



Agreement on the Conservation of Albatrosses and Petrels

Second Meeting of Advisory Committee

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Secretariat

Headquarters Agreement

HEADQUARTERS AGREEMENT

**BETWEEN THE SECRETARIAT TO THE AGREEMENT ON THE
CONSERVATION OF ALBATROSSES AND PETRELS AND THE
GOVERNMENT OF AUSTRALIA**

The Secretariat to the Agreement on the Conservation of Albatrosses and Petrels and the Government of Australia,

Having regard to Article VIII(11)(c) of the Agreement on the Conservation of Albatrosses and Petrels done on 19 June 2001 at Canberra, which provides that, at its first session, the Meeting of Parties (MOP) shall establish a Secretariat to perform the secretariat functions listed in Article X of the Agreement;

Desiring to enable the Secretariat, as a subordinate organ of the MOP, to fully and efficiently fulfill its purposes and functions under the Agreement on the Conservation of Albatrosses and Petrels;

Comment: As per para 4.1.3(a) of the report of MOP1.

Desiring to define the legal capacity, privileges and immunities of the Secretariat and the privileges and immunities to be enjoyed by the Secretariat and its officers under the laws of Australia.

Have agreed as follows:

Article 1 - Definitions

For the purpose of this Agreement:

- (a) "ACAP" means the Agreement on the Conservation of Albatrosses and Petrels done at Canberra on 19 June 2001, which entered into force on 1 February 2004;
- (b) "Appropriate authorities" means the national, state or local authorities of the Commonwealth of Australia, in accordance with the laws of the Commonwealth of Australia and its State or local authorities;
- (c) "Executive Secretary" means the Executive Secretary appointed by the MOP to head the Secretariat;
- (d) "Expert" means a person performing short term or temporary projects on behalf of the Secretariat and includes a person serving on a body or a meeting under the auspices of ACAP or the Secretariat or participating in the work of or performing a mission on behalf of the Secretariat or a body or a meeting within ACAP or the Secretariat, without necessarily receiving remuneration, but does not include staff members;
- (e) "Government" means the Government of the Commonwealth of Australia;

- (f) "Headquarters" means premises of the Secretariat including the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, occupied by the Secretariat for the performance of its official activities;
- (g) "MOP" means the Meeting of Parties to the Agreement on the Conservation of Albatrosses and Petrels.
- (h) "Official activities" means all activities undertaken pursuant to ACAP including the Secretariat's administrative activities;
- (i) "Party" means Party to ACAP;
- (j) "Records" includes all correspondence, documents, manuscripts, photographs, computer data storage, films and recordings belonging to, or held by the Secretariat;
- (k) "Representatives" means representatives of parties to ACAP in attendance at conferences or meetings convened by the MOP or the Secretariat and includes delegates, alternates, advisers, and secretaries of delegations;
- (l) "Secretariat" means the Secretariat established under Article VIII of the Agreement on the Conservation of Albatrosses and Petrels;
- (m) "Serious offence" means an indictable offence in any state or territory of the Commonwealth of Australia, punishable on conviction of a period of imprisonment of one year or more.
- (n) "Staff member" means the Executive Secretary and all persons appointed for employment with the Secretariat and subject to its staff regulations, but does not include experts or persons recruited locally and assigned to hourly rates of pay.

Note – definition presupposes the existence of Staff Regulations.

- (o) 'Taxes' and 'taxation' include customs and excise duties. Taxes do not include reasonable charges for specific services rendered.

Article 2 – Legal Capacity

The Secretariat has a legal personality and capacity to perform its functions in the territory of the Commonwealth of Australia. It has, in particular, the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and be a party to legal proceedings.

Article 3 - Interpretation

This Agreement shall be interpreted in the light of its primary objective of enabling the Secretariat to perform its functions in the Commonwealth of Australia.

