



ROYAL AUSTRALIAN AIR FORCE

Headquarters History and Heritage – Air Force

Deed of Gift

This Deed of Gift between the Commonwealth of Australia and the South Australian Aviation Museum Inc. (ABN 21 020 074 435) trading as the South Australian Aviation Museum Inc (the Recipient) transfers the ownership of Mirage IIID aircraft A3-115 (the Asset) from the Commonwealth to the Recipient.

RECITALS

- A. The Commonwealth is the owner of the Asset, located at RAAF Base Edinburgh.
- B. The Commonwealth considers that the Asset is of cultural and historical significance. The Commonwealth has offered to gift the Asset to the Recipient, on the terms set out in this Deed.
- C. The Recipient has agreed to accept the gift of the Asset on the terms set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

GENERAL CONDITIONS OF DEED
TABLE OF CONTENTS

1	DEED FRAMEWORK	3
1.1	Definitions	3
1.2	Interpretation	3
1.3	Commencement of Operation	4
1.4	Entire Agreement	4
2	ROLES AND RESPONSIBILITIES.....	4
2.1	Commonwealth Representative	4
2.2	Recipient's Representative	5
2.3	Notices	5
3	TERMS OF GIFT.....	5
3.1	Gift.....	5
3.2	Acceptance of Gift	5
3.3	Title and Transfer	5
3.4	Risk	6
3.5	Location of Asset, Access Security and Removal	6
3.6	Problematic Substances	6
3.7	Work Health and Safety (WHS)	6
3.8	Environmental Obligations	8
3.9	Subcontracting	8
3.10	Exclusion of Warranties	8
4	INSURANCE AND INDEMNITY	8
4.1	Indemnity and Release	8
4.2	Insurance	8
4.3	No Claim	9
5	DEED MANAGEMENT	9
5.1	Change to Deed	9
5.2	Waiver	9
5.3	Assignment	9
5.4	Costs	9
6	LAW	9
6.1	Applicable Law	9
6.2	Severability.....	9
7	DISPUTES.....	10
7.1	Resolution of Disputes	10
7.2	Termination	10

ATTACHMENTS:

- A. Particulars of Gift
- B. Condition Report

1 DEED FRAMEWORK

1.1 Definitions

1.1.1 In the Deed, unless the contrary intention appears:

“Asset” means the asset the Commonwealth is gifting under this Deed as described in Attachment A;

“Authorisation” means the obligations and requirements, including but not limited to a licence, accreditation, permit, registration, regulatory approval, export approval or other documented authority (however described), required by Australia’s legislation and regulations and those detailed under the Deed;

“Authorised Person” means a person or office holder who is delegated or authorised to carry out functions on behalf of the Commonwealth Representative in accordance with clause 2.1;

“Commonwealth Representative” means the person holding or performing the office of Disposal Case Officer or any other person appointed pursuant to the Deed as the Commonwealth Representative;

“Confidential Information” means any information provided by the Commonwealth to the Recipient or which comes into the possession of the Recipient in connection with the Deed which the Commonwealth has identified as confidential or the Recipient ought reasonably to know is confidential;

“Effective Date” means the date on which this Deed is signed by the parties, or if signed on separate days, the date of the last signature;

“Nominated Location” means the location of the Asset specified in Attachment A;

“Nominated Courier” means the courier nominated by the Recipient to remove the Asset and specified in Attachment A;

“Problematic Substance” means:

- (i) any substance identified as having ozone depleting potential, or any gas identified as a Synthetic Greenhouse Gas, in the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth) or any regulations made under that Act;
- (ii) any dangerous goods as defined in the Australian Code for the Transport of Dangerous Goods by Road and Rail (extant edition and as amended); or
- (iii) any hazardous chemicals as defined in sub-regulation 5(1) of the Work Health and Safety Regulations 2011 (Cth);

“Removal” means the Recipient or Nominated Courier physically collecting and taking the Asset from the Nominated Location, in accordance with the requirements of the Deed and “Remove” and “Removal Date” have corresponding meanings;

