

Note No. 03/2002

The Embassy of Australia to the Kyrgyz Republic presents its compliments to the Ministry of Foreign Affairs of the Kyrgyz Republic and has the honor to refer to recent discussions between representatives of our two Governments regarding issues related to Australian military and civilian personnel of the Australian Department of Defence who may be present in the Kyrgyz Republic in connection with cooperative efforts in response to terrorism, humanitarian assistance and other agreed activities.

The Embassy of Australia to the Kyrgyz Republic has the honor to request assistance and permission to use Kyrgyz Republic facilities, to include Manas International Airport, for humanitarian assistance, combat and combat support for operations in support of operation Enduring Freedom. Australia will coordinate activities at Manas International Airport with the Ministry of Transport and Communications, airport authorities, and other appropriate authorities to ensure that operations and activities do not interfere with civilian flight operations.

As a result of these discussions, the Embassy proposes that such personnel be accorded a status equivalent to that accorded to the administrative and technical staff of the Embassy of Australia under the Vienna convention on diplomatic relations of April 18, 1961; that Australian personnel be permitted to enter and exit the Kyrgyz Republic with Australian identification and with collective movement or individual travel orders; that

the authorities of the Kyrgyz Republic shall accept as valid, without a driving fee or test, driving licences or permits issued by appropriate Australian authorities to such personnel for the operation of vehicles; and that such personnel be authorized to wear uniforms while performing official duties and to carry weapons when their orders call for it.

The Embassy further proposes that vehicles and aircraft owned or operated by or for Australian armed forces shall not be subject to the payment of landing, navigation, overflight or parking charges, overland transit fees, or similar charges while in the Kyrgyz Republic. However, the Australian armed forces shall pay reasonable charges for services requested and received. In this respect, Australia agrees that Manas International Airport shall be designated as a commercial airport and as such, Australian state aircraft shall pay reasonable fees, based upon International Civil Aviation Organisation (ICAO) schedules, for parking and landing at this airport. Aircraft and vehicles of Australia shall be free of inspections.

The Government of Australia, its military and civilian personnel, contractors and contractor personnel shall not be liable to pay any tax or similar charge assessed within the territory of the Kyrgyz Republic.

The Government of Australia, its military and civilian personnel, contractors and contractor personnel may import into, export out of, and use in the Kyrgyz Republic any personal property, equipment, supplies, materials, technology, training or services required to implement this Agreement. Such importation, exportation and use shall be exempt from any inspection, licence, other restrictions, customs duties, taxes or any other charges assessed within the territory of the Kyrgyz Republic. The Governments of Australia and the Kyrgyz Republic shall cooperate in taking such steps as shall be necessary to ensure the security of Australian personnel and property in the territory of the Kyrgyz Republic.

In the event that the Government of Australia awards contracts for the acquisition of articles and services, including construction, to implement this Agreement, such contracts shall be awarded in accordance with the laws and regulations of the Government of Australia. Acquisition of articles and services in the Kyrgyz Republic by or on behalf of the Government of Australia in implementing

this Agreement shall not be subject to any taxes, customs duties or similar charges in the territory of the Kyrgyz Republic.

The Government of the Kyrgyz Republic recognises the particular importance of disciplinary control by Australian military authorities over Australian personnel and, therefore, the Government of the Kyrgyz Republic authorises the Australian Government to exercise criminal jurisdiction over Australian personnel. The Government of the Kyrgyz Republic and the Government of Australia confirm that such personnel may not be surrendered to, or otherwise transferred to, the custody of an international tribunal or any other entity or state without the express consent of the Government of Australia.

The Government of the Kyrgyz Republic recognises that it shall be necessary for Australian personnel and systems to use the appropriate frequencies of the radio spectrum. The Government of Australia shall be allowed to operate its own telecommunications systems (as telecommunications is defined in the 1992 constitution of the International Telecommunication Union). This shall include the right to utilise such means and services as required to assure full ability to operate telecommunications systems, and the right to use all necessary radio spectrum for this purpose. Use of radio spectrum owned by the Government of the Kyrgyz Republic shall be free of cost. Privately owned frequencies will be compensated for by mutual agreement of the parties.

The Embassy proposes that, other than contractual claims, the parties waive any and all claims against each other for damage to, loss or destruction of property owned by each Party, or death or injury to any military or civilian personnel of the armed forces of either Party, arising out of activities in the Kyrgyz Republic under this Agreement. The Australian Government shall pay, in accordance with Australian law, fair and reasonable compensation in settlement of meritorious claims by third parties, as determined by the Australian Government, arising out of acts or omissions of Australian personnel or which are otherwise incidental to non-combat activities of Australian armed forces under this Agreement.

Finally, the Embassy proposes that the Agreement herein proposed shall have a term of one year from the date of entry into force and thereafter shall continue to be in force

unless terminated by either Party on 180 days written notice through diplomatic channels.

