

No. 16868

**AUSTRALIA
and
PAPUA NEW GUINEA**

Agreement regarding the status of forces of each State in the territory of the other State (with annex). Signed at Port Moresby on 26 January 1977

Authentic text: English.

Registered by Australia on 14 July 1978.

**AUSTRALIE
et
PAPOUASIE-NOUVELLE-GUINÉE**

Accord relatif au statut des forces de chaque État sur le territoire de l'autre État (avec annexe). Signé à Port Moresby le 26 janvier 1977

Texte authentique : anglais.

Enregistré par l'Australie le 14 juillet 1978.

AGREEMENT¹ BETWEEN AUSTRALIA AND PAPUA NEW GUINEA REGARDING THE STATUS OF FORCES OF EACH STATE IN THE TERRITORY OF THE OTHER STATE

Australia and Papua New Guinea,

Recognising the high importance both Governments attach to maintaining close co-operation in defence matters,

Having agreed that service personnel and defence force units from each country may from time to time be present in the other country in accordance with arrangements made between the two Governments,

Desiring to make provision for the status of such personnel while in the other country,

Have agreed as follows:

Article 1. DEFINITIONS

In this Agreement and its annex:

(a) “Authorised service organisation” means a body organised for the benefit of, or to serve the welfare of, members of a visiting force, the civilian component or dependants.

(b) “Civilian component” means civilian personnel in the receiving State who, not being nationals of, nor persons ordinarily resident in the receiving State:

- (i) Are employed by or in the service of a visiting force or an authorised service organisation,
 - (ii) Are serving with an organisation that with the approval of the authorities of the receiving State is accompanying a visiting force, or
 - (iii) Are attached to or accompanying the visiting force and in accordance with the law of the sending State, are subject to the Service law of that State,
- but does not include a dependant.

(c) “Dependant” means a person who is neither a national of nor ordinarily resident in the receiving State and who in relation to a member of a visiting force or of the civilian component is:

- (i) The spouse of the member;
- (ii) A part of the family of the member residing with the member;
- (iii) In the custody, care or charge of the member; or
- (iv) Wholly or mainly maintained by the member, other than as a servant or a member of the servant’s family.

(d) “Loan personnel” means members of, and “loan serviceman” means a member of, the Australian visiting force on loan to and attached to the Papua New Guinea defence force under section 30 (2) of the Defence Act 1974 of Papua New Guinea.

(e) “Receiving State” means the State in the territory of which a visiting force is located whether it be stationed there or in transit.

(f) “Sending State” means the State to which a visiting force belongs.

¹ Came into force on 26 January 1977 by signature, in accordance with article 28.

(g) "Visiting force" means members, including loan personnel, or units of the defence force of one State when in the territory of the other State in connection with activities agreed between the two Governments, provided that the two Governments may agree that certain individuals from units or formations shall not be regarded as constituting or being included in a visiting force for the purpose of this Agreement.

Article 2. COMPOSITION

The size and composition of a visiting force and its civilian component of one State visiting the other State and the conditions applicable insofar as they are not laid down in the present Agreement shall be the subject of mutually acceptable arrangements made from time to time by the two States. A visiting force may be accompanied by its civilian component and dependants.

Article 3. DUTY OF THE VISITING FORCE

It is the duty of visiting force authorities, members of a visiting force, the civilian component and dependants to respect not only the laws and customs of the receiving State but also the spirit of them. The visiting force authorities shall render all assistance within their power to receiving State authorities to prevent misuse of the privileges granted in this Agreement.

Article 4. CRIMINAL AND DISCIPLINARY JURISDICTION

(1) Subject to the provisions of this article:

- (a) The Service authorities of the sending State shall have the right to exercise within the territory of the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the service law of the sending State;
- (b) The authorities of the receiving State shall have jurisdiction over members of a visiting force, the civilian component and dependants with respect to offences committed within the territory of the receiving State and punishable by the law of the receiving State.

(2) The service authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the service law of the sending State with respect to offences punishable by the law of the sending State but not by the law of the receiving State.

(3) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a visiting force, the civilian component and dependants with respect to offences punishable by the law of the receiving State but not by the law of the sending State.