Article 4 - Establishment of secretariat and headquarters

The Headquarters of the Secretariat shall be established in Hobart, Tasmania, Australia.

Note – The following articles are concerned with privileges and immunities.

Article 5 - Premises

1. The Headquarters of the Secretariat shall be inviolable and shall be under the full authority of the Secretariat.
2. The Government shall arrange for the Headquarters to be supplied by the appropriate authorities with available public services, such as electricity, water, sewerage, gas, mail, telephone, telegraph, drainage, collection of refuse and fire protection, on terms no less favourable than those enjoyed by diplomatic missions in Australia.
3. The Secretariat shall make known to the Government the location of its permanent premises and records and of any temporary occupation of premises for the performance of its official activities. Where any premises are used or occupied by the Secretariat for the performance of its official activities, such premises shall, with the concurrence of the Government, be accorded the status of premises of the Secretariat.
4. Without prejudice to the terms of this Agreement, the Secretariat shall not permit the Headquarters to become a refuge from justice for persons avoiding arrest or service of legal process or against whom an order of extradition or deportation has been issued.
5. The appropriate authorities may enter the Headquarters to carry out their duties only with the consent of the Executive Secretary and under the conditions determined by the Executive Secretary. The Executive Secretary's consent shall be deemed to have been given in the case of fire or other exceptional occurrences which may require immediate protective action.

Article 6 - Immunities of the Secretariat

1. Except as otherwise provided in ACAP or in this Agreement, the activities of the Secretariat in Australia shall be governed by Australian domestic law.
2. Within the scope of its official activities the Secretariat and its property, premises and assets shall have immunity from suit and other administrative or legal process except:
 - (a) to the extent that the MOP expressly waives such immunity in a particular case;
 - (b) in respect of any contract for the supply of goods or services and any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation;
 - (c) in respect of a civil action by a third party for death, damage or personal injury arising from an accident caused by a motor vehicle belonging to, or operated on

behalf of, the Secretariat to the extent that compensation is not recoverable from insurance;

- (d) in respect of a motor vehicle offence involving a motor vehicle belonging to, or operated on behalf of, the Secretariat;
 - (e) in the event of the attachment, pursuant to the final order of a court of law, of the salaries, wages or other emoluments owed by the Secretariat to a staff member of the Secretariat or to an expert;
 - (f) in respect of a counter-claim directly connected with proceedings initiated by the Secretariat; and
 - (g) in respect of the enforcement of an arbitration award made under Article 25 of this Agreement.
3. The Secretariat's property, premises and assets, wherever situated, shall have exemption from any form of restrictions or controls such as requisition, confiscation, expropriation or attachment. They shall also be immune from any form of administrative or judicial constraint provided that motor vehicles belonging to or operated on behalf of the Secretariat shall not be immune from administrative or judicial constraint when temporarily necessary in connection with the prevention of, and investigation into, accidents involving such motor vehicles.
4. The immunities in Article 6 shall cease to apply in relation to property, premises and assets which have been abandoned by the Secretariat for a period in excess of twelve months.

Article 7 - Records

The records of the Secretariat shall be inviolable wherever they are.

Article 8 - Flag and emblem

The Secretariat shall be entitled to display its flag and emblem on the premises and means of transport of the Secretariat and of the Executive Secretary.

Article 9 - Exemption from direct taxes

1. Within the scope of its official activities, the Secretariat, its property, premises and assets, and its income, including contributions made to the Secretariat under ACAP or as the result of any agreement arrived at by the States Parties to ACAP, shall be exempt from all direct taxes including income tax, as well as direct taxes levied by the States or local authorities.

Comment: Note - Exemptions from State and local taxes cannot be granted by the Australian Government and are subject to Australian Government negotiations with State and local authorities.

2. The exemptions from taxation on income provided for in this article and in Articles XX and XX shall be given on the understanding that no taxation shall be imposed on such income by other Parties.