“Transfer” means the change of ownership, title and responsibility for risk for the Asset that takes place in accordance with clause 3.3, and Transfer Date has a corresponding meaning;

“WHS Legislation” means:

- (i) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- (ii) any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth);

“Working Day” in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

1.2 Interpretation

- 1.2.1 In the Deed, unless the contrary intention appears:
- a. headings in the document are for the purpose of convenient reference only and do not form part of the Deed;
 - b. the singular includes the plural and vice-versa;
 - c. a reference to one gender includes the other;
 - d. a reference to a person includes a body politic, body corporate or a partnership;
 - e. where the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
 - f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
 - g. a reference to a clause includes a reference to a subclause of that clause;
 - h. a reference to a “dollar”, “\$”, “\$A” or “AUD” means the Australian dollar;
 - i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date, or alternatively, a reference to another version of the document if agreed in writing between the parties;
 - j. the word “includes” in any form is not a word of limitation; and
 - k. a reference to a party includes that party’s administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Deed.

1.3 Commencement of Operation

- 1.3.1 The Deed commences on the Effective Date.

1.4 Entire Agreement

- 1.4.1 This Deed represents the parties’ entire agreement in relation to the subject matter and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

2 ROLES AND RESPONSIBILITIES

2.1 Commonwealth Representative

- 2.1.1 The Commonwealth Representative is responsible for administering the Deed on behalf of the Commonwealth.
- 2.1.2 The Commonwealth Representative may delegate its functions, or authorise that its functions be carried out on its behalf. The Commonwealth shall notify the Recipient in writing of the persons who are delegated functions or authorised to carry out functions on behalf of the Commonwealth Representative (“Authorised Person”), from time to time, and the scope of their delegation or authorisation.
- 2.1.3 The Recipient shall comply with the reasonable directions of:
- a. the Commonwealth Representative made within the scope of the administration of the Deed; and
 - b. an Authorised Person, within the scope of their delegation or authorisation.
- 2.1.4 If given orally a direction shall be confirmed in writing within 14 days. Neither the Commonwealth Representative nor any Authorised Person shall have any authority to waive or vary any provision of, or release the Recipient from, its obligations under the Deed except in accordance with clause 5.1.

- 2.1.5 Unless authorised by the Deed, any cost incurred by the Recipient in response to a communication from the Commonwealth Representative or an Authorised Person is at the Recipient's sole risk.

2.2 Recipient's Representative

- 2.2.1 The Recipient's Representative as specified in Attachment A, is a person with the authority to represent the Recipient for the purposes of this Deed, as at the Effective Date.

2.3 Notices

- 2.3.1 Unless the contrary intention appears, any notice or communication under this Deed shall be effective if it is in writing, signed and delivered to the Commonwealth Representative or Recipient's Representative, as the case may be, at the addresses specified in Attachment A.

- 2.3.2 A notice given in accordance with clause 2.3.1 is deemed to be delivered:

- a. if hand delivered or sent by pre-paid post, when received at the address;
- b. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within 1 Working Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
- c. if sent as an email, when the email enters the addressee's information system, unless the sender's information system receives a message within 1 Working Day that the email has not been delivered to the addressee,

but, if the receipt, transmission or entry into the information system is not on a Working Day or is after 5.00 pm (recipient's local time) on a Working Day, the notice is taken to be received at 9.00 am (recipient's local time) on the next Working Day.