(4) In the cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

- (a) The Service authorities of the sending State shall have the primary right to exercise jurisdiction over persons subject to the service law of the sending State in relation to:
 - (i) Offences solely against the property or security of the sending State;
 - (ii) Offences solely against the person or property of a member of a visiting force, the civilian component, or a dependant of any of the foregoing; or
 - (iii) Offences arising out of any act or omission done in the performance of official duty;

- (b) In the case of any other offence the authorities of the receiving State shall have the primary right to exercise jurisdiction;
- (c) For the purposes of sub-paragraph (a) (iii) of this paragraph:
- (i) A certificate issued by the designated authorities of the sending State that the offence arose out of an act or omission done in the performance of official duty, shall, in any proceedings before a court or tribunal, be sufficient evidence of the facts so certified, unless the contrary is proved;
 - (ii) When the authorities of the receiving State consider that the circumstances of a particular case so warrant, they may request that consultations take place between the diplomatic authorities of the sending State in the receiving State and the authorities of the receiving State;
- (d) If the State having the primary right under this article decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having primary jurisdiction shall give sympathetic consideration to a request from the authorities of the other State for waiver of jurisdiction; regard shall be had for the responsibilities of the authorities of the sending State for the good order and discipline of persons subject to the service law of the sending State;
- (e) For the purposes of sub-paragraph (a) (i) of this paragraph an offence relating to the security of the sending State shall include:
- (i) Treason against the State; and
 - (ii) Sabotage, espionage or violation of any law relating to official secrets of the State, or secrets relating to the national defence of that State.
- (5) Paragraphs (1) to (4) of this article shall not confer on the service authorities of the sending State any right to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State unless they are members of a visiting force.
- (6) The designated service authorities of the sending State and the authorities of the receiving State shall assist each other in the arrest of members of a visiting force, the civilian component or dependants in the receiving State and, subject to paragraphs (7), (8) and (9) of this article, in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.
- (7) The designated authorities of the receiving State shall notify promptly the designated service authorities of the sending State of the arrest of any member of a visiting force, the civilian component or of a dependant.
- (8) Where the authorities of the receiving State have arrested a person subject to the service law of the sending State with respect to an offence over which the receiving and sending States have concurrent jurisdiction the authorities of the receiving State shall release him to the custody of the service authorities of the sending State pending completion of trial proceedings provided that he shall, on request, be made available to the authorities of the receiving State.
- (9) In all other cases where the authorities of the receiving State have arrested a member of a visiting force, the civilian component or a dependant, the authorities of the receiving State shall give sympathetic consideration to a request by the authorities of the sending State that he be released to the authorities of the sending State pending completion of trial proceedings provided that he shall, on request, be made available to the authorities of the receiving State.

(10) The service authorities of the sending State and the authorities of the receiving State shall in all cases including those giving rise to concurrent jurisdiction assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence including the seizure of and, in appropriate cases, the handing over of objects in connection with an offence. The handing over of such objects may, however, be made subject to their return within any reasonable time specified by the authority delivering them.

(11) Under this article the service authorities of the sending State and the authorities of the receiving State shall notify each other of the disposal of all cases in which there are concurrent rights to exercise jurisdiction.

(12) The service authorities of the sending State shall not carry out a death sentence in the receiving State.

(13) The receiving State shall not carry out the death sentence on a member of the visiting force, the civilian component, or on a dependant.

(14) Where an accused has been tried in accordance with the provisions of this article by the service authorities of the sending State or by the authorities of the receiving State, and has been convicted or acquitted (which expressions shall include any other final disposal of a charge), he may not be tried again for the same or substantially the same offence by the authorities of either State. This paragraph shall not prevent the service authorities of the sending State from trying a member of the visiting force for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of the receiving State.

(15) In addition to the provisions of any agreement entered into between Australia and Papua New Guinea concerning the return of prisoners from one country to the other, where a member of a visiting force, the civilian component or a dependant has been sentenced under the law of the receiving State to a term of imprisonment and he makes a request, which is supported by the authorities of the sending State, that his term of imprisonment be served in the sending State, his request shall be given sympathetic consideration by the authorities of the receiving State.

(16) Whenever a member of a visiting force, the civilian component or a dependant is prosecuted under the jurisdiction of the receiving State he shall be entitled:

- (a) To a prompt and speedy trial;
- (b) To be informed, in advance of trial, of the specific charge or charges to be made against him;
- (c) To be confronted with the witnesses against him;
- (d) To have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State;
- (e) To have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the part of the receiving State in which he is being prosecuted;
- (f) If he considers it necessary, to have the services of a competent interpreter; and
- (g) To communicate with a representative of the sending State and, where the rules of the court permit, to have such a representative at his trial.