If the foregoing is acceptable to the Government of the Kyrgyz Republic, the Embassy proposes that this note, together with the the Ministry of Foreign Affairs of the Kyrgyz Republic's reply to that effect, shall constitute an Agreement between the two Governments that will be implemented temporarily after the receipt by the Embassy of Australia to the Kyrgyz Republic of a note from the Ministry of Foreign Affairs of the Kyrgyz Republic, and shall finally enter into force upon notification by both the Government of the Kyrgyz Republic and the Australian Government to each other that they have each completed all of their internal procedures for entry into force. The date of entry into force shall be the date of the latter such notification.

The Embassy of Australia to the Kyrgyz Republic avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Kyrgyz Republic the assurances of its highest consideration.

Embassy of Australia,
Moscow, 3 January, 2002

NOTE NUMBER 011-19/250

THE MINISTRY OF FOREIGN AFFAIRS OF THE KYRGYZ REPUBLIC PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF AUSTRALIA IN THE KYRGYZ REPUBLIC AND HAS THE HONOUR TO CONFIRM RECEIPT OF THE EMBASSY TPN 03/2002 DATED 10 JANUARY 2002 WITH THE FOLLOWING TEXT:

"THE EMBASSY OF AUSTRALIA TO THE KYRGYZ REPUBLIC PRESENTS ITS COMPLIMENTS TO THE MINISTRY OF FOREIGN AFFAIRS OF THE KYRGYZ REPUBLIC AND HAS THE HONOUR TO REFER TO RECENT DISCUSSIONS BETWEEN REPRESENTATIVES OF OUR TWO GOVERNMENTS REGARDING ISSUES RELATED TO AUSTRALIAN MILITARY AND CIVILIAN PERSONNEL OF THE AUSTRALIAN DEPARTMENT OF DEFENCE WHO MAY BE PRESENT IN THE KYRGYZ REPUBLIC IN CONNECTION WITH COOPERATIVE EFFORTS IN RESPONSE TO TERRORISM, HUMANITARIAN ASSISTANCE AND OTHER AGREED ACTIVITIES.

THE EMBASSY OF AUSTRALIA TO THE KYRGYZ REPUBLIC HAS THE HONOUR TO REQUEST ASSISTANCE AND PERMISSION TO USE KYRGYZ REPUBLIC FACILITIES, TO INCLUDE MANAS INTERNATIONAL AIRPORT, FOR HUMANITARIAN ASSISTANCE, COMBAT AND COMBAT SUPPORT FOR OPERATIONS IN SUPPORT OF OPERATION ENDURING FREEDOM. AUSTRALIA WILL COORDINATE ACTIVITIES AT MANAS INTERNATIONAL AIRPORT WITH THE MINISTRY OF TRANSPORT AND COMMUNICATIONS, AIRPORT AUTHORITIES, AND OTHER APPROPRIATE AUTHORITIES TO ENSURE THAT OPERATIONS AND ACTIVITIES DO NOT INTERFERE WITH CIVILIAN FLIGHT OPERATIONS.

AS A RESULT OF THESE DISCUSSIONS, THE EMBASSY PROPOSES THAT SUCH PERSONNEL BE ACCORDED A STATUS EQUIVALENT TO THAT ACCORDED TO THE ADMINISTRATIVE AND TECHNICAL STAFF OF THE EMBASSY OF AUSTRALIA UNDER THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS OF APRIL 18, 1961; THAT AUSTRALIAN PERSONNEL BE PERMITTED TO ENTER AND EXIT THE KYRGYZ REPUBLIC WITH AUSTRALIAN IDENTIFICATION AND WITH COLLECTIVE MOVEMENT OR INDIVIDUAL TRAVEL ORDERS; THAT THE AUTHORITIES OF THE KYRGYZ REPUBLIC SHALL ACCEPT AS VALID, WITHOUT A DRIVING FEE OR TEST, DRIVING LICENCES OR PERMITS ISSUED BY APPROPRIATE AUSTRALIAN AUTHORITIES TO SUCH PERSONNEL FOR THE OPERATION OF VEHICLES; AND THAT SUCH PERSONNEL BE AUTHORIZED TO WEAR UNIFORMS WHILE PERFORMING OFFICIAL DUTIES AND TO CARRY WEAPONS WHEN THEIR ORDERS CALL FOR IT.