3 TERMS OF GIFT

3.1 Gift

- 3.1.1 The Commonwealth will gift the Asset to the Recipient on the Date of Transfer.
- 3.1.2 The Commonwealth agrees to gift the Asset to the Recipient and transfer all of its rights, title and interests in the Asset:
- a. free from any encumbrance, security or third party interest; and
 - b. on the terms and conditions of this Deed.
- 3.1.3 The Recipient agrees that the Commonwealth gifts the Asset on the condition that the Asset is gifted on an 'as is where is' basis.
- 3.1.4 The Recipient acknowledges and agrees that:
- a. the Recipient shall not object to or make any claim against the Commonwealth in respect of any loss, damage, claim, demand, suit, liability or injury suffered by the Recipient or Recipient's Representative in connection with Asset, including but not limited to a claim on the grounds that the Asset is defective or varies from the description in the Deed; and
 - b. the Commonwealth has no obligation and gives no undertaking to maintain the condition of the Asset after the Effective Date.

3.2 Acceptance of Gift

- 3.2.1 The Recipient accepts the gift of the Asset on the terms and conditions of this Deed.

3.3 Title and Transfer

- 3.3.1 Title in and ownership of the Asset passes to the Recipient at the time of Transfer.
- 3.3.2 The Recipient must not transfer ownership of or sell the Asset to any other party without the prior written consent of the Commonwealth.

3.4 Risk

- 3.4.1 Risk of damage to or loss of the Asset passes to the Recipient on and from the time of Transfer. The Recipient shall ensure that it manages these risks including any identified in Attachment B.
- 3.4.2 Risk of damage to or loss of the Asset passes to the Recipient on and from the time of Transfer. The Recipient shall ensure that it manages these risks including any identified in Attachment B.
- 3.4.3 The Asset is accepted by the Recipient in the condition described in Attachment B.
- 3.4.4 The Commonwealth undertakes to disclose to the Recipient any known hazards associated with the Asset as listed in Attachment B.

3.5 Location of Asset, Access, Security and Removal

- 3.5.1 The Asset is located at RAAF Base Edinburgh (the Nominated Location specified in Attachment A).
- 3.5.2 Access to the Nominated Location may be restricted to persons authorised by the Commonwealth.
- 3.5.3 The Commonwealth Representative may impose any conditions they think fit on the Recipient's or Nominated Courier's access to the Asset or the Nominated Location. The Recipient or Nominated Courier who accesses the Asset must comply with all reasonable directions and departmental procedures relating to work health and safety, and security in effect at the Nominated Location or as notified by the Commonwealth or as might reasonably be inferred by the use to which the Nominated Location is being put.
- 3.5.4 The Recipient must at its own expense remove and transport the Asset from the Nominated Location.
- 3.5.5 All costs, risks and liabilities that may arise in connection with the removal and transport of the Asset to the Recipient will be the sole responsibility of the Recipient. The Recipient releases the Commonwealth from all claims in respect of the removal and transport of the Asset to the Recipient.
- 3.5.6 The Recipient is solely responsible for the safe removal of the Asset and for ensuring that the removal of the Asset does not cause any harm or damage to Commonwealth or third party property or persons. All loss, damage, expense or liability suffered or incurred by the Commonwealth in replacing or making good damage caused to its, or a third party's, property or person by the Recipient in connection with the removal and transportation of the Asset shall be a debt due to the Commonwealth by the Recipient. Any such debt shall be paid by the Recipient to the Commonwealth Representative immediately on presentation of an invoice of the amount owing and due.
- 3.5.7 The Commonwealth is under no obligation to provide assistance to the Recipient in respect of the removal of the Asset.
- 3.5.8 Removal of the Asset is to occur within 30 days of a date negotiated between the Commonwealth and the Recipient after such time transfer of the Asset will cease and this Deed will have no affect.

3.6 Problematic Substances

- 3.6.1 The Recipient acknowledges that the Asset may contain Problematic Substances.

3.7 Work Health and Safety (WHS)

- 3.7.1 The Recipient and any subcontractor shall:
 - a. comply with the applicable WHS legislation including the obligation under the WHS legislation to consult, co-operate and co-ordinate activities with the Commonwealth and any other person who, concurrently with the Recipient, bears a work health and safety duty in relation to the same matter; and

- b. in carrying out any obligations under the Deed ensure, so far as is reasonably practicable, the health and safety of:
 - (i) Commonwealth Personnel;
 - (ii) Recipient Personnel; and
 - (iii) other persons,
 in connection with the Deed

3.7.2 The Recipient represents and warrants that:

- a. it has given careful, prudent and comprehensive consideration to the work health and safety implications of any work, including in relation to asset removal; and
- b. the proposed method of performance of that work complies with, and includes a system for identifying and managing work health and safety risks which complies with, all applicable legislation relating to work health and safety including the WHS legislation.

