

Agreement on Scientific and Technological Cooperation between Australia and the Republic of South Africa

Introduction

- 3.1 On 18 October 2006 Australia signed the *Agreement on Scientific and Technological Cooperation between the Government of Australia and the Government of the Republic of South Africa* (the Agreement).¹ Australia has the same type of agreement with a number of other countries.²
- 3.2 Australia and South Africa have had a good long term collaborative research relationship participated in by government agencies, universities and their industry sectors.³
- 3.3 The purpose of this Agreement is to further support, strengthen and encourage the long standing scientific and technological relationship that exists between Australia and the Republic of South Africa by providing a more formal framework in which this cooperation can operate.⁴

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

2 Australia has similar agreements with China, the European Community, the Federal Republic of Germany, Japan, the Republic of Korea, the Government of Russia, the Republic of Indonesia, and the United States of America.

3 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 17.

4 NIA, para. 3.

Background

- 3.4 South Africa is Australia's most important trading partner on the African continent with a two-way merchandise trade (almost A\$3.9 billion in 2006) accounting for almost 75% of Australia's two way trade with sub-Saharan Africa.⁵ The total value of Australian mining investment in Africa is estimated at \$14 billion and involves over 1400 companies in various capacities.⁶
- 3.5 The focus of scientific and technological cooperation between Australia and South Africa has, in recent years, been in the areas of mining exploration and processing and associated environmental management; natural resource management, especially water; catchment management; biological control of invasive species; and agriculture.⁷
- 3.6 Current Australian collaboration with South Africa includes activities in the areas of astronomy, natural resource management, minerals and mining. The range of fields in which there are existing scientific interactions between the two countries suggests that there is potential to expand the relationship and increase scientific benefits and linkages between both countries. Currently, the CSIRO, which has strong linkages with research institutions in South Africa, is interested in cooperation in radio astronomy and, within the energy domain, in areas such as coal liquefaction.⁸

The purpose of the agreement

- 3.7 A more formal agreement on scientific and technological cooperation with South Africa is required to enable South Africa's National Research Foundation to provide greater resources to support collaborative activities. At the present time, only limited resources are able to be committed by South Africa.⁹

5 Australia's merchandise exports to South Africa are dominated by raw materials (alumina, coal and crude petroleum). Australia's investment in South Africa, and Southern Africa more broadly, is predominantly in mining.

6 NIA, para. 8.

7 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

8 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

9 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19.

3.8 The Australian Government has been advised by Australian research institutions

that although the South African Government had money they could make available for their researchers ...it was locked up until the governments had a treaty level instrument that gave legitimacy to subsequent research relationships.¹⁰

3.9 The Agreement between Australia and South Africa should resolve this impediment, potentially allowing agencies to undertake new collaborative research.¹¹

3.10 The Committee was also informed by the Department of Education, Science and Training (DEST) that the Agreement will provide:

Guidance on the type of collaborative activities that the Australian and South African governments may wish to encourage, such as the exchange of scientists, research workers, specialists and scholars, the organisation of bilateral scientific and technological seminars and courses, and the formulation, implementation and application of joint research.¹²

3.11 It will also allow for dialogue between the governments of Australia and South Africa to ensure the cooperation is directed towards the areas of greatest mutual benefit.¹³

Obligations

3.12 The main obligations of Parties as outlined in the NIA to the agreement will be:

- Article 1(1) and 1(2) obliges the Parties to promote the development of cooperation in the fields of science and technology on the basis of equality and mutual advantages and to promote scientific and technological cooperation between their respective government agencies, enterprises, research institutions, universities and other research and development organisations.

10 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19

11 NIA, Consultation, para. 6.

12 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

13 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

- Article 2 obliges the Parties to conduct their scientific and technological cooperation subject to the domestic law of the countries of the Parties, and effected by the:
 - ⇒ exchange of scientists, research workers, specialists, and scholars;
 - ⇒ exchange of scientific and technological information and documentation;
 - ⇒ organisation of bilateral scientific and technological seminars and courses in areas of mutual interest; and
 - ⇒ joint identification of scientific and technological problems, the formulation and implementation of joint research programmes, the application of the results of such research in industry, agriculture and other fields, and the exchange of experience and know-how resulting from this work.
- Article 3 obliges the Parties to facilitate the entry and stay of the other Party's citizens in its country for the purposes of this Agreement.
- Article 4 provides that the Parties may negotiate and conclude arrangements for the effective implementation or operation of any aspect of the Agreement.
- Article 4(4) obliges the Parties to take into account the applicable domestic law of the country of the Party in whose jurisdiction the particular cooperative activities are to be undertaken.
- Article 4(5) obliges the Parties, unless they otherwise agree, to conclude programs of cooperation, compiled biennially or in another agreed period, setting out the details of cooperative activities.
- Article 6 obliges the Parties to agree upon the terms and delivery of the equipment and apparatus required for joint research and pilot plant studies.
- Article 7 obliges the Parties to promote cooperation in the exchange of information.
- Article 8 obliges a Party not to divulge confidential information obtained from the other Party unless the other Party consents to disclosure or requires its disclosure under its domestic law and has informed the other party in writing of this obligation.