THE EMBASSY FURTHER PROPOSES THAT VEHICLES AND AIRCRAFT OWNED OR OPERATED BY OR FOR AUSTRALIAN ARMED FORCES SHALL NOT BE SUBJECT TO THE PAYMENT OF LANDING, NAVIGATION, OVERFLIGHT OR PARKING CHARGES, OVERLAND TRANSIT FEES, OR SIMILAR CHARGES WHILE IN THE KYRGYZ REPUBLIC. HOWEVER, THE AUSTRALIAN ARMED FORCES SHALL PAY REASONABLE CHARGES FOR SERVICES REQUESTED AND RECEIVED. IN THIS RESPECT, AUSTRALIA AGREES THAT MANAS INTERNATIONAL AIRPORT SHALL BE DESIGNATED AS A COMMERCIAL AIRPORT AND AS SUCH, AUSTRALIAN

STATE AIRCRAFT SHALL PAY REASONABLE FEES, BASED UPON INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO) SCHEDULES, FOR PARKING AND LANDING AT THIS AIRPORT. AIRCRAFT AND VEHICLES OF AUSTRALIA SHALL BE FREE OF INSPECTIONS.

THE GOVERNMENT OF AUSTRALIA, ITS MILITARY AND CIVILIAN PERSONNEL, CONTRACTORS AND CONTRACTOR PERSONNEL SHALL NOT BE LIABLE TO PAY ANY TAX OR SIMILAR CHARGE ASSESSED WITHIN THE TERRITORY OF THE KYRGYZ REPUBLIC.

THE GOVERNMENT OF AUSTRALIA, ITS MILITARY AND CIVILIAN PERSONNEL, CONTRACTORS AND CONTRACTOR PERSONNEL MAY IMPORT INTO, EXPORT OUT OF, AND USE IN THE KYRGYZ REPUBLIC ANY PERSONAL PROPERTY, EQUIPMENT, SUPPLIES, MATERIALS, TECHNOLOGY, TRAINING OR SERVICES REQUIRED TO IMPLEMENT THIS AGREEMENT. SUCH IMPORTATION, EXPORTATION AND USE SHALL BE EXEMPT FROM ANY INSPECTION, LICENCE, OTHER RESTRICTIONS, CUSTOMS DUTIES, TAXES OR ANY OTHER CHARGES ASSESSED WITHIN THE TERRITORY OF THE KYRGYZ REPUBLIC. THE GOVERNMENTS OF AUSTRALIA AND THE KYRGYZ REPUBLIC SHALL COOPERATE IN TAKING SUCH STEPS AS SHALL BE NECESSARY TO ENSURE THE SECURITY OF AUSTRALIAN PERSONNEL AND PROPERTY IN THE TERRITORY OF THE KYRGYZ REPUBLIC.

IN THE EVENT THAT THE GOVERNMENT OF AUSTRALIA AWARDS CONTRACTS FOR THE ACQUISITION OF ARTICLES AND SERVICES, INCLUDING CONSTRUCTION, TO IMPLEMENT THIS AGREEMENT, SUCH CONTRACTS SHALL BE AWARDED IN ACCORDANCE WITH THE LAWS AND REGULATIONS OF THE GOVERNMENT OF AUSTRALIA. ACQUISITION OF ARTICLES AND SERVICES IN THE KYRGYZ REPUBLIC BY OR ON BEHALF OF THE GOVERNMENT OF AUSTRALIA IN IMPLEMENTING THIS AGREEMENT SHALL NOT BE SUBJECT TO ANY TAXES, CUSTOMS DUTIES OR SIMILAR CHARGES IN THE TERRITORY OF THE KYRGYZ REPUBLIC.

THE GOVERNMENT OF THE KYRGYZ REPUBLIC RECOGNISES THE PARTICULAR IMPORTANCE OF DISCIPLINARY CONTROL BY AUSTRALIAN MILITARY AUTHORITIES OVER AUSTRALIAN PERSONNEL AND, THEREFORE, THE GOVERNMENT OF THE KYRGYZ REPUBLIC AUTHORIZES THE AUSTRALIAN GOVERNMENT TO EXERCISE CRIMINAL JURISDICTION OVER AUSTRALIAN PERSONNEL. THE GOVERNMENT OF THE KYRGYZ REPUBLIC AND THE GOVERNMENT OF AUSTRALIA CONFIRM THAT SUCH PERSONNEL MAY NOT BE SURRENDERED TO, OR OTHERWISE TRANSFERRED TO, THE CUSTODY OF AN INTERNATIONAL TRIBUNAL OR ANY OTHER ENTITY OR STATE WITHOUT THE EXPRESS CONSENT OF THE GOVERNMENT OF AUSTRALIA.

