

Agreement with the United States of America on Cooperation in Science and Technology for Homeland/Domestic Security Matters

Purpose

- 5.1 The *Agreement between the Government of Australia and the Government of the United States of America on Cooperation in Science and Technology for Homeland/Domestic Security Matters (the Agreement)* establishes a framework to encourage, develop and facilitate bilateral cooperative activities in science and technology.¹
- 5.2 These activities will contribute to the domestic security capabilities for the prevention, detection and response to a domestic security threat. This includes protection of critical infrastructure and consequence management for both Australia and the United States of America (US).² The Agreement also builds upon the existing Australia-US relationship in science and technology, and provides economic benefits to Australia's science and technology industry.³

1 National Interest Analysis (NIA), paras 7 and 13.

2 NIA, para. 4.

3 NIA, paras 5 and 6.

5.3 In addition, this Agreement complements the Agreement relating to scientific and technical cooperation with the US⁴ as it provides for the planning and undertaking of cooperative activities in science and technology relating to domestic security.⁵ The Agreement also strengthens Australia's long-standing relationship with the US in the area of science and technology and enables Australian scientists and counter-terrorism agencies to benefit from collaborative research activities.⁶

5.4 The Department of Prime Minister and Cabinet (PM&C) outlined why the Agreement was of particular benefit to Australia:

Other bilateral and multilateral mechanisms exist but none provide the required scope—that is, homeland security which cuts across a number of federal and state departments; classification—this agreement goes up to 'top secret' or degree of sharing and trust in terms of collaborative projects, staff exchange, shared intellectual property... The scope covers any homeland security activity which has a significant science and technology component and allows for different types of cooperative activity, such as development of threat and vulnerability analyses, staff exchange, prototype development and joint exercises. I note also that this potentially includes any events which have domestic security consequences such as extreme weather and pandemics, as well as specific activities around countering terrorism.⁷

5.5 PM&C elaborated on the types of cooperative activities that could be undertaken under the Agreement.

There are projects on chemical, biological, radiological and nuclear. They are looking at forensics analysis and detection methodologies. There has been potential work on port of entry scanning of cargo and personnel biometric analysis. There is a strategic risk assessment of the risk of terrorist attacks and so on. There is human and behavioural studies on the causation of terrorists and how you may identify them.

4 The *Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America (Canberra, 28 February 2006)* was automatically referred to the Committee upon its tabling on 20 June 2006.

5 NIA, para. 12.

6 NIA, para. 6.

7 Dr Richard Davis, *Transcript of Evidence*, 19 June 2006, p. 10.

There is also surveillance techniques either in airports or in other ports of entry. There is a range.⁸

- 5.6 PM&C also advised that Australia was interested in entering into similar agreements with the United Kingdom of Great Britain and Canada. There is also the possibility of entering into an agreement between four or more parties.⁹

Obligations

- 5.7 Australia's obligations under the Agreement are:

- Parties may seek to achieve the objective of the Agreement using appropriate means.¹⁰
- An Executive Agent (the First Assistant Secretary of the National Security Division of the Department of Prime Minister and Cabinet) will oversight the cooperative activity on Australia's behalf with the US. The US Executive Agent is the Undersecretary of Science and Technology of the US Department of Homeland Security. Any cooperative activity will be required to be agreed to in writing by the Executive Agents or their delegates.¹¹
- Executive Agents will appoint Agreement Directors who will be responsible for managing the cooperative activities including: developing an annual work plan and strategic plan, financial oversight, resolving issues and promoting the Agreement. The Agreement Directors will meet annually to review implementation of the Agreement.¹²
- Articles 6 and 7 provide for the types of areas and forms of cooperative activity related to domestic security, but are not limited to the areas specified.¹³
- Cooperative activities under the Agreement will be implemented in the form of projects and conducted pursuant to project arrangements as provided for in Article 8. The terms of

8 Dr Richard Davis, *Transcript of Evidence*, 19 June 2006, p. 11.

9 Dr Richard Davis, *Transcript of Evidence*, 19 June 2006, p. 15.

10 NIA, para. 14.

11 NIA, para. 15.

12 NIA, para. 16.

13 NIA, para. 17.

the Agreement will override any inconsistency between any project arrangement and the Agreement.¹⁴