Article 5. JURISDICTION OF VILLAGE COURTS

(1) To the extent that they are not inconsistent with paragraph (2) of this article, the provision of article 4 apply to the exercise of jurisdiction by a village court over members of the visiting force, the civilian component and their dependants.

- (2) Whenever a member of the visiting force, the civilian component or a dependant is a party to proceedings before a village court:
- (a) If he has been arrested:
 - (i) The authorities of Papua New Guinea shall forthwith notify the Head Australian Defence Co-operation Group;
 - (ii) The authorities of Papua New Guinea shall as soon as practicable release or transfer him to the custody of the Australian authorities as the circumstances require; and
 - (iii) The Australian service authorities shall ensure that he attends in person on the date and at the time and place appointed for the hearing by the village court;
 - (b) The authorities of Papua New Guinea shall forthwith advise the Head Australian Defence Co-operation Group of the details of the alleged offence or dispute and the date, time and place of the hearing in the village court;
 - (c) If the village court in the exercise of its criminal jurisdiction makes an order for the payment of goods or performance of work, it shall also specify a fine which may, in the alternative, be paid;
 - (d) If the village court in the exercise of its civil jurisdiction orders the performance of work, it shall also specify the amount of money which may, in the alternative, be paid as compensation or damages;
 - (e) If the proceedings relate to a matter referred to in sub-section 24 (3) of the Village Courts Act:
 - (i) The village court, before making an award, shall consult with the District Supervising Magistrate and the Australian service authorities; and
 - (ii) Any award so made may be varied on appeal or review under section 52 of the Village Courts Act if, in the opinion of the Magistrate hearing the appeal or conducting the review, the award is either grossly excessive or grossly inadequate;
 - (f) He shall be entitled to have, without payment, the assistance of a suitable interpreter; and
 - (g) He shall be entitled to be represented by a member of the defence force or a representative of the Government of Australia who is not a legal practitioner.

Article 6. CLAIMS

- (1) Each Government waives all its claims against the other:
- (a) For damage (including loss or use) to property in the receiving State belonging to, hired or chartered by either of them and used by their defence forces if such damage:
 - (i) Was caused by an act or omission of a member or an employee of the defence force of the other Government and arose out of and in the course of the performance of his official duty; or
 - (ii) Arose from the use of vehicles, vessels or aircraft belonging to, hired or chartered by the other Government and being used for the performance of official duties in the receiving State;
 - (b) For maritime salvage where the vessel or cargo salvaged was owned by a Government and being used by its defence force for official purposes; and

(c) For damages for injury or death suffered by a member of its defence force while such member was engaged in the performance of his official duties.

(2) The two Governments shall consult on the settlement of claims by one against the other arising from damage caused in the ways set out in sub-paragraph (1) (a) of this article to other property belonging to, hired or chartered by either Government or a political sub-division thereof and located in the receiving State.

(3) Claims arising out of acts or omissions of a member of a visiting force, the civilian component or of other servants or employees of a visiting force done in the performance of official duty or out of any other act, omission or occurrence for which the sending State is legally responsible, and causing damage in the territory of the receiving State to third parties, other than to either of the two Governments, shall, except when the two Governments otherwise arrange, be dealt with by the Government of the receiving State in accordance with the following provisions:

- (a) Claims shall be filed, considered and settled or adjudicated in accordance with the laws of the receiving State with respect to claims arising from the activities of the defence force of the receiving State;
- (b) The Government of the receiving State may settle such claims, and payment of the amount agreed upon or determined by adjudication shall be made by the Government of the receiving State;
- (c) Such payment, whether made pursuant to a settlement or to adjudication of the case by a competent authority of the receiving State or the final adjudication by such an authority denying payment, shall be binding and conclusive discharge of the claim;
- (d) Every claim paid by the Government of the receiving State shall be communicated to the appropriate authorities of the sending State together with full particulars and a proposed distribution in accordance with sub-paragraph (3) (e) of this article; in default of a reply within two months the proposed distribution shall be regarded as accepted;
- (e) The cost incurred in satisfying claims pursuant to the preceding sub-paragraphs of this paragraph shall be distributed between the two Governments as follows:
- (i) Where the Government of the sending State alone is responsible for the damage the amount awarded or adjudged and the costs associated with the settling of the claim shall be distributed in the proportion of 25 per cent chargeable to the Government of the receiving State and 75 per cent chargeable to the Government of the sending State;
- (ii) Where the two Governments are responsible for the damage or it is not possible to attribute responsibility for the damage specifically to either Government such amount shall be distributed equally between them.
- (4) Every three months a statement of the sums paid by each Government shall be sent to the authorities of the other Government together with a request for reimbursement.