- Article 9 obliges the Parties to settle financial arrangements involved in the implementation of this Agreement, in respect of the programmes of cooperation.
- Article 10 obliges the Parties to afford to the citizens of the other Party all reasonable assistance and facilities in carrying out activities under this Agreement.
- Article 11 obliges the Parties to settle any disputes between them arising out of the interpretation or implementation of the Agreement amicably through consultation or negotiation.¹⁴

Entry into force and withdrawal

3.13 Article 12 of the Agreement provides that the Parties shall notify each other when their domestic requirements for entry into force of the Agreement have been fulfilled.¹⁵

3.14 The NIA states that no new domestic legislation or amendments to existing legislation are required to allow Australia to meet its obligations under the Agreement. In addition:

- under Article 13 of the Agreement, amendments can be made by an exchange of notes between both Parties through diplomatic channels; and,¹⁶
- once in force, Article 12(3) of the Agreement allows either Party to terminate the Agreement upon six weeks' written notice. Cooperative activities under the Agreement which had commenced as at the date of receipt of a notification to terminate the Agreement would be allowed to be fully executed after the termination has taken effect. Termination by Australia would be subject to our domestic treaty-making process.¹⁷

14 NIA, paras. 11-22.

15 NIA, para. 2.

16 Any amendment to the Agreement would be subject to Australia's domestic treaty-making process, NIA, para. 26.

17 NIA, para. 27.

Consultation

3.15 The NIA states that:

- the Federal Government Departments were consulted and all agencies were broadly supportive of the Agreement;
- during 2005, the views of stakeholder agencies were also sought on the suitability of the text agreed with South Africa at an officials level;¹⁸
- State and Territory Governments were consulted through the Commonwealth and State/Territory Standing Committee on Treaties (SCOT) and indicated no objections or concerns;
- approval for Australia to sign the Agreement in October 2006 was received from the Prime Minister and relevant Government Ministers; and,
- the Australian scientific community was consulted, specifically through the Australian Research Council (ARC), the National Health and Medical Research Council (NHMRC), Australian Nuclear Science and Technology Organisation (ANSTO), Defence Science Technology Organisation (DSTO) and the CSIRO. All agencies indicated their support for the provisions.¹⁹

3.16 The Committee questioned DEST in regards to the use of the term 'broadly supportive' in relation to the consultative process. DEST stated that:

I think it is a rare case where you will find every agency has a complete 100 per cent endorsement of the text in its first iteration. So 'broadly supportive' is intended to encompass the situation where we did speak to all agencies and through a process of discussion and some modification of the text we picked up on their initial reservations and they were subsequently happy with the text and signed it off.²⁰

18 A number of agencies raised matters concerning treaty language which then became the subject of further consideration and negotiation with South Africa. The draft text was subsequently amended to satisfy these concerns. NIA, Consultation, para. 3.

19 NIA, Consultation, paras. 1-8.

20 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 20.

Costs

3.17 The NIA states that while there will be some costs associated with implementation and management of the proposed Agreement, these costs will be absorbed by DEST. No additional costs are anticipated as a consequence of this treaty action.

3.18 On the issue of funding DEST explained that:

There is no dedicated Australian government funding that will foster research collaborations, particularly under this relationship. We expect the Australian research entities who are interested in collaborations to identify funding through available resources and then set up collaborative dialogue with their South African partners, who will now have a greater ability to access funding to support their researchers.²¹

Other matters

3.19 The Committee was interested in opportunities that may be presented for collaboration between Australia and South Africa in cereals and plant biotechnology. A DEST representative stated that although he could not provide specifics on this:

The purpose of the agreement is to set up an enabling framework that will allow collaborations where there is mutual potential benefit between Australian research institutions and South African institutions to then set up collaborative dialogue and subsequently research engagement.²²

3.20 The Committee questioned DEST in relation to intellectual property (IP) protection. The Committee was told:

[t]his treaty was developed with the intention of opening up a mechanism that allowed....access to unrealised South African research funding. As a result of that, there was no set of pressing issues that needed to be addressed by either party in terms of setting up detailed prescriptive frameworks for the

21 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19.

22 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

management of IP relationships in the research collaborations that take place under the treaty.²³

- 3.21 There is no clear expectation on how much research is likely to be conducted in Australia or in South Africa.²⁴ The CSIRO stated that :

In some cases a project may be done primarily in one country or the other depending on what it is that the projects team is looking to investigate and what facilities and infrastructure it needs to do that. Equally, there are some projects where it is split between them, and the Australian researchers, for example, may do the majority of their work in Australia and the South African or whoever may do the majority of their work in their country.²⁵

- 3.22 The Committee questioned representatives from DEST whether South African funding would be specifically linked to research located in South Africa. A representative from DEST stated that he was not '100 per cent clear in terms of the details of how the funding would be allocated to each project'²⁶ The representative from DEST further stated:

What generally happens though with research collaborations is that the Australian funding source we use supports the activities of the Australian researchers... The other country would pick up the cost of their own nationals, typically, and over the course of the entire project you would usually find a good split where Australia's nationals are supported by Australian dollars and, in this instance, South African nationals would be supported by South African funding support.²⁷

Conclusion and recommendations

- 3.23 The Committee accepts that the Agreement between Australia and the Republic of South Africa would further support, strengthen and encourage the long standing scientific and technological relationship
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23 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19.

24 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19.

25 Miss Kimberly Shriver, *Transcript of Evidence*, 18 June 2007, p. 19-20.

26 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 20.

27 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 20.

that exists between Australia and the Republic of South Africa by providing a more formal framework in which this arrangement can operate.

Recommendation 2

The Committee supports the *Agreement on Scientific and Technological Cooperation between Australia and the Republic of South Africa* and recommends that binding treaty action be taken.

