

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA  
AND THE GOVERNMENT OF THE KYRGYZ REPUBLIC  
CONCERNING THE STATUS OF AUSTRALIAN FORCES  
IN THE KYRGYZ REPUBLIC,  
DONE AT BISHKEK ON 14 FEBRUARY 2002**

**Documents tabled on 12 March 2002:**

- **National Interest Analysis**
- **Text of the proposed treaty action**

**Agreement between the Government of Australia and the Government of the Kyrgyz Republic concerning the Status of Australian Forces in the Kyrgyz Republic, done at Bishkek on 14 February 2002**

**NATIONAL INTEREST ANALYSIS**

**Proposed binding treaty action**

1. The proposed Agreement is, pursuant to its terms, currently being implemented temporarily as a non-legally binding arrangement. The Agreement shall finally enter into force upon notification by both the Australian Government and the Government of the Kyrgyz Republic that they have each completed all of their internal procedures for entry into force.

**Date of proposed binding treaty action**

2. The proposed Agreement is constituted by an exchange of notes. The Australian Note was dated 3 January 2002 and the Kyrgyz Republic Note was dated 14 February 2002.

3. It is proposed that Australia send written notification to the Kyrgyz Republic, confirming completion of internal procedures for entry into force, as soon as practicable after the tabling of the Agreement in Parliament and its consideration by JSCOT.

4. The earliest possible date for entry into force is 25 June 2002.

**Date of tabling of the proposed treaty action**

5. The proposed Agreement will be tabled on 12 March 2002.

**Summary of the purpose of the proposed treaty action and why it is in the national interest**

6. Australia has agreed to deploy a Royal Australian Air Force (RAAF) detachment to the Kyrgyz Republic to support coalition forces currently undertaking operations in Afghanistan. The Kyrgyz Republic advised that it required a Status of Forces Agreement (SOFA) of treaty status as a precondition to the deployment of Australian Defence Force (ADF) personnel to its territory. A SOFA establishes conditions for the presence of visiting personnel and assets in the host country. Australia usually seeks to conclude a SOFA for any overseas operational deployment to provide certain protections for ADF personnel and assets. The terms of the proposed Agreement are broadly consistent with the terms Australia typically seeks in an operational SOFA. Importantly, and among other things, the Agreement provides that ADF personnel deployed in the Kyrgyz Republic will remain subject to Australian criminal jurisdiction.

## **Reasons for Australia to take the proposed treaty action**

7. The United States requested that Australia support coalition forces currently undertaking operations in Afghanistan. As part of its military contribution, Australia agreed to deploy an RAAF detachment to the Kyrgyz Republic to provide air-to-air refuelling services. The Kyrgyz Republic advised that it required a SOFA of treaty status as a precondition to the deployment of ADF personnel to its territory. Consequently Australia has negotiated a SOFA with the Kyrgyz Republic.

8. A SOFA is an internationally recognised means of providing for the presence of one country's visiting forces in the territory of another country. A SOFA establishes conditions for the presence of visiting personnel and assets in the host country. It addresses issues such as jurisdiction, claims, immigration requirements and customs duties. Australia usually seeks to conclude a SOFA to cover any overseas operational deployment of ADF personnel or assets.

9. The terms of the proposed Agreement are broadly consistent with the terms which Australia typically seeks in an operational SOFA. They provide certain protections for ADF personnel and assets, including measures necessary for their security. Importantly, and among other things, the Agreement provides that ADF personnel deployed in the Kyrgyz Republic will remain subject to Australian criminal jurisdiction .

10. Examples of recent operational SOFAs to which Australia is a party include the Agreement between Papua New Guinea and Fiji, Tonga, Solomon Islands, Vanuatu, Australia and New Zealand concerning the Status of Elements of the Defence Forces of those Countries Deployed in the North Solomon's Province of Papua New Guinea as part of the South Pacific Peacekeeping Force, done at Suva on 28 September 1994; and the Agreement between Australia, Papua New Guinea, New Zealand, Fiji and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, done at Port Moresby on 5 December 1997.

## **Obligations**

11. The terms of the proposed Agreement are similar to the terms of other operational SOFAs to which Australia is a party.

