

## Agreement relating to Scientific and Technical Cooperation with the United States of America

### Background

- 2.1 Through the 1968 *Agreement with the Government of the United States of America for Cooperation in Scientific Research and Technological Development* (the 1968 Agreement), Australia affirmed the importance of its commitment to cooperation in science and technology with the United States of America (US). However, the 1968 Agreement was limited to affirming the broad Australia-US science and technology relationship with no provision for the equitable collaboration and sharing of costs and benefits.<sup>1</sup>
- 2.2 In 1991, following the expiration of the 1968 Agreement, Australia, and the US commenced negotiating a more detailed instrument outlining clearer commitments in areas such as intellectual property (IP) rights.<sup>2</sup>
- 2.3 The 2006 *Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America* (the Agreement) will build upon and strengthen the science and technology relationship between Australia and the US, established under the 1968 Agreement. The Agreement, by

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1 National Interest Analysis (NIA), para. 6.

2 NIA, para. 6.

establishing guiding principles will provide for shared responsibility in collaborative activities and the equitable sharing of costs and benefits. The Agreement will also expand opportunities for collaboration between agencies and so serve to enhance research links between Australia and the US.<sup>3</sup>

- 2.4 Currently, almost 25 per cent of all Australian Government funded international science and technology collaborations occur with the US. Funds provided by US organisations account for almost 50 per cent of total overseas funding received by Australian research agencies and universities.<sup>4</sup>

## Purpose of the Agreement

- 2.5 The Agreement establishes an enabling framework that expands opportunities for mutually determined agency-to-agency collaboration for peaceful purposes in science and technology between Australia and the US.<sup>5</sup>
- 2.6 The Agreement provides for cooperative activities including: joint research projects, task forces, studies, organisation of scientific seminars, conferences, symposia and workshops, training of scientists and technical experts, visits and exchanges of individual scientists, engineers and other appropriate personnel, exchanges of information on activities, policies, practices, laws and regulations concerning research and development and other forms of cooperative activities as may be agreed.<sup>6</sup>
- 2.7 The Agreement also provides protection for Australian researchers when negotiating IP issues in the US market.<sup>7</sup>
- 2.8 In relation to intellectual property under the Agreement a representative from the Department of Education, Science and Training (DEST) stated:

The IP provisions of the agreement recognise the growing value of intellectual property and the increasing importance of science and innovation in the global economy. The

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3 NIA, paras 3, 4 and 7.

4 NIA, para. 5.

5 NIA, paras 7 and 8.

6 NIA, para. 8; Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 8.

7 NIA, paras 9 and 21.

agreement makes provisions that protect IP brought to a research activity by each research partner and for allocating the rights to exploit IP created during an activity. The key feature of these IP provisions is that the rights to exploit IP are allocated on the basis of the relative contributions of each research partner. In doing so, the agreement will minimise any uncertainty about the treatment of IP – uncertainty which may in the past have impeded collaboration between Australian and US researchers.<sup>8</sup>

2.9 In addition, the Agreement provides that each Party appoint an Executive Agent to coordinate and facilitate cooperative activities under the Agreement. The Executive Agent is charged with discussion and regular review of the implementation of the Agreement on matters of importance in the field of science and technology including policy issues in relation to the overall science and technology relationship between Parties.<sup>9</sup>

2.10 DEST commented on how the Agreement would benefit Australia:

... this agreement has been held up as a fairly important agreement by the US Department of State as guided by the Office of Science and Technology Policy. The US does have a strong science and technology relationship with Australia. ... by providing greater certainty for researchers in how to manage the treatment of IP and by providing a framework under which cooperative activities can take place, the US sees a similar benefit to what Australia sees, in that we have removed some uncertainties for researchers and provided a greater level of surety about how technology management plans and research relationships can take place, so that should increase the level of cooperation.<sup>10</sup>

## Consultation

2.11 Approval for ratification of the Agreement was received from: the Treasurer; the Attorney-General; the Ministers for Foreign Affairs; Agriculture, Fisheries and Forestry; Trade; Communications,

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8 Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 8.

9 NIA, paras 16 and 17.

10 Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 12.

Information Technology and the Arts; Transport and Regional Services; Immigration and Multicultural and Indigenous Affairs; Finance and Administration; Industry, Tourism and Resources; Environment and Heritage; Defence; Health and Ageing; and Justice and Customs. The Prime Minister has also been informed of the process to bring the Agreement into force.<sup>11</sup>

- 2.12 State and Territory governments were advised of the Agreement through the Commonwealth-State/Territory Standing Committee on Treaties. The Agreement has been on the list of current and forthcoming negotiations since November 2000. State and Territory Governments raised no objections or concerns as result of this notification.<sup>12</sup>
- 2.13 In 1999, prior to the commencement of negotiations with the US, the Australian Government undertook consultation regarding the level and extent of its collaborative activity with the US, with: science portfolio and funding agencies, major universities and science and industry stakeholder representative bodies. Their views were also sought on problems they had encountered in collaboration with the US, specifically in the allocation of IP rights.<sup>13</sup>
- 2.14 In early 2005, nearing the conclusion of the drafting process, the benefits of the Agreement were again discussed with key Australian agencies for science and technology research.<sup>14</sup> All agencies supported the provisions proposed under the Agreement.<sup>15</sup>
- 2.15 In addition, DEST has stated that it will communicate the Agreement to all science and technology research agencies and researchers with a potential interest in using the treaty. Further, they will be informed of how the Agreement can benefit their prospective research interests.<sup>16</sup>

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11 NIA, Consultation Annex, para. 5.

12 NIA, Consultation Annex, para. 6.

13 NIA, Consultation Annex, para. 7.

14 These were: the Australian Research Council, the National Health and Medical Research Council, the Australian Nuclear Science and Technology Organisation, the Defence Science and Technology Organisation and the Commonwealth Scientific and Industrial Research Organisation, Consultation Annex, para. 8.

15 NIA, Consultation Annex, para. 8.

16 Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 11.

## Costs

- 2.16 Costs associated with the appointment and employment of an Executive Agent will be absorbed by the Department of Education, Science and Training.<sup>17</sup> Costs and resources attached to duties undertaken will account for approximately 20 per cent of the work undertaken by the Executive Agent.<sup>18</sup>

## Legislation

- 2.17 No new domestic legislation will be required as a result of the Agreement's entry into force.<sup>19</sup>

## Entry into force and withdrawal

- 2.18 The Agreement will enter into force one day after an exchange of notes between Parties.<sup>20</sup> The Agreement may be terminated by either Party six months after formal notification is exchanged between Parties.<sup>21</sup> The Agreement may be amended at any time by mutual written agreement between Parties.<sup>22</sup>

## Conclusion and recommendation

- 2.19 The Committee believes that the Agreement will strengthen Australia-US ties and enable Australian scientists and researchers to benefit from the formalisation of a framework to support research collaboration.

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17 NIA, para. 32.

18 Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 13.

19 NIA, para. 31.

20 NIA, para. 2.

21 NIA, para. 35.

22 NIA, para. 34.

**Recommendation 1**

**The Committee supports 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) and recommends that binding treaty action be taken.**