(5) Paragraphs (3) and (6) of this article shall not apply to:

- (a) Claims arising out of the use of official vehicles of the sending State which are covered by insurance policies taken out in accordance with the law of the receiving State; and
- (b) Contractual claims.

(6) A certificate issued by the designated authorities of the sending State that the claim arose out of any act or omission done in the performance of official duty shall be conclusive of that fact.

(7) The authorities of the two Governments shall co-operate in the procurement of evidence for a fair hearing and disposal of claims under this article.

(8) In the case of any private movable property which is subject to compulsory execution under the law of the receiving State and which is within an area in use by the visiting force or the civilian component, the authorities of the sending State shall, upon request, assist the appropriate authorities of the receiving State to take possession of such property.

(9) The sending State shall not claim immunity from the jurisdiction of the courts of the receiving State for members of a visiting force, the civilian component or dependants in respect of the civil jurisdiction of the courts of the receiving State.

Article 7. TAXATION

The taxation provisions to apply to members of a visiting force, the civilian component and dependants shall be as arranged by the two Governments.

Article 8. LOCAL PURCHASES

Subject to any wishes expressed by the Government of the receiving State, the Government of the sending State and its contractors and authorised service organisations shall purchase locally produced goods and commodities which they require for the official use of a visiting force if they are available at a suitable price and are of a standard required.

Article 9. ENTRY PRIVILEGES (OFFICIAL PURPOSES)

Vehicles, equipment, weapons, armaments, provisions, supplies and other goods imported into or acquired in the receiving State by the visiting force for the official use of a visiting force shall be free of all duties and taxes. Except as may be otherwise arranged, title to such vehicles, equipment, weapons, armaments, provisions, supplies and other goods shall remain in the sending State, which may remove them from the receiving State at any time, free from export duties and related charges and restrictions, or otherwise dispose of them in accordance with arrangements made between the two Governments.

Article 10. FIRST ENTRY PRIVILEGES (PRIVATE PURPOSES)

(1) The personal effects, furniture and household goods (other than motor vehicles, cigarettes, cigars, tobacco and spirituous liquors) of a member of a visiting force or the civilian component or a dependant, may at the time of arrival of the member to take up service in the receiving State or within six months thereafter, or, in the case of a dependant, at the time of arrival of the dependant to join a member or within six months thereafter, be brought into the receiving State free of import duty, including sales tax, provided the furniture and household goods remain in the use, ownership and possession of that member or dependant, or, with the permission of the appropriate authority of the receiving State, of another member or dependant during the period of two years immediately after the date of importation.

(2) One motor vehicle owned and used outside the receiving State by:

- (a) Either a member of a visiting force or a dependant of such a member, or
- (b) Either a member of the civilian component or a dependant of such a member,

during the period of three months immediately preceding his departure for that State shall be eligible for admission into that State free of import duty, including sales tax, provided that the vehicle remains in the use, ownership and possession of that member, or, with the permission of the appropriate authority of the receiving State, of another member during the period of two years immediately after the date of its importation.

(3) Goods imported under paragraphs (1) and (2) of this article shall not be disposed of within the receiving State without prior permission of the authorities of that State; they may, however, be freely exported without payment of duty.

(4) Nothing in this article derogates from any concessions or entitlements granted, from time to time, in accordance with the law of the receiving State, to persons entering that State.

Article 11. EXCHANGE CONTROLS

(1) Members of the visiting force, the civilian component and dependants shall remain subject to the foreign exchange regulations of the sending State but as regards acts done in the territory of the receiving State shall also be subject to the exchange control regulations of the receiving State.

