

# Namibian War Graves Agreement

## Introduction

- 3.1 The Agreement<sup>1</sup> between the Government of the Republic of Namibia and the Governments of Australia, Canada, India, New Zealand, South Africa and the United Kingdom of Great Britain and Northern Ireland relates to the maintenance of war graves of members of the Commonwealth armed forces located in Namibia.
- 3.2 While there are no Australians among the 426 identified Commonwealth burials, Australia – as a founding member of the Commonwealth War Graves Commission (the Commission) – supports the work of the Commission and recognises the important role the Commission plays in the remembrance of the Commonwealth war dead.<sup>2</sup>

## Background

- 3.3 The Commission was established by Royal Charter on 21 May 1917, the provisions of which were amended and extended by a Supplemental

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1 *The Agreement Between the Government of the Republic of Namibia and the Governments of Australia, Canada, India, New Zealand, South Africa and the United Kingdom of Great Britain and Northern Ireland concerning the Treatment of War Graves of members of the Armed Forces of the Commonwealth in the Territory of the Republic of Namibia.*

2 National Interest Analysis (NIA), para. 4.

Charter on 8 June 1964. The nations forming the Commission are the United Kingdom of Great Britain and Northern Ireland, Australia, Canada, India, New Zealand and South Africa. Its duties are to mark and maintain the graves of members of the armed forces of the Commonwealth who died in the two world wars, to build and maintain memorials to the dead whose graves are unknown, and to keep records and registers. The cost of maintaining the graves is shared by partner governments in proportions based on their number of graves. The Australian High Commissioner in London represents Australia at the meetings of the Commission.<sup>3</sup>

- 3.4 In order to carry out its operations, the Commission reaches an agreement with countries in which the war graves are located. However, as the Commission has no international legal standing of its own, member countries must sign the agreement with the country in question.<sup>4</sup>

## The Agreement

- 3.5 The Agreement was negotiated with the Government of the Republic of Namibia by the Commission on behalf of its Member States.<sup>5</sup>
- 3.6 No previous agreement has been completed between the Government of the Republic of Namibia and the Commission.<sup>6</sup>
- 3.7 Despite the absence of a formal agreement the maintenance of the graves of Commonwealth war dead has, up until this time, been undertaken in Namibia by the Commission. The Agreement will therefore formalise the Commission's work.<sup>7</sup> The Commission will remain responsible for the care and maintenance of all Commonwealth graves and co-located German graves from World War I.<sup>8</sup>

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3 NIA, para. 3.

4 Major General Paul Stevens, *Transcript of Evidence*, 19 June 2006, p. 2.

5 NIA, para. 1.

6 NIA, para. 5.

7 NIA, para. 8.

8 Department of Veterans' Affairs, *Submission 3*, p. 2.

## Obligations

- 3.8 The Commission does not have international legal personality and the Commission's Member States retain responsibility for entering into treaties and adopting rights and obligations on the Commission's behalf.<sup>9</sup>
- 3.9 The Agreement obliges the Government of the Republic of Namibia to recognise the Commission as the sole authority responsible for the laying out, construction and permanent care of the graves, cemeteries and memorials of the Commonwealth war dead in Namibia (Articles 2 and 6). In doing so, Namibia will allow the Commission the free use of, and access to, the land of its cemeteries (Articles 3 and 7), and will not, subject to the approval of the Namibian Ministry of Finance, charge the Commission any state or local taxes, duties or charges in connection with its function (Article 7).<sup>10</sup>
- 3.10 Under Articles 4 and 5, the Commission is responsible for the transfer and exhumation of remains when necessary and the Namibian authorities will assist in this process.<sup>11</sup>

## Costs

- 3.11 Australia contributes to the Commission on the basis of the percentage of war dead that Australians constitute from World War I and World War II.<sup>12</sup>
- 3.12 As the Office of Australian War Graves maintains war cemeteries and graves on behalf of the Commission in Australia and Papua New Guinea, a highly reduced percentage applies to Australia's annual contribution. The reduced amount equates to 6.05 per cent of the Commission's total budget (2005/2006: A\$5.700m).<sup>13</sup>

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9 NIA, para. 10.

10 NIA, para. 11.

11 NIA, para. 12.

12 Major General Paul Stevens, *Transcript of Evidence*, 19 June 2006, p. 3.

13 NIA, para. 16.

## Consultation

- 3.13 As there are no graves or memorials for Australians located in Namibia, from either World War I or World War II, no consultation has been conducted.

## Entry into force

- 3.14 Under Article 9, the Agreement will enter into force one month after the date on which the formalities required by the Government of the Republic of Namibia have been completed.

## Conclusion and recommendation

- 3.15 The Committee acknowledges that Australia is a founding member of the Commission and as a result has a commitment to the work of the Commission in its entirety.
- 3.16 The Committee believes that the Agreement will contribute to the remembrance of the Commonwealth war dead.

### Recommendation 2

**The Committee supports the Agreement Between the Government of the Republic of Namibia and the Governments of Australia, Canada, India, New Zealand, South Africa and the United Kingdom of Great Britain and Northern Ireland concerning the Treatment of War Graves of Members of the Armed Forces of the Commonwealth in the Territory of the Republic of Namibia and recommends that binding treaty action be taken.**