

**TREATY BETWEEN**

**AUSTRALIA**

**AND**

**THE KINGDOM OF THE NETHERLANDS**

**ON THE ONGOING PRESENCE OF AUSTRALIAN PERSONNEL IN THE  
NETHERLANDS FOR THE PURPOSE OF RESPONDING TO THE  
DOWNING OF MALAYSIA AIRLINES FLIGHT MH17**

Australia

and

The Kingdom of the Netherlands (hereinafter: “the Parties”)

Noting the *Agreement between the Kingdom of the Netherlands and Ukraine on the International Mission for Protection of investigation*, signed on 28 July 2014;

Noting the Joint Investigation Team (JIT) conducting the criminal investigation into the downing of MH17 pursuant to the JIT Agreement comprises the investigative authorities of Australia, Belgium, Malaysia, the Netherlands and Ukraine;

Noting the decision of the States participating in the JIT to support the criminal prosecution and trial of those responsible for the downing of MH17 in the national jurisdiction of the Netherlands;

Noting the *Memorandum of Understanding between the Government of Australia, the Government of the Kingdom of Belgium, the Government of Malaysia, the Government of the Netherlands and the Government of Ukraine regarding political support for prosecuting the perpetrators of the downing of flight MH17 on 17 July 2014*, signed on 21 September 2017;

HAVE AGREED as follows:

## **Article 1**

### **Definitions**

For the purpose of this Treaty:

- a. “the Activity” means: the activities referred to in Article 2;
- b. “AFP” means: Australian Federal Police;
- c. “Australian Personnel” means: Australian Government officials, including Australian Federal Police and Department of Foreign Affairs and Trade officials and other civilian officials;
- d. “VCDR” means: the Vienna Convention on Diplomatic Relations, done at Vienna on 18 April 1961.

## **Article 2**

### **Scope of Activity**

Australia can send, on a temporary basis, Australian Personnel and associated equipment and assets, to the Netherlands for the purpose of providing support to the JIT, assisting with activities and investigations relating to the downing of Malaysia Airlines Flight MH17 and

assisting with preparations for the prosecution of the perpetrators of the downing of Malaysia Airlines flight MH17, in so far as this may be or have been mutually determined by the Parties.

### **Article 3**

#### **Applicable Laws and Regulations**

1. Australian Personnel shall respect the sovereignty, territorial integrity and political independence of the Kingdom of the Netherlands in accordance with the Charter of the United Nations.
2. Australian Personnel shall respect the laws of the Netherlands, and refrain from any action or activity incompatible with the purposes of this Treaty.
3. Each Party shall retain full national command and control over their respective personnel, as appropriate. Neither Party shall take any administrative or disciplinary action against the other Party's personnel. Should it become necessary to take administrative or disciplinary action against a Party's personnel during the Activity, the relevant national authorities shall take action in accordance with their national laws, regulations and policies.

### **Article 4**

#### **Status of Australian Personnel**

1. Australian Personnel shall be accorded the status equivalent to that accorded to the administrative and technical staff of a diplomatic mission of a state that is a party to the VCDR. Should the Netherlands request the withdrawal of Australian Personnel from the Netherlands, Australia shall comply with this request.
2. Notwithstanding Paragraph 1, where a person who is Australian Personnel is also accredited as a diplomatic agent of the Australian Embassy to the Netherlands with the full privileges and immunities available to diplomatic agents under the VCDR, and where there is any inconsistency between the rights, protections and obligations accorded to that person under the VCDR and the rights, protections and obligations accorded to that person under this Treaty, the rights, protections and obligations accorded to that person under the VCDR shall prevail.

### **Article 5**

#### **Claims**

1. The Parties shall waive all claims against each other that may arise from the Activity except where such claims arise out of wilful misconduct, recklessness or gross negligence.

2. With respect to third party claims arising out of the acts or omissions of Australian Personnel and/or Dutch personnel done in the course of the Activity that are not the responsibility of a third party, the following shall apply:
- i. Where the Parties mutually determine that responsibility for damage, loss, injury or death can be attributed to one Party, the cost of handling and settling the claim shall be the sole responsibility of that Party;
  - ii. Where it is mutually determined that both Parties are responsible for the damage, loss, injury or death, the Parties shall enter into consultation to resolve the handling and settling of the claim, with each Party paying an apportioned share based on their degree of responsibility for the damage, loss, injury or death;
  - iii. Where it is mutually determined that it is not possible to attribute responsibility for damage, loss, injury or death, the cost of handling and settling the claim shall be apportioned equally between the Parties; and
  - iv. In the event that one Party receives notice of such claims, the receiving Party shall inform the other Party as soon as practicable. The Parties shall assist each other in the procurement of evidence related to such claims.

