

AUSTRALIA



Treaty Series No. 19 (1971)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Commonwealth of Australia

to provide for the Establishment and
Operation in Australia of a
Large Optical Telescope

Canberra, 25 September 1969

[The Agreement entered into force on 22 February 1971]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
April 1971*

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AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA
TO PROVIDE FOR THE ESTABLISHMENT AND OPERATION
IN AUSTRALIA OF A LARGE OPTICAL TELESCOPE

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia;

Desiring to provide for the establishment and operation in Australia as a joint enterprise of a large optical telescope that will enable United Kingdom and Australian astronomers to undertake astronomical observations to the advancement of scientific knowledge;

Have agreed as follows:

ARTICLE 1

- (1) In this Agreement, unless the context otherwise requires:
- (a) "the Commonwealth Government" means the Government of the Commonwealth of Australia;
 - (b) "the United Kingdom Government" means the Government of the United Kingdom of Great Britain and Northern Ireland;
 - (c) "the telescope" means the telescope constructed in accordance with this Agreement and, where the context so admits, includes ancillary equipment, facilities and services essential to the effective operation of the telescope;
 - (d) "the Telescope Board" means the Anglo-Australian Telescope Board established in accordance with this Agreement;
 - (e) "the University" means the Australian National University constituted under the Australian National University Act 1946-67 of the Commonwealth of Australia.

(2) For the purposes of this Agreement each Contracting Party shall act through a designated agency. These two agencies shall be responsible jointly for implementing the Agreement. For the purposes of making such agreements, determining such matters or receiving such consents, approvals or communications as may be required for the operation of the Agreement, each agency shall be represented by a person nominated by that agency.

Establishment of the telescope

ARTICLE 2

(1) The Contracting Parties shall cause to be manufactured, constructed, operated and maintained, by the Telescope Board, an optical telescope and associated facilities and services. The telescope shall have a nominal aperture of 150 inches.

(2) The specifications for the telescope shall be based on the design adopted by the Association of Universities for Research in Astronomy for a similar optical telescope to be located at Kitt Peak, Arizona in the United States of America, but shall incorporate such modifications to that design as are agreed by the Telescope Board to be necessary in the light of the desired uses of the telescope.

(3) The telescope shall be the property of the Telescope Board.

ARTICLE 3

(1) World-wide tenders shall be called for the optics, mounting, telescope tube, building, dome and other major components of the telescope, unless it is agreed by the Telescope Board that tenders should be invited on a selective basis from firms known to be competent. The Telescope Board shall decide which components are to be regarded as major components and shall approve in advance of calls for tenders for major components, the specifications and list of tenderers.

(2) If the members of the Telescope Board do not agree unanimously on the placement of a particular contract the matter shall be referred by the Telescope Board to the Contracting Parties for determination. The placement by the Telescope Board of contracts for major components shall be approved by the Contracting Parties.

ARTICLE 4

(1) The Commonwealth Government shall arrange with the University for the use by the Telescope Board of a site for the telescope in the area that is vested in or under the control of the University at Siding Spring Mountain in the State of New South Wales. The terms and conditions of such use shall be agreed upon between the Telescope Board and the University.

(2) So far as practicable and subject to satisfactory arrangements being made between the Telescope Board and the University, use should be made of supporting facilities in existence or to be provided by the University at Siding Spring Mountain and at Mount Stromlo. This does not however preclude the use of supporting facilities elsewhere.

(3) The arrangements for the provision by the University of facilities and services for the purposes of construction, operation and maintenance of the telescope shall be such as are agreed upon between the Telescope Board and the University, and the Commonwealth Government shall accord its good offices as appropriate in the negotiations and the putting into effect of these arrangements.

Operation and use of the telescope

ARTICLE 5

(1) Observing time on the telescope and use of associated joint facilities and services shall be shared equally between the Contracting Parties and it shall be the responsibility of the Telescope Board to make arrangements consistent with this principle in its determination of the use of the telescope and associated facilities and services.

(2) The rules to be made by the Telescope Board shall include rules governing the detailed arrangements for maintenance, operation and use of the telescope.

(3) Either Contracting Party may permit other than United Kingdom or Australian astronomers to use the telescope during the time to which that Party is entitled to use the telescope in accordance with this Article.

The Telescope Board

ARTICLE 6

(1) The Telescope Board to be incorporated under an enactment of the Parliament of the Commonwealth of Australia shall be a body corporate with perpetual succession and a Common Seal and shall have such capacities and powers as are necessary and incidental to the performance of its functions under this Agreement including, without affecting the generality of the foregoing capacities and powers:

- (a) to acquire, hold and dispose of real and personal property;
- (b) to enter into contracts including contracts for the performance of works and contracts of service and for services;
- (c) to employ persons;
- (d) to sue and be sued;
- (e) to receive gifts;
- (f) to do anything incidental to any of its powers.

