strategic management and performance and

• it was rated as ‘satisfactory’ in respect of its contribution to the wider multilateral development system.

Although some weakness was identified, for example, in respect of its alignment with partner priorities and systems, overall, the AMA reflected positively on the improved performance of the IFAD.

Relying on the review and the outcome of the AMA the decision was made to refer the matter to the JSCOT to seek approval to undertake binding treaty action to re-join the IFAD.

**JSCOT consideration**

The Agreement and the supporting National Interest Analysis were submitted to JSCOT on 26 June 2012. The report (the second JSCOT report) noted the oral evidence from a representative of AusAID that Australia’s withdrawal from the IFAD had had a significant impact, prompting significant reforms. In particular, JSCOT noted that ‘the distribution of the IFAD’s resources to South-east Asia and the Pacific had clearly improved’ and that the IFAD had ‘opened 12 offices in the region’. This was a favourable comparison to the position of having no presence in the area in 2004 when Australia withdrew from the IFAD.

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28. Ibid., p. 8.
29. Ibid., p. 6.
30. Ibid., p. 13.
31. The current JSCOT was appointed by both Houses of the 43rd Parliament to inquire into and report on:
   1. matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
   2. any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
      (i) either House of the Parliament, or
      (ii) a Minister; and
   3. such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe. Source: [http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/index.htm)
33. Ibid.
34. Ibid., p. 29.

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The second JSCOT report supported Australia’s accession to the Agreement and unanimously recommended that binding treaty action be taken.\(^{35}\) In reaching this conclusion, JSCOT took into account the IFAD’s stated objective to:

...provide financing primarily for projects and programs specifically designed to introduce, expand or improve food production systems and to strengthen related policies and institutions within the framework of national priorities and strategies, taking into consideration: the need to increase food production in the poorest food deficit countries; the potential for increasing food production in other developing countries; and the importance of improving the nutritional level of the poorest populations in developing countries and the conditions of their lives\(^{36}\)

and commented that the IFAD ‘faces a significant, possibly insurmountable, challenge if it is to achieve’ that objective in the face of continuing volatility of food prices.\(^ {37}\) Noting that past crop failures in the United States and Russia due to high temperatures and drought have resulted in a rise in the price of food, JSCOT concluded that organisations like the IFAD ‘are likely to be needed more than ever in the years to come’.\(^ {38}\)

**Other committee consideration**

On 13 September 2012 the House of Representatives Selection Committee asked the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Joint Standing Committee) to inquire into and report on the Bill. The reasons for the referral were:

- to determine whether the IFAD has fully addressed the concerns that were raised by the former Howard Government and which prompted Australia to withdraw from the organisation in 2004 and
- to consider the additional financial and human resources required by AusAID to support Australia’s engagement with the IFAD.\(^ {39}\)

At the date of writing this Bills Digest five submissions had been made to the Joint Standing Committee.\(^ {40}\) Each of the submissions was supportive of Australia rejoining the IFAD.

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35. Ibid., p. 34.
36. Article 2 of the Agreement.
38. Ibid., p. 33.

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The Senate Selection of Bills Committee resolved to recommend that the Bill not be referred to any committee for inquiry and report.\textsuperscript{41} In addition, the Senate Standing Committee for the Scrutiny of Bills reviewed the Bill and had no comment about its provisions.\textsuperscript{42}

In addition, the Bill was reviewed by the Parliamentary Joint Committee on Human Rights (Parliamentary Human Rights Committee). The \textit{Human Rights (Parliamentary Scrutiny) Act 2011} requires each bill and disallowable legislative instrument to be accompanied by a Statement of Compatibility. The fact that proposed legislation is not considered to raise any human rights issues does not exempt it from this requirement. As the Bill was not accompanied by a Statement of Compatibility, the Committee proposes to write to the Minister for Foreign Affairs to draw his attention to this requirement.\textsuperscript{43}