(2) Remittances from the receiving State to the sending State shall be permitted without restriction in respect of:

- (a) Funds derived by members of a visiting force and the civilian component from services or employment in connection with official duties;
- (b) Funds derived by members of a visiting force, the civilian component or dependants from sources outside the receiving State subject to any laws, regulations or policies of the sending State in that respect;
- (c) The proceeds of the sale of personal effects, furniture, motor vehicles and other property used by a member of a visiting force, the civilian component or a dependant which are disposed of in anticipation of the termination of his services in the receiving State;
- (d) Funds belonging to an authorised service organisation and derived from its recognised trading activities.

(3) The preceding paragraphs shall not preclude the transmission into or outside the receiving State of foreign exchange instruments representing the official funds of the visiting force.

Article 12. REQUIREMENTS FOR ENTRY AND EXIT

(1) The Government of the receiving State shall facilitate the admission of members of a visiting force, the civilian component and dependants into, and their departure from, the receiving State in connection with activities agreed between the two Governments.

(2) The undermentioned documents only, which must be presented on demand, shall be required in respect of members of a visiting force seeking to enter the receiving State on official duty:

- (a) Personal identity card issued by the appropriate authority of the sending State showing full name, date of birth, rank and number, service and photograph;
- (b) Individual or collective movement order issued by an appropriate authority and certifying to the status of the individual or group as a member or members of a visiting force; and

(c) Such documents conforming to standards approved by the World Health Organization as may be issued by the appropriate authorities of the sending State in satisfaction of national health and quarantine regulations of the receiving State.

(3) Members of the civilian component and dependants shall be required to be in possession of a valid national passport and a certificate issued by the appropriate authority of the sending State that the holder is a member of the civilian component or a dependant. The certificate will serve in lieu of a visa when travel is undertaken under the authority of a movement order.

(4) Passports and visas will be required by members of a visiting force, the civilian component and dependants for exit and entry purposes when travelling outside the receiving State other than on official duty under the authority of a movement order.

(5) Members of a visiting force, the civilian component and dependants shall be exempt from regulations on registration and control of aliens, but shall not be considered as thereby acquiring any right to permanent residence or domicile in the receiving State.

(6) If a person admitted into the receiving State in accordance with this Agreement ceases while still in the receiving State to be a member of the visiting force, the civilian component or a dependant, the Government of the sending State shall, subject to the law of the sending State, take steps to effect the departure from the receiving State of that person within thirty days of his so ceasing to be such a member or dependant, unless with the approval of the Government of the receiving State other arrangements are made. Where the former member or dependant has not left the receiving State at the end of thirty days of his ceasing to be a member or dependant and no other arrangements have been approved by the Government of the receiving State, the authorities of the sending State shall thereupon inform the authorities of the receiving State, giving particulars as may be required. Similar notification shall be given to the authorities of the receiving State concerning any members of a visiting force who, after having been admitted to the receiving State, absent themselves for more than twenty-one days, otherwise than on approved leave.

(7) If the Government of the receiving State has requested the removal from the receiving State a member of a visiting force, the civilian component or a dependant admitted in accordance with this agreement or has made a deportation order against a former member or dependant who has not formally been granted permanent residence in the receiving State, the authorities of the sending State shall be responsible for the transportation from the receiving State of the person concerned, and, where applicable, his dependants without cost to the Government of the receiving State.

Article 13. USE OF SERVICES AND FACILITIES

(1) A visiting force and all persons associated with its activities may use the public services and facilities owned, controlled or regulated by the Government of the receiving State or its instrumentalities. The terms of use, including charges, shall be no less favourable than those available to other users in like circumstances unless otherwise agreed.

(2) No landing charges shall, however, be payable by the Government of the sending State by reason of the use by its aircraft, or by civil charter operated on its behalf in connection with a visiting force, of any airport in the receiving State. The Government of the sending State shall make such contribution to the maintenance

and operating costs of any airport in the receiving State as may be fair and reasonable, having regard to the use made of that airport by aircraft operating in connection with activities of the sending State. The amount of such contribution shall be the subject of arrangements between the two Governments. Aircraft owned by or operated on behalf of the Government of the sending State shall observe local regulations relating to air traffic control while in the receiving State.

(3) No toll charges, including light and harbour dues, shall be levied upon vessels of the visiting force using port facilities owned, controlled or regulated by the Government of the receiving State or its instrumentalities, nor shall such vessels be subject to compulsory pilotage at these ports.