(2) The Telescope Board shall be constituted of as many members as are agreed by the Contracting Parties always provided each Party is equally represented. Unless otherwise agreed, each Party shall appoint for the time being three members on terms and conditions determined by the Party making the appointment.

(3) Each Contracting Party may appoint a person to be a temporary member, whenever a member previously appointed by that Party is absent or unavailable. During the term of his appointment a temporary member shall have and may exercise all the functions of a member of the Telescope Board.

ARTICLE 7

(1) The Telescope Board shall make arrangements for two of its members to act as Chairman and Deputy Chairman respectively. The periods of tenure and the functions of these offices shall be as determined by the Telescope Board. The functions of the Chairman, or, in his absence or inability otherwise to perform his functions, of the Deputy Chairman, shall include convening and presiding at meetings of the Telescope Board and carrying out such executive responsibilities and functions as the Telescope Board considers to be appropriate subject to and pending any directions or decisions of the Telescope Board.

(2) In the event of the absence of the Chairman and the Deputy Chairman from any meeting of the Telescope Board, the members present shall appoint one of their members to preside at that meeting.

(3) Subject to this Agreement, the Telescope Board may make rules with respect to the order and conduct of the business at its meetings.

(4) A member of the Telescope Board who is directly or indirectly interested in a contract made or proposed to be made by the Telescope Board, otherwise than as a member and in common with others of an incorporated company consisting of not less than twenty-five persons, shall as soon as possible disclose the nature of his interest at a meeting of the Telescope Board. Thereafter, unless the Telescope Board gives permission, the member shall take no part in any decision of the Telescope Board in respect of that contract.

(5) Four members of the Telescope Board, being two members appointed by each Party, shall constitute a quorum for the transaction of the business of the Telescope Board.

ARTICLE 8

(1) The functions of the Telescope Board shall be to do or arrange or cause to be done, subject to and in accordance with Article 2 of this Agreement, such acts, things and matters as shall provide for or contribute to the manufacture, construction, operation and management of the telescope and, without prejudice to the generality of those functions, specific functions shall be:

- (a) to approve the final specifications for the telescope, ancillary equipment and buildings and other works;
- (b) to arrange for and supervise construction;
- (c) to employ persons under such conditions as shall be approved by the Telescope Board in accordance with Articles 17 and 18;
- (d) to appoint agents, consultants and advisers;
- (e) to enter into arrangements with the University;
- (f) to receive, expend and account for funds;
- (g) to arrange for, direct and control the operation of the telescope;
- (h) to arrange, with the approval of the Contracting Parties, for such modifications to the telescope subsequent to its initially being brought into use as may be necessary from time to time for its more efficient operation;
- (i) to furnish to the Contracting Parties as soon as practicable after each 30th day of June, a report on the operations during the year ending on that date together with financial statements in respect of that year and statements of estimated expenditure in future years in accordance with Article 16.

(2) The first report to be furnished by the Telescope Board in accordance with sub-paragraph (i) above shall relate to the period ending on the 30th day of June, 1970.

ARTICLE 9

(1) The Telescope Board may appoint advisory or executive committees to act in connection with the performance of its functions and may determine and direct the functions and procedures of committees so appointed.

(2) An advisory or executive committee may, if the Telescope Board considers fit, consist of or include persons who are not members of that Board.

ARTICLE 10

The principal office of the Telescope Board shall be located in the Australian Capital Territory.

Financial arrangements

ARTICLE 11

(1) The costs of manufacturing and constructing the telescope shall be borne by the Contracting Parties in equal shares.

(2) Except as otherwise agreed by the Contracting Parties in particular cases, all costs for operation, use and maintenance of the telescope shall be borne by the Contracting Parties in equal shares.

(3) The Telescope Board shall determine the financial and accounting arrangements for the manufacture, construction, operation, use and maintenance of the telescope, in accordance with Article 5 and paragraphs (1) and (2) of this Article.

ARTICLE 12

The costs referred to in Article 11 shall comprise all costs and expenses incurred by the Telescope Board in connection with the performance of its functions and shall include such commitments made after the 31st day of August, 1967 before the formation of the Telescope Board, expenditure related thereto and any other expenditure which would have fallen to the Telescope Board had the Telescope Board existed when it was incurred.

ARTICLE 13

The costs referred to in Article 11 of this Agreement shall not, unless the Telescope Board otherwise so approves, include expenses of the Contracting Parties except as provided for in Article 12.

ARTICLE 14

The Contracting Parties shall make payments to the Telescope Board from time to time in such amounts as are required to enable it to meet the expenditures necessary to the proper carrying out of its functions under this Agreement and within the limits of estimates approved in accordance with Article 16.

ARTICLE 15

(1) The Telescope Board shall:

- (a) cause to be kept proper accounts and records of its transactions and affairs;
- (b) ensure that all payments are properly authorised and correctly made;
- (c) ensure that adequate control is maintained over its assets and over the incurring of liabilities.

