

No. 31160

**AUSTRALIA
and
NEW ZEALAND**

**Exchange of letters constituting an agreement relating to
Nauru. Canberra, 23 May 1994**

Authentic text: English.

Registered by Australia on 18 August 1994.

**AUSTRALIE
et
NOUVELLE-ZÉLANDE**

**Échange de lettres constituant un accord concernant Nauru.
Canberra, 23 mai 1994**

Texte authentique : anglais.

Enregistré par l'Australie le 18 août 1994.

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND RELATING TO NAURU

I

NEW ZEALAND HIGH COMMISSION
COMMONWEALTH AVENUE
CANBERRA, AUSTRALIA

23 May 1994

37/26/2

Dear Senator Evans,

I have the honour to refer to discussions between our two Governments regarding the Agreement between Australia and the Republic of Nauru for the Settlement of the Case in the International Court of Justice Concerning Certain Phosphate Lands in Nauru, which was concluded at Nauru on 10 August 1993.² That Agreement (hereinafter called "the Settlement Agreement") contains a provision, in Article 3, which enures in favour of New Zealand and which constitutes a release for New Zealand from all claims which Nauru might have against it in relation to any matters arising from the administration of Nauru, or pertaining to phosphate mining on Nauru.

Against the above background, and having regard to the good relations between our two Governments, you have invited New Zealand to make a contribution to the Australian settlement with Nauru. In response, I have the honour to make the following proposals:

1. The New Zealand Government, in reliance upon Article 3 of the Settlement Agreement and on an *ex gratia* basis, hereby offers to pay the Government of Australia the sum of A\$12 million in full and final settlement of any claims whatsoever that the Government of Australia may have, now or in the future, against the New Zealand Government, its servants or agents:
 - (a) arising out of or concerning the administration of Nauru during the period of the League of Nations Mandate or the United Nations Trusteeship, or the termination of that administration;

¹ Came into force on 23 May 1994, in accordance with the provisions of the said letters.

² United Nations, *Treaty Series*, vol. 1770, No. I-30807.

- (b) arising out of or concerning the phosphate mining on Nauru, including any matter concerning the British Phosphate Commissioners, their assets or liabilities, or concerning the winding up of the affairs of the Commissioners and the distribution of their assets and liabilities; or
 - (c) arising out of or concerning the Settlement Agreement.
2. This offer is made without prejudice to the New Zealand Government's position that it has at no time had any legal liability, either to the Government of Nauru or to the Government of Australia, in respect of the matters referred to in paragraph 1 of this letter and that it is under no obligation to contribute in respect of the sums paid or payable by the Government of Australia under the Settlement Agreement.
3. This offer is also made subject to the Government of Australia's agreement:
- (a) that it shall make no claim whatsoever now, or at any time in the future, against the New Zealand Government arising out of or concerning any of the matters referred to in paragraph 1 of this letter, including any claim under Article 3.3 or 3.4 of the Agreement between the Government of New Zealand, the Government of Australia and the Government of the United Kingdom to terminate the Nauru Island Agreement 1919 signed at Canberra on 9 February 1987;¹
 - (b) that it shall indemnify the New Zealand Government against any loss, costs, damages or expenses which the latter may incur or be called upon to pay as a result of any claim by the Government of Nauru against the New Zealand Government arising out of or concerning any of the matters referred to in paragraph 1 of this letter, provided that no obligation shall arise under this subparagraph in excess of the amount of the *ex gratia* payment referred to in paragraph 1.

If this offer is acceptable to the Government of Australia, I should be grateful if you would confirm accordingly.

¹United Nations, *Treaty Series*, vol. 1487, p. 53.

I have the honour to propose that this letter and your reply to that effect shall constitute an agreement between our two Governments, which shall come into force on today's date, being the date of the receipt by the Government of Australia of the above contribution from the New Zealand Government.

Yours sincerely



ROSEMARY BANKS
Acting High Commissioner for New Zealand

Senator The Hon. Gareth Evans QC
Minister for Foreign Affairs
Parliament House
Canberra

II

SENATOR THE HON. GARETH EVANS QC
MINISTER FOR FOREIGN AFFAIRS
LEADER OF THE GOVERNMENT IN THE SENATE
PARLIAMENT HOUSE
CANBERRA

23 May 1994

Dear Ms Banks,

I have the honour to refer to your letter of 23 May 1994, which reads as follows:

[*See letter I*]

On behalf of the Government of Australia, I confirm that the foregoing is acceptable to the Government of Australia and that your letter and this reply shall together constitute an Agreement between the Government of Australia and the Government of New Zealand, which shall enter into force on today's date.

Your sincerely,



GARETH EVANS

Ms Rosemary Banks
Acting High Commissioner
New Zealand High Commission
Canberra