(4) Vessels, vehicles and aircraft of the visiting force shall be exempt from any form of registration, licensing, compulsory testing or taxation in respect of their use in the receiving State. However, the authorities of the sending State shall insure official vehicles of the visiting force and civilian component against third party risks in accordance with the laws of the receiving State.

(5) For the purposes of paragraphs (3) and (4) of this article, a vessel, vehicle or aircraft on hire or charter to the Government or defence force of a sending State shall, for the period that it is used exclusively for the service of the visiting force, be deemed to be a vessel, vehicle or aircraft of that visiting force.

Article 14. DRIVING LICENCES AND VEHICLE NUMBER PLATES

(1) The authorities of the receiving State shall accept as valid, without a driving test or fee, a driving permit or licence issued by the sending State to members of a visiting force or the civilian component for the purpose of driving official vehicles. For the purpose of driving vehicles other than official vehicles, a driving permit or licence issued by the authorities of the receiving State shall be obtained.

(2) Official vehicles of a visiting force shall carry distinctive number plates.

(3) Privately owned vehicles of members of a visiting force, the civilian component and dependants shall carry number plates to be acquired under and subject to the law of the receiving State.

Article 15. COMPULSORY SERVICE

Members of a visiting force, the civilian component and dependants shall not be subject to any law of the receiving State relating to liability for compulsory service of any kind.

Article 16. POSTAL AND COMMUNICATIONS ARRANGEMENTS

(1) A visiting force may in accordance with arrangements between the two Governments control and operate in the receiving State facilities for communicating with and reporting to the authorities of the sending State.

(2) A visiting force may, at installations and facilities put at its disposal, establish and operate military post offices for the handling of official correspondence, documents, and non-official mail of authorised individuals between these and other post offices of the sending State. Detailed arrangements for the interchange of mails with or through the postal services of the receiving State shall be as mutually arranged.

(3) The authorities of the receiving State shall not inspect official mail in the military postal channels of the sending State. Any inspection of non-official mail in such channels which may be required by the regulations of the receiving State shall be

conducted by the authorities of the receiving State in accordance with procedures to be arranged between the appropriate authorities of both States.

(4) Telecommunication facilities operated in pursuance of paragraph (1) of this article shall not be used for the transmission of non-official communications. Non-official communications shall be transmitted by the public telecommunications services of the receiving State at the charges applicable to the nationals of the receiving State for equivalent transmissions.

(5) The provisions of the International Telecommunication Convention¹ and of the Regulations and Recommendations associated with that Convention shall be observed in relation to any telecommunication facility operated in pursuance of paragraph (1) of this article.

(6) Arrangements made in pursuance of paragraph (1) of this article for the operation of telecommunications facilities shall include arrangements for the receiving State to approve the proposed route of any telecommunications cable to be laid in the receiving State and the proposed frequency and power of any wireless transmitter to be operated from the receiving State. Facilities shall not be operated except in accordance with approved proposals. Where a facility operates otherwise than in accordance with approved proposals by reason of the malfunction of equipment, the visiting force shall, at the request of the authorities of the receiving State, suspend the operation of the facility until the malfunction is corrected.

Article 17. UNIFORMS

Members of a visiting force may wear the uniform of the sending State in performing official duties in the receiving State.

Article 18. CONFORMITY WITH LAWS

Consistently with arrangements for the time being in force between Australia and Papua New Guinea, a visiting force and its members and the civilian component and dependants shall conform to the provisions of the law of the receiving State, including quarantine law and industrial awards and determinations.

Article 19. CARRIAGE OF ARMS

Members of a visiting force may possess and carry arms in the receiving State on condition that they are authorised to do so by their orders, provided that arrangements regarding the carrying of arms outside areas and facilities in use by the visiting force are to be made between the appropriate authorities of the two States.

Article 20. AUTHORISED SERVICE ORGANISATIONS

The Government of the receiving State shall permit in its territory the operation of authorised service organisations of the sending State in accordance with arrangements made between the appropriate authorities of the two States.

