

No. 25485

**AUSTRALIA,
NEW ZEALAND and
UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

**Agreement to terminate the Nauru Island Agreement, 1919.
Concluded at Canberra on 9 February 1987**

Authentic text: English.

Registered by Australia on 10 December 1987.

**AUSTRALIE,
NOUVELLE-ZÉLANDE et
ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD**

**Accord portant abrogation de l'Accord de 1919 relatif à l'île
de Nauru. Conclu à Canberra le 9 février 1987**

Texte authentique : anglais.

Enregistré par l'Australie le 10 décembre 1987.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA,
THE GOVERNMENT OF NEW ZEALAND AND THE GOVERN-
MENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND TO TERMINATE THE NAURU ISLAND
AGREEMENT 1919²

The Government of Australia, the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as “the Partner Governments”),

Recalling that the Agreement between the Partner Governments concerning, *inter alia*, the mining of the phosphate deposits of the island of Nauru, done on 2 July 1919,² as amended by the Agreements between the Partner Governments done on 30 May 1923³ and 26 November 1965,⁴ (hereinafter referred to as “the Nauru Island Agreement”) established a Board of Commissioners (the present members of whom are hereinafter referred to as “the Commissioners”) comprising three members, one to be appointed by each of the Partner Governments;

Recalling that the Agreement between the Government of Australia and the Government of New Zealand relating to Christmas Island, done on 30 September 1958,⁵ as amended by the Agreements between the Government of Australia and the Government of New Zealand done on 21 November 1958⁶ and 8 September 1976⁷ (hereinafter referred to as “the Christmas Island Agreement 1958”) provided that the Christmas Island Phosphate Commission shall, in the exercise of its responsibility to manage and control the mining of phosphate on Christmas Island, employ the Commissioners as managing agents;

Recognising that pursuant to Article 1 of the Agreement between the Government of New Zealand and the Government of Australia to amend the Christmas Island Agreement 1958, done at Canberra on 9 June 1981,⁸ the functions of the Commissioners as managing agents for the Christmas Island Phosphate Commission have ceased;

Desiring that, since the purposes for which the Commissioners were appointed have come to an end, the Commissioners should proceed to wind up their affairs and distribute their residual assets and liabilities to the Partner Governments;

Have agreed as follows:

Article 1. (1) Within 60 days of the entry into force of this Agreement the Commissioners shall:

(a) Convert into cash those of their assets that do not consist of cash or cash at banks;

¹ Came into force on 9 February 1987 by signature, in accordance with article 5 (1).

² *British and Foreign State Papers*, vol. 113, p. 151.

³ *Ibid.*, vol. 135, p. 248.

⁴ United Nations, *Treaty Series*, vol. 598, p. 81.

⁵ *Ibid.*, vol. 340, p. 61.

⁶ *Ibid.*, p. 76.

⁷ *Ibid.*, vol. 1050, p. 367.

⁸ *Ibid.*, vol. 1324, p. 368.

(b) Make payments in respect of those known liabilities of the Commissioners that may be paid conveniently; and

(c) When they are reasonably satisfied that:

- (i) They have made the payments referred to in sub-paragraph (b); and
- (ii) All known assets and liabilities of the Commissioners can be accounted for in their final accounts,

distribute the net surplus of their assets less the sum of A\$500,000 to the Partner Governments in the following proportions:

- United Kingdom: 31.5 percent;
- Australia: 47.5 percent;
- New Zealand: 21.0 percent.

(2) The sum of A\$500,000 referred to in paragraph (1) of this Article shall be applied in payment of those liabilities of the Commissioners that may only be paid conveniently after the distribution referred to in paragraph (1) of this Article, and before the distribution referred to in paragraph (3) of this Article.

(3) Within 150 days of the entry into force of this Agreement, the Commissioners shall:

- (a) Prepare and present to the Partner Governments their final accounts, duly audited; and
- (b) Distribute the balance of their assets to the Partner Governments in the proportions referred to in paragraph (1) of this Article.

(4) Should there arise or come to hand following the distribution referred to in paragraph (3) of this Article any assets which, had the Commissioners remained in office and the distribution not been made to Partner Governments, would have been assets to which the Commissioners would have been entitled, then each of the Partner Governments shall promptly provide the others with particulars of every such asset arising or coming to hand, and as regards any such assets the Partner Governments shall be entitled to the same, in the same proportions set out in paragraph (1) of this Article.

Article 2. Each of the Partner Governments shall indemnify the Commissioner appointed by that Government who holds office immediately before the entry into force of this Agreement in respect of liabilities incurred in the course of his duties as a Commissioner.

Article 3. (1) This Article shall apply to claims unsatisfied upon the distribution of assets in accordance with paragraph (3) of Article 1 which are claims:

- (a) Against one or more Commissioners or former Commissioners as such; or
- (b) Against a Partner Government arising out of the actions of the Commissioners or former Commissioners as such.

(2) In the event of a claim, the Partner Government against whom, or against whose Commissioner or former Commissioner, that claim is brought shall inform the other Partner Governments of that claim prior to the commencement of proceedings or, where time limits for litigation render this impossible, as soon as possible thereafter. The Partner Governments shall consult at the request of any Partner Government on the conduct of the legal proceedings arising out of the claim, and on the manner in which the claim may be settled.

(3) If in relation to a claim which does not arise out of the fraudulent or criminal acts of one or more of the Commissioners or former Commissioners:

(a) The Partner Governments mutually decide that payment should be made in settlement of the claim; or

(b) A Partner Government is obliged to make a payment following an order of a Court of competent jurisdiction adjudicating upon the claim,

the Partner Governments shall contribute to that payment in the proportions referred to in paragraph (1) of Article 1.

(4) The Partner Governments shall contribute in the proportions referred to in paragraph (1) of Article 1 to the costs incurred by a Partner Government in defending a claim other than a claim which arises out of the fraudulent or criminal acts of one or more of the Commissioners or former Commissioners as such.

(5) Notwithstanding the proportionate assumption by the Partner Governments of responsibility for claims provided for in paragraphs (3) and (4) of this Article, if any such claim arises out of any act or omission by the Commissioners or former Commissioners while acting as managing agents for the Christmas Island Phosphate Commission, in respect whereof the Commissioners or former Commissioners would have been entitled under the laws of the State of Victoria in Australia to reimbursement or recovery from the Christmas Island Phosphate Commission as principal, then the Government of Australia and the Government of New Zealand shall consult with a view to ascertaining the best method of assessing the claim and determining the appropriateness of the settlement.

Article 4. After the distribution to the Partner Governments provided for by paragraph (3) of Article 1 the Partner Governments may, and shall on request of the Commissioners, formally by written notice terminate the office of the Commissioners.

Article 5. (1) This Agreement shall enter into force upon signature.

(2) Insofar as it is still in force, the Nauru Island Agreement shall be terminated on the date upon which the presentation to each Partner Government of final accounts provided for in Article 1 has been completed as recorded in an exchange of notes through the diplomatic channel at Canberra between the Partner Governments.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE at Canberra this ninth day of February 1987 in three originals.

For the Government of Australia:

[Signed — Signé]¹

For the Government of New Zealand:

[Signed — Signé]²

For the Government of the United Kingdom of Great Britain and Northern Ireland:

[Signed — Signé]³

¹ Signed by G. Scholes — Signé par G. Scholes.

² Signed by G. Ansell — Signé par G. Ansell.

³ Signed by John Leahy — Signé par John Leahy.