

No. 33345

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**AUSTRALIA  
and  
UNITED STATES OF AMERICA**

**Exchange of notes constituting an agreement concerning certain mutual defence commitments. Sydney and Canberra, 1 December 1995**

*Authentic text: English.*

*Registered by Australia on 5 November 1996.*

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**AUSTRALIE  
et  
ÉTATS-UNIS D'AMÉRIQUE**

**Échange de notes constituant un accord concernant certains engagements mutuels en matière de défense. Sydney et Canberra, 1<sup>er</sup> décembre 1995**

*Texte authentique : anglais.*

*Enregistré par l'Australie le 5 novembre 1996.*

## EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING CERTAIN MUTUAL DEFENCE COMMITMENTS

### I

Excellency,

I have the honour of referring to recent discussions which have taken place between officials of the Government of Australia and of the Government of the United States of America (hereinafter referred to as the Parties) concerning the establishment of certain defence commitments between the two Parties. These discussions reflect the mutual desire of the Parties, in the exercise of their national and mutual defence responsibilities for the security of Australia and the United States, to facilitate the process of cooperation in defence matters and to ensure that the respective interests of the Parties are fairly respected under international law.

I have, further, the honour to refer to the Agreement concerning the Status of United States Forces in Australia, signed in Canberra on May 9, 1963,<sup>2</sup> which *inter alia*, defined the terms "members of the United States Forces" and "members of the civilian component" and established procedures for resolution of certain claims arising from damage to property and death or injury to persons. I have, still further, the honour to refer to the Parties' Agreement to Facilitate Interchange of Patent Rights and Technical Information for Defence Purposes, signed at Washington on January 24, 1958,<sup>3</sup> which, *inter alia*, provides that a Recipient Government who receives technical information for defence purposes shall use its best endeavours to insure that the information is not dealt with in any manner likely to prejudice certain rights of the owner thereof, and that the private owners of technical information which has been communicated for defence purposes who are subjected to the unauthorised disclosure or use of the information by a Recipient Government may be compensated in accordance with the procedures set forth in that Agreement.

In consideration of the above, I have the honour to propose that whenever our national defence organisations, within the limits of defence responsibilities and authorities as established by each Party, undertake to cooperate in writing, such arrangements shall be subject to this Agreement between the Parties concerning certain mutual defence commitments, when explicitly invoked by or for such arrangements, as to the following matters.

<sup>1</sup> Came into force on 1 December 1995, in accordance with the provisions of the said notes.

<sup>2</sup> United Nations, *Treaty Series*, vol. 469, p. 55.

<sup>3</sup> *Ibid.*, vol. 307, p. 105.

1.
  - a) As regards issues of liability, the provisions of the Agreement concerning the Status of United States Forces in Australia or of any other agreement between the Government of Australia and the Government of the United States of America concerning the status of forces of one country when in the other which may be concluded hereafter, shall apply pursuant to their terms.
  - b) For issues of liability where the Agreement concerning the Status of United States Forces in Australia or any other such agreement does not apply, the following shall apply:
    - i. Each Party waives all claims against the other for injury or death to its personnel, and for damage to its property arising from the performance of official duties.
    - ii. In the event of claims from third parties for injury or death to persons or damage to property arising from the performance of official duties in carrying out cooperative research, development, test, evaluation or production programs, and the provision of logistic support, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be handled by the most appropriate Government as mutually determined.
    - iii. As to i, and ii, above, if the Parties mutually determine that the damage, injury or death is caused by reckless acts, reckless omission, wilful misconduct or gross negligence, the costs of any liability shall be borne entirely by the Party of the culpable person.
    - iv. Claims arising under any contract implementing a written arrangement shall be resolved in accordance with the provisions of the contract and shall be settled between the national defence organisations in accordance with their written arrangements.
2. The following provisions shall apply with respect to rights to own and use information provided or developed under a written arrangement:
  - i. Information generated outside of a written arrangement that is provided by a national defence organisation, to the other national defence organisation in the implementation of that written arrangement, shall be used only for the purposes and in the manner set out in the written arrangement.
  - ii. Information generated by or for a national defence organisation in performance of the written arrangement shall be used by or for the other national defence organisation only for the purposes and in the manner set out in that written arrangement.