Article 21. BANKING FACILITIES

Where the authorities of the sending State judge that suitable banking services of the receiving State are not available in some locations in that State, members of the visiting force in those locations shall have right of access to banking services provided by the sending State provided that banks in the receiving State have indicated that they are not prepared to provide, or have not within a reasonable time provided,

¹ Registered with the Secretariat of the United Nations on 2 January 1981 under No. I-19497.

suitable banking services for members of the visiting force. Prior to such banking services being provided by the sending State, that State shall inform the appropriate authorities in the receiving State of its intention to establish banking services in the receiving State and shall conform in every respect with any conditions imposed by the relevant authorities in the receiving State.

Article 22. PERSONNEL SERVICES

(1) The authorities of the receiving State shall be responsible, on request from the authorities of the sending State, for the provision of the following services in respect of the visiting force, the civilian component, dependants and authorised service organisations:

- (a) Working accommodation;
- (b) Residential accommodation;
- (c) Food services in defence force installations;
- (d) Health care services in defence force installations.

(2) The detailed arrangements relating to the provision of such services, including the requirements of the sending State, and the scales and standards of accommodation to be provided, shall be the subject of mutually acceptable arrangements made from time to time by the authorities of the two States.

(3) The Government of the sending State shall reimburse the Government of the receiving State for expenses involved in these arrangements at such rates as are agreed from time to time between the authorities of the two States.

Article 23. SECURITY

(1) A visiting force shall have the right to take such lawful measures as it deems necessary to ensure the maintenance of order and security on land, premises and places which it occupies as the result of arrangements with the receiving State.

(2) The authorities of the two States shall co-operate in taking such steps as from time to time may be necessary to ensure the security of such premises and of the equipment, property, records and official information of a visiting force, its members, civilian component, dependants and their property.

Article 24. FLYING OF FLAGS

Wherever the flag of the sending State is flown at premises occupied by a visiting force, the flag of the receiving State shall be flown on a separate and adjacent flagstaff.

Article 25. LOAN PERSONNEL

The provisions of this Agreement apply to loan personnel with such modifications, additions or exceptions as are provided in the annex to this Agreement.

Article 26. CONSULTATIONS

Any matter arising under this Agreement with respect to its interpretation, application or implementation shall be settled by consultation or negotiation between the two Governments.

Article 27. VARIATION AND SUSPENSION

The Governments may agree at the instance of either Government to a variation or suspension, on reasonable notice, of this Agreement or a part or parts hereof.

Article 28. TERMINATION

This Agreement shall enter into force on the date of signature, and shall remain in force until the expiration of 180 days from the date on which either Government gives to the other Government notice, in writing, that it desires to terminate the Agreement.

IN WITNESS WHEREOF the undersigned acting with due authority have signed this Agreement.

DONE at Port Moresby in two originals, this 26th day of January, one thousand nine hundred and seventy-seven.

[Signed]

T. CRITCHLEY
For Australia

[Signed]

JOHN GUISE
For the Independent State
of Papua New Guinea

ANNEX TO THE AGREEMENT BETWEEN AUSTRALIA AND PAPUA NEW GUINEA
REGARDING THE STATUS OF FORCES OF EACH STATE IN THE TERRITORY
OF THE OTHER STATE

SPECIAL PROVISIONS RELATING TO AUSTRALIAN LOAN PERSONNEL
IN PAPUA NEW GUINEA

Article 1. RELATIONSHIP WITH PAPUA NEW GUINEA DEFENCE FORCE

The following provisions shall apply in regard to the relationship of loan personnel to the Papua New Guinea defence force:

(a) A loan serviceman shall have the same obligations and will be entitled to the same privileges as a member of the Papua New Guinea defence force of equivalent rank.

(b) A loan serviceman shall have the same powers of command and discipline over members of the Papua New Guinea defence force as if he were a member of that force holding the rank in that force which is equivalent to the rank held by him in the Australian defence force. He is bound by Defence Council Orders, in accordance with their tenor, and is required to obey orders and carry out instructions of a member of superior equivalent rank in the Papua New Guinea defence force, provided that such orders or instructions are not inconsistent with his duties under the law governing the defence force of Australia (including his duties under any instrument having the force of law), and would, if given in similar circumstances by a person subject to the service law of Australia, constitute a lawful command under the service law of Australia.

(c) A loan serviceman is subject to the Defence Act of Papua New Guinea, with the exception of the Code of Military Discipline and section 60 of that Act, but is not subject to the jurisdiction of any authority, court or tribunal established under or exercising powers contained in the Defence Act and the Code of Military Discipline. A loan serviceman charged with an offence shall be charged under, and tried in accordance with, the service law of Australia.