3.7.3 Without limiting the Recipient's obligations under the Deed or at law, the Recipient and any subcontractor shall:

- a. provide to the Commonwealth Representative within 14 days of a request by the Commonwealth Representative any information or copies of documentation requested by the Commonwealth Representative and held by the Recipient to enable the Commonwealth to comply with its obligations under the WHS legislation in relation to the Deed;
- b. provide copies of:
 - (i) all notices and communications issued by a regulator, agent of the regulator or a health and safety representative to the Recipient and any subcontractor relating to work health and safety matters; and
 - (ii) all notices, communications and undertakings given by the Recipient and any subcontractor to the regulator, agent of the regulator or a health and safety representative,
 in connection with or related to the deed to the Commonwealth Representative within 14 days of receipt or submission of the notice, communication or undertaking by the recipient; and
- c. provide to the Commonwealth Representative within 14 days of a request by the Commonwealth Representative written assurances specifying that to the best of the Recipient's knowledge that it is compliant with:
 - (i) the WHS Legislation; and
 - (ii) any relevant or applicable standards or codes of practice relating to work health and safety,
 and that the Recipient has made reasonable enquiries before providing the written assurances.

3.7.4 If the Recipient or any subcontractor becomes aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety, it shall immediately notify the Commonwealth giving full particulars (so far as they are known to it).

- 3.7.5 The Commonwealth Representative may direct the recipient or any subcontractor to take specified measures that the Commonwealth Representative considers reasonably necessary to comply with applicable legislation relating to work health and safety including the WHS legislation and/or deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons in connection with the Deed. The Recipient shall comply with the direction. The Recipient shall not be entitled to relief from the performance of its obligations, including in relation to Asset removal, under the Deed as a result of compliance with the direction.

3.8 Environmental Obligations

- 3.8.1 The Recipient shall perform its obligations under the Deed in such a way that the Commonwealth is not placed in breach of any applicable environmental legislation including, but not limited to, the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

3.9 Subcontracting

- 3.9.1 The Recipient may use a subcontractor for the performance of any obligations under this Deed but the Recipient remains responsible for:
- a. the performance and consequences of the subcontractor's activities; and
 - b. ensuring that the subcontractor holds appropriate insurance cover for those activities.

- 3.9.2 A nominated courier is considered a subcontractor of the Recipient under this Deed.

3.10 Exclusion of Warranties

- 3.10.1 To the extent permitted by law, no warranty, condition, description or representation in relation to the Asset is given by the Commonwealth, expressly or impliedly, by this Deed or otherwise. The Commonwealth does not warrant that the Asset is free from any defects or is fit for any purpose.
- 3.10.2 All warranties, terms and conditions in relation to the state, quality, weight, fitness or condition of the Asset and of every other kind, whether express or implied by use, statute or otherwise, are excluded from this Deed to the maximum extent permitted by law.

4 INSURANCE AND INDEMNITY

4.1 Indemnity and Release

- 4.1.1 The Recipient at all times releases and indemnifies the Commonwealth from and against all liability, loss, damage, costs or expenses (including legal fees, costs and disbursements) that the Commonwealth may suffer or incur which arises under this Deed, including any:
- a. claim that the Recipient may have or claim to have or but for this release might have had against the Commonwealth (including any of which the Recipient is not aware, or could not have been aware as at the Effective Date) in respect of the Asset, or its state, condition or fitness
 - b. Removal, use, possession, ownership, maintenance, control or disposal of the Asset or any part of the Asset by the Recipient or any third party after the Transfer Date; or
 - c. claim, suit, demand, action or proceedings that may be made or brought at any time by any third party in respect of any damage to the property or personal injury or death, where that property damage, or personal injury or death, occurs by virtue of or in connection with the Recipient's ownership, Removal, use, possession, maintenance, control or disposal of the Asset or any part of the Asset.