\section*{Basis of policy commitment}

According to the second reading speech supporting the Bill, Australia’s membership of the IFAD will:

\begin{itemize}
\item complement and strengthen Australia’s existing support for food security, rural development and poverty reduction
\item provide for direct engagement with smallholder producers who are disproportionately represented among the poor and vulnerable—consistent with the fundamental purpose of the Australian aid program of helping people overcome poverty
\item address poverty issues in rural areas where IFAD is focussed and where Australia has an interest but limited current engagement
\item offer in-depth country and technical knowledge in regions and sectors where Australia wishes to expand but lacks expertise and
\end{itemize}

\section*{References}


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• offer expertise and experience in rural development in fragile and conflict affected area where Australia has a strategic interest but may not be able to directly engage.44

Position of major interest groups

According to the National Interest Analysis which was provided to JSCOT, between 3 February 2012 and 4 March 2012, AusAID undertook a public consultation process to gauge the views of the Australian public about Australia re-joining the IFAD. AusAID received 15 responses to the request for submissions, from NGOs, universities, consultants and private citizens. ‘All 15 of the submissions reacted positively to the proposal and recommended Australia re-join the Fund’.45

Financial implications

The Government will provide up to $126.4 million over four years from 2012–13 as part of rejoining the IFAD. The replenishment of the IFAD will have an impact on the fiscal balance of up to $120.0 million in 2013–14, as the total replenishment commitment is expected to be made in that year. Underlying cash impacts will occur as contributions are disbursed from 2014–15.46

According to the Explanatory Memorandum, ‘final details of the financial implications of rejoining the IFAD will not be confirmed until after the satisfactory completion of the treaty and pledging process’.47

Key provisions

The original domestic legislation which implemented the Agreement is the International Fund for Agricultural Development Act 1977 (IFAD Act).48 As noted above, this legislation was not repealed

47. Explanatory Memorandum, p. 1.

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subsequent to Australia’s withdrawal from the Agreement.\textsuperscript{49} Schedule 1 of the Bill amends and updates the IFAD Act as follows:

\textbf{Item 1} of the Bill repeals and substitutes the definition of ‘\textit{Agreement}’ in section 3 of the IFAD Act to refer to the Agreement Establishing the International Fund for Agricultural Development, adopted by the United Nations Conference on the Establishment of an International Fund for Agricultural Development at Rome on 13 June 1976, as in force in Australia from time to time.\textsuperscript{50} Under the previous arrangement, the Agreement was attached as a Schedule to the Act so that the Act needed to be updated every time the Agreement was amended. The new definition will refer to the Agreement as in force at any particular time. This means that amendments to the Act will not be required if the Agreement changes.

\textbf{Item 2} of the Bill repeals existing section 4 of the IFAD Act, which states that Australia’s membership in the Fund is approved. The Explanatory Memorandum states that this section is not required for Australia to re-join IFAD.

\textbf{Item 4} of the Bill repeals the existing Schedule to the IFAD Act, which sets out the form of the Agreement as it was in 1977 when the IFAD Act was enacted—instead, the new definition of ‘Agreement’ to be inserted into section 3 of the IFAD Act by \textbf{item 1} of the Bill will refer to the most current version of the Agreement, which (as at June 2012) can be found on the Austlii website (see the Note to \textbf{item 1} of the Bill).\textsuperscript{51} As set out above, as the text of the Agreement will no longer be incorporated into the IFAD Act, that Act will not need to be amended if the Agreement is amended.

\section*{Concluding comments}

Australia has had a long involvement with the IFAD—from its initial co-sponsorship of Resolution XIII of the World Food Conference which recommended the establishment of the IFAD—to the lodgement of the instrument of denunciation in 2004 and ultimate withdrawal from the IFAD—to the present action to re-join. To date, all the reports provided to JSCOT in its consideration of whether to re-join the IFAD have referred to the IFAD in the most positive of terms and have indicated that significant improvements have occurred in the management of the IFAD since Australia’s withdrawal.


\textsuperscript{50} See footnote 4.

\textsuperscript{51} At the time of writing this Bills Digest, Australia had not yet acceded to the Agreement, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-8&chapter=10&lang=en
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