(d) A loan serviceman will retain the right of personal access to Head Australian Defence Co-operation Group.

Article 2. CRIMINAL AND DISCIPLINARY JURISDICTION

(1) In the application of article 4 of the Agreement to loan personnel the following subparagraph will apply instead of sub-paragraph (4) (c) of that article:

“(c) For the purposes of sub-paragraph (a) (iii) of this paragraph:

- “(i) Where an offence has arisen out of an act or omission done in the performance of official duty, the Service authorities of Papua New Guinea shall issue a certificate to that effect and such a certificate shall be sufficient evidence of the facts so certified unless the contrary is proved;
- “(ii) A copy of the certificate shall be forwarded to the service authorities of Australia;
- “(iii) In the event that the service authorities of Papua New Guinea decline to issue such a certificate the service authorities of Australia may ask that consultations take place between the diplomatic authorities of Australia in Papua New Guinea and the authorities of Papua New Guinea.”

(2) Where a loan serviceman has been arrested by the designated service authorities of Papua New Guinea at the request of the designated service authorities of Australia for an offence against the provisions of the service law of Australia he will be handed over immediately to the appropriate service authority of Australia.

Article 3. CLAIMS

In the application of article 6 of the Agreement paragraphs (3), (4), (5) and (6) thereof shall not apply and the following alternative provisions shall apply to loan personnel:

(a) All claims arising out of acts or omissions of loan personnel done or omitted in the course of their official duty as such shall be dealt with by the Government of Papua New Guinea and settled at the cost of the Government of Papua New Guinea.

(b) A loan serviceman shall not be subject to any proceedings for the enforcement of any judgement or order given or made against him in Papua New Guinea in a matter which arises in the course of his official duty.

(c) Nothing in this article shall prevent a loan serviceman being held responsible for loss or damage to property of or held for the Government of Papua New Guinea or any of its statutory authorities or instrumentalities and in his charge or care where such loss or damage is caused by an act or omission involving fraud, dishonesty or wilful misconduct in the performance of official duty by the loan serviceman.

(d) If the appropriate authorities of Papua New Guinea are satisfied that a loan serviceman is responsible for loss or damage of the kind referred to in the preceding sub-paragraph they may forward full particulars of such loss or damage and of the surrounding circumstances to the service authorities of Australia who shall if satisfied as to his responsibility invite the serviceman to pay such amount (not exceeding the amount of the loss or damage) as is determined by the authorities of Papua New Guinea and any payment so made on account of such loss or damage shall be forwarded to the Government of Papua New Guinea. Nothing in this sub-paragraph in any way derogates from any right in the Government of Papua New Guinea to pursue a claim through non-service procedures available to it from time to time outside these arrangements in respect of any unpaid part of such claim or in respect of a claim which is not satisfied within a reasonable time under the above procedures.

(e) The Government of Papua New Guinea shall make good loss or damage to uniforms and service equipment (but not personal effects) of loan personnel occasioned by the performance of their official duties.

(f) The Government of Papua New Guinea will consider claims by loan personnel for loss of or damage to their personal effects (including, for the purposes of this sub-paragraph, household goods, motor cars and motor cycles) arising out of civil disturbances or riots to the same extent, if any, as it would in the case of claims by its own service personnel.

Article 4. CARRIAGE OF ARMS

The following provision shall apply to loan personnel in lieu of article 19 of the Agreement:

“Loan personnel may possess and carry arms in Papua New Guinea on condition that they are authorised to do so by their orders as members of the Papua New Guinea defence force.”

Article 5. DRIVING LICENCES

The authorities of Papua New Guinea shall issue without fee a driving permit or licence to a loan serviceman if required for the purpose of driving official vehicles of Papua New Guinea.

Article 6. SECURITY

The Government of Papua New Guinea will take such steps as from time to time may be necessary to ensure the security of loan personnel and dependants and their property.

Article 7. PERSONNEL SERVICES

In respect of loan personnel and dependants the Government of Papua New Guinea shall be responsible for the provision of those personnel services referred to in paragraph 22 (1) of the Agreement on the terms and conditions referred to in paragraphs 22 (2) and 22 (3) of the Agreement.