12. The proposed Agreement provides that Australian personnel are accorded a status equivalent to that of 'administrative and technical staff' under the Vienna Convention on Diplomatic Relations 1961. Accordingly, and in addition to the express terms of the Agreement, the Kyrgyz republic shall afford Australian personnel the privileges and immunities due to them under that Convention. These include the following key matters:

- Members shall not be liable to any form of arrest or detention;
- The receiving State shall treat members with due respect and shall take all appropriate steps to prevent any attack on the members person, freedom or dignity;
- Immunity from criminal jurisdiction;
- Immunity from civil jurisdiction in certain circumstances;
- Exemption from most taxes, in particular any taxes on salary;
- Exemption from compulsory military service in the receiving State;
- Exemption from certain customs duties, taxes and related charges;

13. The Agreement sets out conditions concerning the rights of ADF personnel and their access to facilities when in the Kyrgyz Republic. These conditions include the following matters:

\* *Entry and exit*

- ADF personnel shall be permitted to enter and exit the Kyrgyz Republic with Australian identification and with collective movement or individual travel orders.

\* *Driving licences and laws*

- The Kyrgyz Republic shall accept as valid, without a driving fee or test, driving licenses or permits issued by appropriate Australian authorities for the operation of vehicles.

\* *Wearing of Uniforms and Carriage of arms*

- ADF personnel are permitted to wear their uniforms while performing official duties.
- ADF personnel are authorized to possess and carry arms in accordance with their orders.

\* *Telecommunications systems*

- The Australian Government shall operate its own telecommunications systems as defined in the 1922 Constitution of the International Communications Union. The Kyrgyz Republic shall permit Australian personnel and systems to use radio spectrum.
- Use of radio spectrum owned by the Kyrgyz Republic shall be free of charge. Compensation for use of privately owned spectrum shall be determined by mutual agreement of the Parties.

\* *Operation of vehicles and aircraft*

- Vehicles and aircraft owned or operated by or for the ADF shall not be subject to the payment of fees or charges, except that the ADF shall pay reasonable charges for services requested and received.
- Australian state aircraft shall pay reasonable parking and landing fees at Manas International Airport.

\* *Local purchases*

- Contracts for the acquisition of articles and services to implement the Agreement shall be awarded in accordance with the laws and regulations of the Government of Australia.
- Acquisition of articles and services shall not be subject to any taxes, customs duties or similar charges.

\* *Importation and exportation*

- The Australian Government, its personnel, contractors and contractor personnel, are permitted to import, export and use personal property, equipment, supplies, materials, technology, training and services required to implement the Agreement
- Such importation, exportation or use, shall be exempt from any inspection, licence, other restrictions, customs duties, taxes or other charges.

\* *Personal taxation*

- The Australian Government, its personnel, contractors and contractor personnel, shall not pay any tax or similar charge.

\* *Claims*

- Apart from contractual claims, claims by either Party shall be waived for damage to, loss or destruction of property, and for death or injury to personnel of the ADF or the Kyrgyz Republic arising out of activities under the Agreement
- The Australian government shall pay fair and reasonable compensation for meritorious claims by third parties arising out of, or incidental to non-combat, activities of Australian personnel under the Agreement.

\* *Criminal jurisdiction*

- The Australian Government shall exercise criminal jurisdiction over its personnel.
- Australian personnel shall not be surrendered or transferred to an international tribunal, other entity or state without the express consent of the Australian Government.

\* *Security*

- The Kyrgyz Republic shall cooperate with the Australian Government to ensure the security of ADF personnel and property.

## **Implementation**

14. No changes to domestic laws or policy are required to implement the proposed Agreement. The Agreement would not change the existing roles of the Commonwealth Government or the State and Territory Governments.

## **Costs**

15. This treaty action would not require any foreseeable financial expenditure by Australia, although the proposed Agreement includes terms related to financial matters. In particular, the proposed Agreement provides for a regime to handle claims made by either Party, and for exemptions for Australia from certain fees and duties of the Kyrgyz Republic.

## **Consultation**

16. The States and Territories were informed of the proposed Agreement through the Commonwealth-State Standing Committee on Treaties' Schedule of Treaty Action. No State or Territory comment has been received to date.

## **Regulation Impact Statement**

17. No Regulation Impact Statement is required for the proposed treaty action.

## **Future treaty action: amendments, protocols, annexes or other legally binding instruments**

18. The proposed Agreement does not provide for the negotiation of any future legally binding instruments.

19. The proposed Agreement does not provide for procedures for its amendment, although it could be amended by a subsequent exchange of notes between the Parties.

### **Withdrawal or denunciation**

20. The proposed Agreement can be unilaterally terminated on 180 days' notice by either Party.

21. While the proposed Agreement does not provide for any other procedures for its termination, it could be terminated at any time by mutual agreement of the Parties in writing.

### **Contact details**

Directorate of Agreements  
The Defence Legal Service  
Department of Defence