- iii. Information jointly generated by or for the national defence organisations in performance of a written arrangement shall be used by or for each organisation only for the purposes and in the manner set out in the written arrangement.
- iv. Title to information generated by or for the national defence organisations shall be allocated, as necessary, solely or jointly to the Governments and their contractors as set out in written arrangements between the national defence organisations.

3. Neither Party shall sell, transfer title to, disclose, or transfer possession of, or authorise such actions regarding (i) information generated outside of a written arrangement and provided by or for the other's national defence organisation, (ii) information generated in the performance of a written arrangement which is jointly generated or which may be specified in the written arrangement, or (iii) materiel or equipment provided by or for the other's national defence organisation, jointly acquired, or which may be specified in a written arrangement, to any third party (as may be defined in a written arrangement) without the prior written consent of the other's national defence organisation.

4. As regards the lease or loan of materiel or equipment pursuant to a written arrangement, each Party shall (i) use the materiel or equipment, for the purposes set forth in the written arrangement, (ii) maintain and return the materiel or equipment in as good condition as when received, reasonable wear and tear excepted (except for expendables and items authorised for testing to destruction) or pay the cost of any damage or loss, and (iii) fulfill such other terms and conditions, as may be set forth in the written arrangement.

5. As regards the provision of logistics support, each party shall provide, upon request and subject to availability, food, water, billeting, transportation, petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, storage services, training services, repair and maintenance services, spare parts and components, access to and use of facilities, base operations support (including construction incident thereto), airfield and port services, as reflected in written arrangements between our national defence organisations. The furnishing of such support shall create a corresponding obligation to provide cash reimbursement, replacement in kind, or replacement of equal value, which shall be discharged, as may be set forth in a written arrangement. Payment, if required, for the provision of such logistics support, shall be calculated upon such terms as are most favourable to the recipient under the national laws of the providing Party.

Any dispute regarding the interpretation or implementation of any written arrangements so concluded by our national defence organisations shall be resolved by consultation between the signatories to such arrangements and shall not be referred to a national or international tribunal or other third party for resolution or settlement.

Any dispute regarding the interpretation or application of this Agreement shall be resolved by consultation between the Parties and shall not be referred to a national or international tribunal or third party for resolution or settlement.

In order for this Agreement to apply to written arrangements between our national defence organisations, it must be explicitly invoked by or for that arrangement.

If the foregoing is acceptable to your Government, I have the honour to propose that this Note and your Note in reply, to that effect, shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply. This Agreement shall remain in force until six months after the date of the receipt of notice of termination by either Government.

Accept, Your Excellency, the assurance of my highest consideration.



GARRY FERGUSON JONES  
Deputy Secretary  
Acquisition and Logistics  
Australian Department of Defence

Australia  
1 December 1995

Ms. Kaarn J Weaver  
Deputy Chief of Mission  
Embassy of the United States of America  
Australia

## II

## EMBASSY OF THE UNITED STATES OF AMERICA

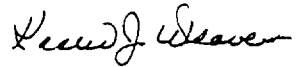
December 1, 1995

Sir,

I have the honor to refer to your note dated December 1, 1995 which reads as follows:

[See note I]

I have the honor to confirm that the proposals set out in your note are acceptable to the Government of the United States of America and agree that your note together with this reply shall constitute an agreement between the United States of America and Australia which shall enter into force on the date of this reply.



KAARN J. WEAVER

Mr. Garry Ferguson Jones  
Deputy Secretary  
Australian Department of Defence  
Acquisitions and Logistics  
Canberra

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