Article 10 - Exemption or refund of customs and excise duties and refund for value-added tax

1. Property intended for the official use of the Secretariat (including MOP and Secretariat publications, information material and motor vehicles but not alcohol or tobacco products) shall be exempt from all customs and excise duties or a refund for the excise or customs duty paid shall be available to the Secretariat.
2. The Secretariat shall be entitled to refunds for any value added tax or similar tax in respect of services and goods over \$500 in value (including publications, information material and motor vehicles but not alcohol or tobacco products), if the services and goods so purchased by the Secretariat are necessary for its official use.
3. Paragraphs 1 and 2 of this Article do not provide the Secretariat with an exemption from, or refund for, luxury car tax.

Article 11 - Re-sale

Goods which have been acquired or imported by the Secretariat to which exemptions under article XX of this Agreement apply and goods acquired or imported by the Executive Secretary under articles XX or XX of this Agreement shall not be given away, sold, lent, hired out or otherwise disposed of in Australia except under conditions agreed in advance with the Government.

Article 12 - Currency and exchange

The Secretariat shall be exempt from currency and exchange restrictions, including those in respect of funds, currency and securities received, acquired, held or disposed of. The Secretariat may also operate without restrictions bank or other accounts for its official use in any currency, and have them transferred freely within Australia or to any other country.

Article 13 - Communications

1. The Secretariat may employ any appropriate means of communication, including encrypted messages.
2. The Secretariat may install and use radio transmitters only with the consent of the Government.
3. Official correspondence and other official communications of the Secretariat are not subject to censorship.

Article 14 - Publications

The importation and exportation of the Secretariat's publications and other information material imported or exported by the Secretariat within the scope of its official activities shall not be restricted in any way.

Article 15 - Representatives in attendance at meetings convened by the Secretariat

- 1 Representatives shall enjoy, while exercising their functions in Australia and while travelling in the exercise of their functions in Australia, the following privileges and immunities:
 - (a) immunity from arrest and detention except when found committing, attempting to commit or just having committed a serious offence;
 - (b) immunity, which shall extend beyond the termination of their mission, from suit and other legal process in respect of acts and things done by them in the exercise of their official functions, including words written or spoken; except in the case of civil or administrative proceedings arising out of death, damage or personal injury caused by a motor vehicle belonging to or driven by them;
 - (c) inviolability for all their official papers and documents;
 - (d) exemption (including exemption of the spouse of the representative) from the application of laws relating to the registration of aliens, the obligation to perform national service and any other national duty;
 - (e) the same exemption from currency and exchange restrictions as is accorded to a representative of a foreign government on a temporary mission to Australia on behalf of that government;
 - (f) the same exemptions in relation to inspection of their personal baggage as are accorded to diplomatic agents;
 - (g) the right to use codes and to send and receive correspondence and other papers and documents by couriers or in sealed bags;
 - (h) the same exemption from taxes on income as is accorded an envoy in Australia; and
 - (i) similar repatriation facilities including such facilities in respect of a spouse and dependent relatives, in time of international crisis as are accorded to an envoy.
2. The provisions of the preceding paragraph shall be applicable irrespective of the relations existing between the governments which the persons referred to represent and the Government, and are without prejudice to any additional immunities to which such persons may be entitled.
3. In order to assist the Government to implement the provisions of this article, the Secretariat shall inform the Government of the names of representatives four weeks prior to their arrival in Australia.

4. The privileges and immunities described in paragraph 1 of this article shall not be accorded to any representative of the Government or to any national or permanent resident of Australia.
5. Privileges and immunities are accorded to representatives not for the personal benefit of individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Secretariat. Consequently, a Party not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Party the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded. If the Party sending the representative does not waive the immunity of the representative, it shall make the strongest efforts to achieve an equitable solution of the matter.
6. The Government shall treat representatives with all due respect and shall take all appropriate steps to prevent any attack on a representative. Where it appears that an offence may have been committed against a representative, steps shall be taken in accordance with the domestic law of Australia to investigate the matter and to ensure that appropriate action is taken with respect to the prosecution of the alleged offender.

