

**National Interest Analysis [2017] ATNIA 30**

**with attachment on consultation**

**Agreement between the Government of the United States of America and the  
Government of Australia for Space Vehicle Tracking and Communication Facilities**

(Washington D.C., 17 October 2017)

**[2017] ATNIF 37**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Agreement between the Government of the United States of America and the Government of Australia for Space Vehicle Tracking and Communication Facilities**

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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is to bring into force the *Agreement between the Government of the United States of America (US) and the Government of Australia for Space Vehicle Tracking and Communications Facilities*, done at Washington D.C. on 17 October 2017 (the proposed Agreement). The proposed Agreement will replace the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning Space Vehicle Tracking and Communication Facilities* done at Canberra on 29 May 1980, as amended by an Exchange of Notes completed on 21 November 2013 which will expire on 26 February 2018.
2. The proposed Agreement consolidates the existing Exchange of Notes (collectively, the current Agreement) and also extends the duration. The proposed Agreement would be in force for another twenty-five (25) years, consistent with the Australian Government's preferred position and other Australian Government space related treaties which are currently in force for extensive or indefinite periods. The US Government's policy position requires the treaty to be in force for a maximum of 25 years due to tendering requirements.
3. Pursuant to Article 16, the proposed Agreement would enter into force once both Parties have notified each other through diplomatic channels that their respective domestic requirements for entry into force have been met.
4. Should the proposed Agreement enter into force before the expiry of the current Agreement on 26 February 2018, the current Agreement would terminate.

#### **Overview and national interest summary**

5. Operational-level cooperation with the US on space-related activities began in 1957 with the establishment of facilities at Woomera in South Australia to track US satellites. This was broadened to include additional scientific facilities set up by the US National Aeronautics and Space Administration (NASA) in 1960.
6. Since then, the space vehicle tracking and communication relationship between Australia and the US has been the subject of a succession of agreements and exchanges of notes between the two countries. Australia and the United States first concluded an *Exchange of Notes constituting an Agreement relating to Space Vehicle Tracking and Communications* in 1960. The 1960 agreement was superseded by a similar agreement concluded in 1970, which was in turn replaced in 1980 by the current Agreement. Since 1980, the current Agreement has been reviewed and amended from time-to-time.

7. The current Agreement consists of a base document and multiple subsequent Exchanges of Notes. In 2009, it was agreed by both Parties to conclude a new agreement to consolidate the provisions contained in previous Exchanges of Notes into one document. Both Parties also agreed to extend the current Agreement for two years until 2012, and then for a further two years until 2014 to allow the new agreement to be developed. Unfortunately, due to extended consultation processes on the draft of the new agreement, the new agreement was not finalised before the expected expiry and both Parties agreed to extend the current Agreement for a further four year period until the new agreement was negotiated and brought into force. The current Agreement will expire on 26 February 2018.
8. The proposed treaty action amends and extends the current Agreement, which provides for the establishment, operation and maintenance of NASA facilities in Australia that will provide commensurate benefits for Australia. Australia has derived scientific and economic benefits from activities conducted under the current Agreement. This is through the collaboration between Australian and NASA scientists and the direct employment for several hundred Australian engineering, scientific, technical and administrative staff, and indirectly provided a pool of trained personnel for high-end engineering, scientific and technical roles in the public and private sectors. The proposed Agreement would continue to facilitate collaboration between Australian and NASA scientists and create jobs. As such, it is in Australia's national interest to extend the current Agreement.