## **Article 6**

### **Entry and Exit of Personnel**

Australian Personnel shall enjoy entry into, exit from, and movement within, the Netherlands without delay or hindrance for the purposes of the Activity. Entry, exit and movement of Australian Personnel shall be on the basis of passports, without the requirement of visas. The Australian Senior Representative shall inform the appropriate authorities of the Kingdom of the Netherlands as soon as it becomes apparent that a member of the Australian personnel needs to remain in the Netherlands for a period exceeding three (3) months. The appropriate authorities of the Kingdom of the Netherlands will provide the relevant legal documents for the purposes of the Activity to the member of the Australian personnel promptly and with the minimum of administrative formalities.

## **Article 7**

### **Movement and Use of Assets, and Licensing**

Australian Personnel and their national authorities shall be permitted to import, export, possess, store, move and use equipment, supplies and other items, required for the Activity, together with personal effects and items for Australian Personnel's own consumption or use, free of all licences, duties, taxes and charges. The exemption from duties, taxes and charges shall not apply to the purchase of goods in the Netherlands.

**Article 8**  
**Facilities**

Australian Personnel:

- a. shall, as mutually determined with the Netherlands, be granted the use of such bases, training centres, police premises and other facilities for the purpose of the Activity; and
- b. shall be entitled, at the direction of the Australian Senior Representative or other Australian official nominated by Australia and notified to the Netherlands, and in consultation with the relevant Netherlands authorities, to establish such temporary facilities in the Netherlands as may be necessary for the Activity.

**Article 9**  
**Uniforms**

Australian Personnel shall be entitled to wear, while engaged in the course of the Activity, their national uniform.

**Article 10**  
**Coordination**

Australia shall appoint a Senior Representative (hereinafter: «the Australian Senior Representative») who shall be notified to the Netherlands. The Australian Senior Representative is a member of the Australian Personnel, as defined in Article 1(c) of this Treaty. The Australian Senior Representative, or such other Australian Personnel authorised by the Australian Senior Representative, shall be the point of contact between all relevant Netherlands authorities and Australian Personnel who are AFP personnel, or personnel coordinated by the AFP, in the Netherlands pursuant to the Activity.

**Article 11**  
**Security and Safety of Personnel**

The Parties shall cooperate to ensure the security of Australian Personnel and associated assets while in the Netherlands. Guard duties and similar duties related to the security of Australian Personnel and associated assets shall be the responsibility of the Netherlands and shall be carried out in accordance with the laws and regulations of the Netherlands.

**Article 12**  
**Information Sharing**

1. The Parties may share information in accordance with applicable bilateral agreements or arrangements, including those for the protection of classified information. Information shall be used only for the purposes for which it is provided and shall not be transferred to any third party, without the written consent of the originating Party.
2. Neither Party shall release any information relating to the other Party's personnel or the victims of MH17, including personal details, names, injuries or deaths sustained, or any other information that may be sensitive, to any person or entity, without the prior written permission of the other Party to which the information relates.

**Article 13**  
**Territorial Application**

With respect to the Kingdom of the Netherlands, this Treaty shall apply to the European part of the Netherlands.

**Article 14**  
**Entry into Force, Amendments and Consultation**

1. Each Party shall inform the other by diplomatic note of the completion of domestic requirements for entry into force of this Treaty. This Treaty shall enter into force on the date of the later of these notes.
2. Should this Treaty enter into force before the termination of the Treaty between Australia and the Kingdom of the Netherlands on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17, signed on 1 August 2014, that Treaty shall cease to have effect on the date this Treaty enters into force.
3. The Parties may agree, in writing, to amend this Treaty and the Parties shall agree on the terms for entry into force of the amendment.
4. Any issue regarding the interpretation or application of this Treaty shall be resolved amicably and expeditiously through consultation between the Parties and shall not be referred to any third party, national or international court or tribunal for settlement.

**Article 15**  
**Termination**

1. Either Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. Termination shall take effect six (6) months after the date of the notice.
  
2. Termination of this Treaty shall not affect rights and responsibilities regarding disputes, immunities, claims and information arising from actions that have taken place during the period in which this Treaty was in force.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE in duplicate at The Hague on this            day of            two thousand and eighteen.

FOR AUSTRALIA

FOR THE KINGDOM OF THE  
NETHERLANDS

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