Article 16 - Executive Secretary

In addition to the privileges, immunities, exemptions and facilities provided for in Article 18, the Executive Secretary, unless they are a national or a permanent resident of Australia, shall enjoy the privileges, immunities, exemptions and facilities, to which a diplomatic agent in Australia is entitled; including privileges, immunities, exemptions and facilities, in respect of a spouse and dependent children under the age of eighteen years, unless they are nationals or permanent residents of Australia.

Article 17 - Staff members

1. Staff members of the Secretariat:
 - (a) shall have, even after the termination of their service with the Secretariat, immunity from suit and other legal process in respect of acts and things done by them in the exercise of their official functions, including words written or spoken. This immunity shall not, however, apply in the case of a motor vehicle offence committed by such a staff member, nor in the case of civil or administrative proceedings arising out of death, damage or personal injury caused by a motor vehicle belonging to, or driven by the staff member to the extent that compensation is not recoverable from insurance;
 - (b) shall be exempt from any obligations in respect of national service and all other kinds of mandatory service;
 - (c) shall be exempt from the application of laws relating to the registration of aliens and immigration;
 - (d) shall be accorded the same exemption from currency and exchange restrictions as is accorded to an official of comparable rank forming part of a diplomatic mission in Australia;

- (e) shall, at the time of first taking up their post in Australia, be exempt from taxes or entitled to refunds for taxes levied in respect of import of furniture, and personal effects (excluding motor vehicles, alcohol or tobacco products) in their ownership or possession or already ordered by them and intended for their personal use or for their establishment. Such goods shall be imported within six months of a staff member's first entry into Australia. Goods which have been acquired or imported by staff members and to which exemptions or refunds under this sub-paragraph apply shall not be given away, sold, lent, hired out, or otherwise disposed of except under conditions agreed in advance with the Government. Furniture, motor vehicles and personal effects may be exported free of taxes when leaving Australia on the termination of the official functions of the staff member;
 - (f) shall be exempt from all taxes on income received from the Secretariat;
 - (g) shall have similar repatriation facilities as accorded to a diplomatic agent in times of international crisis;
2. Privileges and immunities applicable to a staff member in accordance with sub-paragraphs b), c), d), e) and g) of paragraph 1 above shall also apply to their spouse and dependent children under the age of 18 years forming part of their household unless they are nationals or permanent residents of Australia.
 3. The privileges and immunities described in paragraph 1 of this article shall not be accorded to any staff member who is a national or permanent resident of Australia.

Article 18 - Experts

1. Experts shall enjoy the following privileges and immunities while exercising their functions in Australia and while travelling in the exercise of their functions in Australia:
 - (a) immunity from suit and other legal process in respect of acts and things done by them, including words written or spoken, except in the case of a motor vehicle offence committed by such an expert, nor in the case of civil or administrative process arising out of death, damage or personal injury caused by a motor vehicle belonging to, or driven by, an expert. Such immunity shall continue after the expert's functions in relation to the Secretariat have ceased;
 - (b) inviolability for all their official papers, documents and materials;
 - (c) the same exemption from currency and exchange restrictions as is accorded to a representative of a foreign government on a temporary mission in Australia on behalf of that government; and
 - (d) immunity from personal arrest and detention except when found committing, attempting to commit or just having committed a serious offence.
2. Privileges and immunities in respect of personal baggage as are accorded to a diplomatic agent.
3. The privileges and immunities described in paragraph 1 of this article shall not be accorded to any expert who is a national or permanent resident of Australia.

Article 19 - Visas

The Australian Government will, pursuant to the Laws of Australia, facilitate the entry into, residence in, and departure from Australia, and freedom of movement in Australia, of the following persons:

- (a) representatives;
- (b) staff members of the Secretariat and any members of their families forming part of their household; and
- (c) experts.