- Article 9 provides that an engagement of any non-federal or non-central government person or entity (participant) in a cooperative activity must be approved in writing by the other Party. A participant will be required to have a written agreement with their relevant government to ensure that they abide by the Agreement. Further, Article 10 provides that each Party enter into contracts with any of its nationals participating in cooperative activities where possible.¹⁵
- Each Party is responsible for covering its own costs in undertaking cooperative activities under the Agreement. However, the Agreement creates no standing financial commitment. Article 11 provides for the sharing of costs for cooperative activities.¹⁶
- At the commencement of each cooperative activity, Parties will develop a joint Technology Management Plan which defines how intellectual property rights and royalties will be allocated.¹⁷
- Each Party may own intellectual property rights in both jurisdictions for commercialisation purposes.¹⁸
- Article 14 provides for the publication of research results.¹⁹
- Article 12 provides for the exchange of information and equipment in accordance with Australian and US law. Article 12 also provides for the exchange of classified, controlled and business confidential information which may arise.²⁰
- The Agreement includes facilitation of the entry and exit of people, equipment, materials and information to undertake cooperative activity. Each Party will ensure that custom duties and other like charges are not imposed on collaborative projects.²¹
- Article 16 provides for research safety in accordance with applicable laws.²²

14 NIA, para. 18.

15 NIA, para. 19.

16 NIA, para. 20.

17 NIA, para. 20.

18 NIA, para. 20.

19 NIA, para. 23.

20 NIA, para. 21.

21 NIA, para. 24.

22 NIA, para. 24.

- Neither Party can sell, transfer title, disclose or transfer possession of information or equipment to a third party without written approval from the other Party. State, Territory and local governments are not defined as third parties.²³
- Article 18 provides for dispute resolution by consultation, except for disputes concerning the publication of research results or intellectual property. The former is to be dealt with by Agreement in accordance with Article 14 and the latter by way of Arbitration in accordance with Annex 1.²⁴

Consultation

- 5.8 Consultation was undertaken with representatives from the Departments of Defence; Foreign Affairs and Trade; Education, Science and Training; Agriculture, Fisheries and Forestry; Health; Transport and Regional Services; and the Attorney-General's Department. Representatives from the Department of the Prime Minister and Cabinet; Defence and the Attorney-General's Department participated in the negotiation of the Agreement. The Australian Government Solicitor provided the legal counsel on the drafting of the Agreement.²⁵
- 5.9 The Australian Government consulted with State and Territory Governments through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT). A verbal briefing on the Agreement was provided at the 22 September 2005 SCOT meeting. No objections or concerns were raised by State or Territory Governments as a result of this briefing.²⁶ In addition, consultation was undertaken with State water, fire brigade and police.²⁷
- 5.10 The Defence, Science and Technology Organisation was consulted throughout the development of the treaty text and considered the Agreement as a useful addition to other defence arrangements. CSIRO²⁸ legal officers examined the intellectual property clauses in

23 NIA, para. 25.

24 NIA, para. 26.

25 Consultation Annex, para. 2.

26 Consultation Annex, para. 4.

27 Dr Richard Davis, *Transcript of Evidence*, 19 June 2006, p. 12.

28 Commonwealth Scientific and Industrial Research Organisation.

August/September 2005 and supported the Agreement as a useful arrangement to facilitate interactions with the US.²⁹

Costs

- 5.11 There are no financial obligations directly associated with the implementation of this Agreement. The Agreement provides the opportunity for the co-funding of collaborative projects with the US. The US has in excess of \$100 million to support scientific research in this area.³⁰
- 5.12 Under the Agreement, PM&C representatives will oversee the implementation of the Agreement and attend joint meetings with the United States Department of Homeland Security. These costs will be met through PM&C's budget.³¹

Entry into force and withdrawal

- 5.13 The Agreement will enter into force upon the exchange of diplomatic notes. The Agreement was signed on 21 December 2005. Provisional application of the Agreement has been facilitated through an exchange of diplomatic notes at the time of the signing of the Agreement. This allows both parties to commence on a number of time critical activities prior to the Agreement's entry into force. The Agreement will not be legally binding until all domestic procedures have taken place.³²
- 5.14 The Agreement may be terminated in writing by either Party and would take effect 6 months from the date of the written notice, or by the mutual written agreement of the Parties.³³

29 Consultation Annex, para. 5.

30 NIA, para. 28.

31 NIA, para. 29.

32 NIA, para. 3.

33 NIA, para. 32.

Implementation

- 5.15 All manner of exchange between Parties in relation to this Agreement are to be conducted in accordance with the applicable laws of each Party. There will be no change to existing legislation as a result of the Agreement.³⁴

Conclusion and recommendation

- 5.16 The Committee acknowledges that the Agreement will enable Australian scientists and counter terrorism agencies to benefit from collaborative research activities and strengthen Australia's relationship in the area of science and technology.

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America on Cooperation in Science and Technology for Homeland/Domestic Security Matters* (Washington, 21 December 2005) and recommends that binding treaty action be taken.

³⁴ NIA, para. 27.