### **Reasons for Australia to take the proposed treaty action**

9. The ongoing collaboration between NASA and Commonwealth Scientific and Industrial Research Organisation (CSIRO) allows CSIRO scientists access to world class radio astronomy facilities at a reduced cost. In addition, the data gathered by NASA is freely available to Australian scientists and is used by Australian organisations such as Geoscience Australia and the Australian Bureau of Meteorology.
10. NASA's scientific investigations of the solar system are accomplished primarily through the use of robotic spacecraft. The facilities covered by the proposed Agreement are vital to NASA's programs involving radio contact with human and robotic missions, scientific satellites and deep space probes exploring our solar system and beyond. This includes the Canberra Deep Space Communication Complex (CDSCC) at Tidbinbilla, as well as Tracking and Data Relay Satellite facilities in Alice Springs, the Northern Territory and Dongara, Western Australia.
11. The facilities provide a two-way communications link for the guidance and control of spacecraft and the relay of data and images. It has provided support for several missions including: the Curiosity rover, which is exploring the surface of Mars, the Cassini mission to Saturn, and the Hubble space telescope.
12. The CDSCC is also an integral component to NASA's Deep Space Network (DSN), the largest and most sensitive scientific telecommunications system in the world, which includes facilities at Goldstone, United States and Madrid, Spain. The DSN is an international network of antennas that supports interplanetary spacecraft missions and radio and radar astronomy observations for the exploration of the Solar System and the universe.

13. All activities conducted in Australia under the Agreement are managed to ensure that they are consistent with Australian interests. The CSIRO manages the facilities on behalf of NASA, with specific operational and maintenance activities contracted out as required.
14. Management and operation of the CDSCC is conducted by CSIRO. The continued use of Australian facilities presents further opportunities for Australia to develop its highly skilled technical workforces, significantly enhance domestic scientific and technical capabilities, and providing opportunities for Australian industry. NASA funds the total cost of the facilities, including the salaries and administrative costs of Australian Government personnel involved in the management of activities under the proposed Agreement.

## **Obligations**

15. The Preamble and Article 1 of the proposed Agreement extends the obligations under the current Agreement to reflect the current policy and legislative positions of the Australian and US Governments which will enable the objectives and purpose of the treaty to continue for another 25 years. The proposed Agreement continues and confirms Australia's long-standing relationship with NASA and provides for continuing cooperation in space vehicle tracking and communication support. The proposed Agreement, as per Article 1, specifies that all activities made under the proposed Agreement will be compliant with Australian and US national laws and regulations, including those relating to export control.
16. Article 5 of the proposed Agreement ensures that each Party is obligated to bear any costs required to fulfil their respective responsibilities under the proposed Agreement, including travel and subsistence of personnel and transportation of equipment. However it limits obligations to ensure that bearing any costs is subject to availability of a Party's funding procedures and availability of appropriated funds.
17. Article 6 of the proposed Agreement, obligates both Parties to allow the transfer of all goods, technology, proprietary data, or technical data (including software)—any of which items may be export controlled—without restriction except as otherwise required by the proposed Agreement. The addition of this obligation is needed because the current Agreement does not provide extensive detail about the transfer of data acquired through the activities of the current Agreement and further clarity was required. However, Article 6(4) expressly limits the manner in which transferred materials for which protection is to be maintained, may be used. All such items are required to be identified and data to be marked and may only be used by the receiving Party (i.e. the US Government or the Government of Australia) or its contractors for the purposes of fulfilling the receiving Party's responsibilities under the proposed Agreement. These items or data may not be provided to third parties without the originating Party's permission and the imposition of contractual or equivalent safeguards to ensure that they abide by these strict conditions. Further Article 6(5) ensures that after the completion of activities performed under the proposed Agreement, the items must be returned or disposed as directed by the originating Party or its contractor.
18. Article 7 obliges both Parties to protect any intellectual property created or provided. This is a new addition to the proposed Agreement and was not included in the current Agreement.