THE GOVERNMENT OF THE KYRGYZ REPUBLIC RECOGNISES THAT IT SHALL BE NECESSARY FOR AUSTRALIAN PERSONNEL AND SYSTEMS TO USE THE APPROPRIATE FREQUENCIES OF THE RADIO SPECTRUM. THE GOVERNMENT OF AUSTRALIA SHALL BE ALLOWED TO OPERATE ITS OWN TELECOMMUNICATIONS SYSTEMS (AS TELECOMMUNICATIONS IS DEFINED IN THE 1992 CONSTITUTION OF THE INTERNATIONAL TELECOMMUNICATIONS UNION). THIS SHALL INCLUDE THE RIGHT TO UTILISE SUCH MEANS AND SERVICES AS REQUIRED TO ASSURE FULL ABILITY TO OPERATE TELECOMMUNICATIONS SYSTEMS, AND THE RIGHT TO USE ALL NECESSARY RADIO SPECTRUM FOR THIS PURPOSE. USE OF RADIO

SPECTRUM OWNED BY THE GOVERNMENT OF THE KRYGYZ REPUBLIC SHALL BE FREE OF COST. PRIVATELY OWNED FREQUENCIES WILL BE COMPENSATED FOR BY MUTUAL AGREEMENT OF THE PARTIES.

THE EMBASSY PROPOSES THAT, OTHER THAN CONTRACTUAL CLAIMS, THE PARTIES WAIVE ANY AND ALL CLAIMS AGAINST EACH OTHER FOR DAMAGE TO, LOSS OR DESTRUCTION OF PROPERTY OWNED BY EACH PARTY, OR DEATH OR INJURY TO ANY MILITARY OR CIVILIAN PERSONNEL OF THE ARMED FORCES OF EITHER PARTY, ARISING OUT OF ACTIVITIES IN THE KYRGYZ REPUBLIC UNDER THIS AGREEMENT. THE AUSTRALIAN GOVERNMENT SHALL PAY, IN ACCORDANCE WITH AUSTRALIAN LAW, FAIR AND REASONABLE COMPENSATION IN SETTLEMENT OF MERITORIOUS CLAIMS BY THIRD PARTIES, AS DETERMINED BY THE AUSTRALIAN GOVERNMENT, ARISING OUT OF ACTS OR OMISSIONS OF AUSTRALIAN PERSONNEL OR WHICH ARE OTHERWISE INCIDENTAL TO NON-COMBAT ACTIVITIES OF AUSTRALIAN ARMED FORCES UNDER THIS AGREEMENT.

FINALLY, THE EMBASSY PROPOSES THAT THE AGREEMENT HEREIN PROPOSED SHALL HAVE A TERM OF ONE YEAR FROM THE DATE OF ENTRY INTO FORCE AND THEREAFTER SHALL CONTINUE TO BE IN FORCE UNLESS TERMINATED BY EITHER PARTY ON 180 DAYS WRITTEN NOTICE THROUGH DIPLOMATIC CHANNELS.

IF THE FOREGOING IS ACCEPTABLE TO THE GOVERNMENT OF THE KYRGYZ REPUBLIC, THE EMBASSY PROPOSES THAT THIS NOTE, TOGETHER WITH THE MINISTRY OF FOREIGN AFFAIRS OF THE KYRGYZ REPUBLIC'S REPLY TO THAT EFFECT SHALL CONSTITUTE AN AGREEMENT BETWEEN THE TWO GOVERNMENTS THAT WILL BE IMPLEMENTED TEMPORARILY AFTER THE RECEIPT BY THE EMBASSY OF AUSTRALIA TO THE KYRGYZ REPUBLIC OF A NOTE FROM THE MINISTRY OF FOREIGN AFFAIRS OF THE KYRGYZ REPUBLIC, AND SHALL FINALLY ENTER INTO FORCE UPON NOTIFICATION BY BOTH THE GOVERNMENT OF THE KYRGYZ REPUBLIC AND THE AUSTRALIAN GOVERNMENT TO EACH OTHER THAT THEY HAVE EACH COMPLETED ALL OF THEIR INTERNAL PROCEDURES FOR ENTRY INTO FORCE. THE DATE OF ENTRY INTO FORCE SHALL BE THE DATE OF THE LATTER SUCH NOTIFICATION.

THE EMBASSY OF AUSTRALIA TO THE KYRGYZ REPUBLIC AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE MINISTRY OF FOREIGN AFFAIRS OF THE KYRGYZ REPUBLIC THE ASSURANCES OF ITS HIGHEST CONSIDERATION."

IN THIS CONNECTION THE MINISTRY HAS THE HONOUR TO INFORM THE EMBASSY OF THE AGREEMENT OF THE GOVERNMENT OF THE KYRGYZ REPUBLIC TO THE PROPOSALS OUTLINED IN THE EMBASSY NOTE AND TO CONFIRM THAT THE EMBASSY NOTE AND THIS REPLY CONSTITUTE THE AGREEMENT BETWEEN THE GOVERNMENT OF THE KYRGYZ REPUBLIC AND THE GOVERNMENT OF AUSTRALIA.

THE MINISTRY AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE EMBASSY THE ASSURANCES OF ITS HIGHEST CONSIDERATION.

BISHKEK
14 FEBRUARY 2002