

Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended.

Background

- 5.1 The 50th anniversary of treaty-level cooperation between the United States of America (the US) and Australia in space vehicle tracking was on 26 February 2010, and was celebrated with a signing ceremony for the Exchange of Notes constituting an Agreement between the Government of United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities (the Exchange of Notes) in the Senate Courtyard.¹
- 5.2 The Agreement concerning Space Vehicle Tracking and Communication Facilities (the Agreement) has allowed Australia to be a part of some of the human race's greatest achievements. Images of the first few minutes of Neil Armstrong's walk on the moon were received first at Honeysuckle Creek tracking station, just outside Canberra.

1 National Interest Analysis (NIA), para 3.

- 5.3 The Agreement has provided significant benefits to Australian science, with the establishment of major space industry infrastructure in Australia. The Department of Innovation, Industry, Science and Research (DIISR) estimates that the US National Aeronautical and Space Administration (NASA) has spent hundreds of millions of dollars on space related activities in Australia since the relationship began.²
- 5.4 The Agreement also encourages collaboration between NASA and CSIRO scientists, allowing 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.³
- 5.5 The Agreement was first ratified in 1960 and has been reviewed every ten years since. The Agreement consists of a base Agreement with multiple subsequent Exchanges of Notes.⁴
- 5.6 The latest Exchange of Notes is the subject of this inquiry. It deals with two matters:
- the extension of the Agreement by two years; and
 - the inclusion in the Agreement of the Data Relay Satellite Ranging System facility at Dongara in Western Australia.⁵

Facilities covered by the Agreement

- 5.7 The CSIRO and the NASA jointly operate three facilities in Australia: the Canberra Deep Space Communication Complex (CDSCC) at Tidbinbilla in the ACT; and Tracking and Data Relay Satellite Ranging System facilities in Alice Springs in the NT and Dongara in WA.⁶

Canberra Deep Space Communication Complex

- 5.8 The most significant of these facilities is the CDSCC, which is one of three such facilities in the world, the others being in Madrid, Spain and

2 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 1.

3 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 2.

4 NIA para 5.

5 NIA para 11 and para 13.

6 NIA para 8.

Goldstone in the US. The facilities are responsible for providing a two way communications link for the guidance and control of robotic spacecraft in deep space and for the relay of images and data. The three facilities are spaced evenly around the globe to enable constant communication with the robotic spacecraft as the Earth rotates on its axis.⁷

- 5.9 The three facilities are in contact with more than 40 robotic spacecraft, including:
- Cassini, currently in orbit around Saturn;
 - Dawn, currently travelling to the asteroid belt between Mars and Jupiter;
 - LCROSS, recently responsible for discovering water on the Moon;
 - the Mars Rovers Spirit and Opportunity;
 - NHPC, currently travelling to Pluto; and
 - Voyagers 1 and 2, launched in 1977 and currently beyond the solar system.⁸
- 5.10 The CDSCC employs 130 specialist technicians and support staff. Management of the CDSCC is in the process of being transferred to the CSIRO after a period of time being operated under contract by Raytheon Australia. Staff at the facility will become CSIRO employees as part of this process.⁹

Data Relay Satellite Ranging System Facilities

- 5.11 The Data Relay Satellite Ranging System facilities in Alice Springs and Dongara are used for tracking and communication with earth orbiting civilian satellites and are part of the Tracking and Data Relay Satellite System (TDRSS), which is intended to increase the time earth orbiting satellites can communicate with the ground, thereby improving the amount of data that can be transferred.¹⁰ Each facility is automated with no permanent staff.¹¹

7 NIA para 8.

8 CDSCC website, <http://www.cdsc.nasa.gov/Pages/pg03_trackingtoday.html>, viewed 5 February 2010.

9 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 6.

10 Department of Innovation, Industry, Science and Research, *Submission No. 1*, p. 1.

11 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 5.