Article 20 - Objective and waiver of privileges and immunities

1. Privileges and immunities provided for in this Agreement are granted to staff members and experts to ensure the independence of the persons to whom they are accorded in the exercise of the functions of the Secretariat to achieve the purposes of the ACAP. They are not granted for the personal benefit of the individuals themselves.
2. Except as provided in paragraph 3 below, the privileges and immunities provided in this Agreement may be waived by the MOP. They should be waived in a particular case where the privilege and immunity in question would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.
3. In the case of representatives, their privileges and immunities under this Agreement may be waived by the States Parties which they respectively represent.
4. If such immunities are not waived, the MOP or relevant States Parties shall make the strongest efforts to achieve an equitable solution of the matter. Such a solution may include arbitration in accordance with article XIV of ACAP.

Article 21 - Cooperation

The Secretariat shall cooperate fully at all times with the appropriate authorities in order to prevent any abuse of the privileges, immunities and facilities provided for in this Agreement. The Government reserves its sovereign right to take reasonable measures to preserve security. Nothing in this Agreement prevents the application of laws necessary for health and quarantine or, in respect of the Secretariat and its officers, laws relating to public order.

Article 22 - Notification of appointments, identity cards

1. The Secretariat shall notify the Government of the appointment of an Executive Secretary and the date when the Executive Secretary is to take up or relinquish the post. Four weeks prior notice of arrival and final departure shall be given. If staff members are accompanied by a

spouse or dependent children under the age of eighteen years, prior notice shall also be given in respect of such persons.

2. The Secretariat shall notify the Government when a staff member takes up or relinquishes their post or when an expert starts or finishes a project or mission. If staff members are accompanied by a spouse or dependent children under the age of eighteen years, prior notice shall also be given in respect of such persons.
3. The Secretariat shall twice a year send to the Government a list of all experts and staff members and the members of their families forming a part of the household in Australia. In each case the Secretariat shall indicate whether such persons are nationals or permanent residents of Australia.
4. The Government shall issue to all staff members and experts as soon as practicable after notification of their appointment, a card bearing the photograph of the holder and identifying them as a staff member or expert as the case may be. This card shall be accepted by the appropriate authorities as evidence of identity and appointment. The members of their families forming a part of the household shall also be issued with an identity card. When the staff member or expert relinquishes their duties, the Secretariat shall return to the Government their identity card together with identity cards issued to members of their family forming a part of the household.

Article 23 - Consultations

The Government and the Secretariat shall consult at the request of either of them concerning matters arising under this Agreement. If any such matter is not promptly resolved, the Secretariat shall refer it to the MOP.

Article 24 - Settlement of disputes

Any dispute between the Government and the Secretariat concerning the interpretation or application of this Agreement or any question affecting the relations between the Government and the Secretariat which is not settled by consultation or negotiation or by some other mutually acceptable method may be submitted to an arbitral tribunal constituted, mutandis mutandis, as provided for in article XIV of ACAP.

Article 25 - Entry into force and termination

1. This agreement shall enter into force on the day in which the Government and the Secretariat have notified each other, in writing, that their respective requirements for the entry into force of this Agreement have been compiled with.
2. This Agreement may be terminated by a joint decision of the Government and the Secretariat. In the event of the Headquarters of the Secretariat being moved from Australia, this Agreement shall, after a period reasonably required for such transfer and the disposal of the property of the Secretariat in Australia, cease to be in force. In either event, the date

on which the Agreement terminates shall be confirmed by an exchange of notes between the Government and the Secretariat.

Article 26 - Amendment

This Agreement may be amended by agreement between the Government and the Secretariat subject to the approval of the MOP.

IN WITNESS WHEREOF the undersigned, being duly authorised thereunto, have signed this Agreement.

DONE at XXX this XXX day of XXX, 20XX.