(2) The accounts, records and financial transactions of the Telescope Board shall be audited from time to time by the Auditor-General for the Commonwealth of Australia. Copies of the reports relative to the audit of the accounts, records and financial transactions shall be supplied to both Contracting Parties.

ARTICLE 16

The Telescope Board shall prepare and submit to the Contracting Parties for their approval detailed annual estimates of receipts and expenditure covering accounting periods ending on the 30th day of June in each year together with outline estimates of expenditure for the following five years. The Telescope Board shall prepare and submit such other detailed estimates as may be required by either Party. The estimates shall be in such form as to permit the extraction of information covering annual periods ending on the 31st day of March in each year.

Employment of staff

ARTICLE 17

The Contracting Parties and the Telescope Board shall take such action as is appropriate and competent to be taken on their respective parts to provide for the preservation and retention by persons who are employed by the Telescope Board of the existing and accruing employment rights of those persons.

ARTICLE 18

For the purpose of the employment of persons, the Telescope Board shall normally follow terms and conditions used by the Commonwealth Public Service, but these terms and conditions may be varied by the Telescope Board when it considers this is necessary and in particular when it is necessary to provide, in accordance with Article 17, for the preservation and retention of the existing and accruing employment rights of those persons normally resident in the United Kingdom.

General

ARTICLE 19

The Commonwealth Government shall take all steps that are appropriate and practicable for it to take to ensure that development or activities do not take place or are not carried out in the area of Siding Spring Mountain that would cause interference with the effective use of the telescope.

ARTICLE 20

(1) The Commonwealth Government shall facilitate entry into, or exit from, Australia free from customs or other duties of goods required in connection with the manufacture, construction, operation, use or maintenance of the telescope and its ancillary equipment which, at the time of entry for home consumption, are the property of the Telescope Board and are not goods of a kind, which if produced or manufactured in Australia, would be subject to excise duties.

(2) Exemption from sales tax shall be allowed by the Commonwealth Government in respect of goods purchased in Australia and which are, or which are intended to be, the property of the Telescope Board before going into use or consumption in Australia, and which are required in connection with the manufacture, construction, operation, use or maintenance of the telescope and its ancillary equipment.

(3) Goods which are owned by the Telescope Board at the time they are entered for home consumption or are purchased by the Telescope Board in Australia, or of which the Telescope Board acquires ownership before they go into use in Australia, shall remain its property and shall not be disposed of in Australia except under conditions acceptable to the Commonwealth Government.

(4) In accordance with the laws for the time being in force in Australia, the Commonwealth Government shall wherever possible facilitate the temporary admission into, or exit from, Australia free from Customs duties and other taxes, of goods or equipment which are required by a user of the telescope for use in connection with the operation and use of the telescope.

(5) In accordance with the laws for the time being in force in the United Kingdom, the United Kingdom Government shall wherever possible facilitate the entry into, or exit from, the United Kingdom free from Customs duties and other taxes, of goods which are required in connection with the manufacture, construction, operation and use or maintenance of the telescope and its ancillary equipment.

ARTICLE 21

In accordance with the laws for the time being in force in Australia, the Commonwealth Government shall, subject to current immigration policies and requirements, facilitate the admission into and exit from Australia of persons not normally resident in Australia employed or engaged as staff, consultants or advisers by the Telescope Board or by its contractors and of persons duly authorised to have access to or use of the telescope.

ARTICLE 22

The staff of the Telescope Board and its consultants, advisers and contractors and persons duly authorised to have access to or use of the telescope who are not normally resident in Australia but are required for the purposes of this Agreement to reside in Australia shall be permitted to import their personal and household effects on first arrival and to export those effects on departure free from import duties and taxes in accordance with the laws in force in Australia at the time of importation or exportation.

ARTICLE 23

This Agreement shall come into force on the date the Commonwealth Government notifies the United Kingdom Government that it has completed the processes necessary in Australia to give effect to the Agreement.⁽¹⁾

(1) In a communication dated 19 February 1971 the Government of Australia notified the Government of the United Kingdom that the processes necessary in Australia to give effect to the Agreement would be completed on 22 February 1971, on which date the Agreement entered into force.

ARTICLE 24

(1) This Agreement shall continue in force for a period of 25 years unless previously terminated by the agreement of both Contracting Parties. After the expiration of 25 years either Party may terminate the Agreement by giving to the other 5 years' notice of their intention.

(2) In the event that this Agreement is terminated the Contracting Parties shall agree on the manner in which the telescope and other property of the Telescope Board shall be dealt with. If such assets are sold, the net proceeds of such sale shall be divided equally between the two Parties.

(3) The terms and conditions of this Agreement may be varied or extended from time to time in such manner as may be agreed between the Contracting Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments have signed the present Agreement.

DONE in duplicate at Canberra this twenty-fifth day of September, One thousand nine hundred and sixty-nine.

C. H. JOHNSTON

MALCOLM FRASER

For the Government of the United
Kingdom of Great Britain and
Northern Ireland

For the Government of the Com-
monwealth of Australia

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