19. Article 8 obligates both Parties to coordinate any release of public information and further stipulates certain data and information which cannot be shared without mutual and written permission.
20. Article 9 obligates Australia to exempt and refund the US Government for any taxes, duties, and any other charges for items purchased in or removed from Australia for use in connection with the activities under the proposed Agreement. This is a continuation of the taxation exemption and refund provisions provided for in the current Agreement. NASA is currently exempt from duties, taxes and like charges, including wholesale sales tax and a refund where charges associated with this have been imposed or levied. Article 9 further obligates the Australian Government to assist with the movement of goods between states and territories as required. The legislative provisions enabling this are set out at paragraphs 29 –30 below.
21. In accordance with Article 10 of the proposed Agreement, the obligation on the Australian Government is to support the exchange of mutually agreed personnel (including contractors and subcontractors) and facilitate the entry to and exit from Australia. Further, Article 10(2) provides tax exemptions for any personal and household items imported for use by personnel. Specifically, taxation of ‘US personnel’ continues to be governed by the *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect on Taxes on Income* signed in 1982.. Other people engaged or employed for the purposes of activities under the proposed Agreement who are not ‘US personnel’ (that is nationals of the US and employees of the US Government or the Cooperating Agency – *Article 10(3)*) are subject to applicable Australian taxation laws.
22. A further obligation at Article 11 of the proposed Agreement is placed on US Government to ensure that they utilise Australian resources and personnel to the maximum extent possible
23. Article 12 of the proposed Agreement obligates the US to comply with the Australia’s national security requirements for any activity associated with the proposed Agreement.
24. The Australian Government is obligated under Article 13 of the proposed Agreement to take all necessary steps to ensure that radiofrequency bands continue to be available to carry out the activities set out in the proposed Agreement. NASA is obligated to ensure it uses the radio transmitting and receiving equipment in compliance with Australian law.
25. The addition of Article 14 of the proposed Agreement ensures that both Parties consult with one another and exchange views on future cooperation and resolve questions between each other. Article 14 further adds a dispute settlement clause, which provides first for consultations between the cooperating agencies. If the Cooperating Agencies cannot resolve the dispute, it is to be resolved by consultations between the Parties.

## **Implementation**

26. No new domestic legislation or amendments to existing legislation are required to allow Australia to meet its obligations under the proposed Agreement. Exemptions from duties and taxes are set out in Article 9 of the proposed Agreement are covered by existing legislation, as described at paragraphs 29-30 below.

## **Costs**

27. No additional costs are anticipated as a consequence of this proposed treaty action. NASA funds the total cost of the establishment, operation and maintenance of space vehicle tracking and communication facilities in Australia through its contractual arrangements with CSIRO. NASA is also responsible for remediation work in relation to its facilities. Any additional activities or the set-up of new infrastructure under the proposed Agreement as further amended would not impose any costs on the Australian Government or the respective State and Territory Governments.
28. Under the proposed Agreement, the Australian Government is obliged to grant NASA an exemption from or refund duties, taxes and like charges, including GST, on imports to Australia of goods for use in connection with the proposed Agreement (Article 9). The proposed Agreement also requires Australia to give a refund of Commonwealth indirect taxes (including GST) for goods and services purchased in Australia for use in connection with the proposed Agreement.
29. Where the Government is under such an obligation, Section 105-125 of Schedule 1, Volume 2 of the *Taxation Administration Act 1953* enables the Commissioner of Taxation to make a refund of the indirect tax for such purchases. The *Taxation Administration Regulations 1976* at Part 4A, entitle NASA (amongst other organisations) to claim a refund of the GST for their purchases of goods in Australia. Subsection 42-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999* and item 10 of Schedule 4 of the *Customs Tariff Act 1995* allow NASA to import goods into Australia for the purposes of the proposed Agreement without paying GST or customs duty.

## **Regulation Impact Statement**

30. The Office of Best Practice Regulation has been consulted and has advised that a regulation impact statement is not required.

## **Future treaty action**

31. Article 15 of the proposed Agreement provides that the proposed Agreement can be further amended at any time by written agreement of the two Parties.
32. Conclusion, entry into force and any future amendments made to the proposed Agreement would be subject to Australia's domestic treaty-making requirements, including consideration by JSCOT.

## **Withdrawal or Termination**

33. Article 16 of the proposed Agreement allows either Party to terminate the proposed Agreement by giving written notice of termination through the diplomatic channel after consultations between the Parties have occurred. Such termination takes effect at least two (2) years after the date of written notice.

34. Any termination of the proposed Agreement by Australia would be subject to Australia's domestic treaty-making requirements.

**Contact details**

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## **ATTACHMENT ON CONSULTATION**

### **Agreement between the Government of the United States of America and the Government of Australia for Space Vehicle Tracking and Communication Facilities**

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#### **CONSULTATION**

##### **State and Territory Governments**

35. State and Territory Governments were consulted through the biannual meeting of the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). No requests for further information or comments on the Treaty were received.