- 5.12 The Exchange of Notes adds the Dongara Facility to the Agreement. The Dongara Facility was removed from the Agreement by an amendment included in the last Exchange of Notes in 2000. Since then, the Facility has operated under a commercial contract between the CSIRO and NASA.¹²
- 5.13 The reinstatement of the Dongara Facility in the Agreement will have no practical effect on its operations. In other words, according to DIISR, the Dongara Facility will continue to operate as it has done in the past.¹³

A Consolidated Agreement

- 5.14 Both Australia and the US have agreed to develop a consolidated agreement incorporating the base Agreement and all the Exchanges of Notes into a single document. It was the intention of the US Government and the Australian Government to have the consolidated agreement finalised in time to be implemented on the 50th anniversary of the relationship between NASA and the CSIRO.¹⁴
- 5.15 However, DIISR advised the Committee that the timeframe estimated for completing the consolidated agreement was optimistic and could not be achieved before the Agreement expired.¹⁵
- 5.16 To provide more time to develop a consolidated agreement, the Exchange of Notes extends the life of the Agreement by two years.¹⁶
- 5.17 In the Committee's view, the reasons for the failure to negotiate a consolidated agreement are straightforward. The United States Presidential election cycle, with its attendant changes to the senior ranks of the United States federal public service, including NASA, would have made reaching an agreement at this time quite difficult.
- 5.18 In addition, NASA has just completed a thorough review of its strategic direction with regard to human space exploration,¹⁷ which will have a significant effect on the resources available for robotic space exploration. It is not surprising that NASA was not prepared to commit to a ten year agreement without knowing what resources would be available to it.

12 NIA para 14.

13 NIA para 14.

14 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 3.

15 Dr Michael Green, *Transcript of Evidence*, 9 February 2010, p. 3.

16 NIA para 11.

17 NASA, *Report of the Review of Human Spaceflight Plans Committee*, 2009.

- 5.19 The Department's failure to recognise that the environment for a consolidated agreement was not right may have been due to the lack of dedicated space policy resources until the Space Policy Unit was established within DIISR in July 2009.

Timing and Parliamentary and Public scrutiny

- 5.20 One of the effects of DIISR's optimistic approach to developing a consolidated agreement was that the Exchange of Notes was tabled in Parliament on 2 February 2010, only twenty four days before the Exchange of Notes needed to take effect.
- 5.21 The Minister for Innovation, Industry, Science and Research, Senator the Hon Kim Carr, requested that the Committee expedite its consideration of the Exchange of Notes.
- 5.22 Because of the importance of the relationship between the CSIRO and NASA to Australian scientists, the Committee was able to meet the requested time frame, and Report 109, supporting the Exchange of Notes and recommending binding treaty action be taken, was tabled on 11 February 2010.
- 5.23 This is one of a spate of recent requests by the Australian Government for the Committee to expedite consideration of a treaty. Other recent treaties that have been the subject of such a request include:
- the Measure 16 (2009) Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty;
 - the Agreement between Australia and the Republic of Poland on Social Security;
 - the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund; and
 - the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund.
- 5.24 There were, in each of these cases, grounds for expeditious consideration by the Committee, and in each case, the Committee was able to accede to the request. Nevertheless, in all of these cases, it would not have been

necessary to make such a request if the treaty making process had been planned effectively by the sponsoring agencies concerned.

- 5.25 Other than in exceptional circumstances, there is no justification for the Committee to be requested to truncate its inquiry timeframes, which have been agreed to with the Government.
- 5.26 The Committee's inquiries provide an important contribution to treaty making by subjecting treaties to parliamentary and public scrutiny, and providing legitimacy to the treaties. The value of the Committee's inquiries to the treaty making process is undermined when there is insufficient time to properly consider a treaty or allow public examination of a treaty.
- 5.27 The Committee is concerned that a request for expeditious treatment is becoming a solution to poor planning on the part of some departments. The Committee is of the view that the Minister for Foreign Affairs should remind other ministers of the need to include time for proper consideration by the Committee when planning to enter into a treaty.

Recommendation 3

The Committee recommends that the Minister for Foreign Affairs write to all other ministers to remind them that, when they are planning to enter into a treaty, they must factor in the agreed 15 to 20 sitting day timeframe for the Committee to conduct its inquiry.