4.2 Insurance

- 4.2.1 On and from the Transfer Date, the Recipient shall:

- a. be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by the Recipient and any subcontractors, including liability under statute and common law;
 - b. have public liability insurance for an amount of not less than \$20 million per occurrence; and
 - c. any other Insurances specified in Attachment A.
- 4.2.2 The Recipient shall ensure each subcontractor is insured against the subcontractor's corresponding liabilities.
- 4.2.3 The Recipient shall, on request, produce satisfactory evidence of the insurance or registration to the Commonwealth Representative, including details of:
 - a. name of the insurance provider;
 - b. type of insurance;
 - c. terms of the insurance including any specific exclusions;
 - d. limits of liability per claim or occurrence and details of any aggregate limits or relevant sub-limits that apply;
 - e. whether any past or current claims made under the policy have been materially affected, or are likely to materially affect, the amount of cover available under the policy;
 - f. deductible amounts; and
 - g. period of insurance.

4.3 No Claim

- 4.3.1 The Recipient acknowledges that it has no claims against the Commonwealth and releases the Commonwealth from any claims in respect of any matter arising out of or as a consequence of the ownership and/or use of the Asset by the Recipient.

5 DEED MANAGEMENT

5.1 Change to Deed

- 5.1.1 Either party may propose a change to the Deed.
- 5.1.2 The Deed may only be changed in writing and signed by the Commonwealth Representative and the Recipient.
- 5.1.3 A change to the Deed shall take effect on the date on which the change is signed by the parties in accordance with clause 5.1, or if signed on separate days, the date of the last signature.

5.2 Waiver

- 5.2.1 Failure by either party to enforce a term of this Deed shall not be construed as in any way affecting the enforceability of that term, or the Deed as a whole.

5.3 Assignment

- 5.3.1 Neither party may, without the written consent of the other, assign in whole or in part, its rights under the Deed.

5.4 Costs

- 5.4.1 Each party shall bear its own legal costs and expenses in respect of the preparation and execution of this Deed.

6 LAW

6.1 Applicable Law

- 6.1.1 The laws of the Australian Capital Territory shall apply to the Deed. The courts of that Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Deed.

6.2 Severability

- 6.2.1 If any part of the Deed is or becomes illegal, invalid or unenforceable, the legality, validity or unenforceability of the remainder of the Deed shall not be affected and shall be read as if that part had been severed.

7 DISPUTES

7.1 Resolution of Disputes

- 7.1.1 A party shall not commence court proceedings relating to any dispute arising from the Deed except when that party seeks urgent relief from a court or when dispute resolution has failed under clause 7.1. If a party fails to comply with clause 7.1, the other party is not required to undertake dispute resolution for the dispute in accordance with clause 7.1.
- 7.1.2 The parties shall negotiate in good faith to settle a dispute arising between them and, if the dispute cannot be settled by negotiation (including negotiation between senior management of the parties) within 30 days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
- 7.1.3 The parties shall at all times during the dispute continue to fulfil their obligations under the Deed.

7.2 Termination

- 7.2.1 The Commonwealth may immediately terminate this Deed by notice in writing to the Recipient, if:
- a. the Recipient fails to obtain any relevant approval, licence, authorisation, certification, permit or consent required to enable it to comply with its obligations under this Deed;
 - b. the Recipient assigns its rights without the prior written approval of the Commonwealth;
 - c. the Recipient fails to take action to remedy a default by the Recipient of another obligation to be performed or observed under the Deed within 14 days of being given notice in writing by the Commonwealth Representative to do so or, where action is taken within 14 days, the Recipient fails to remedy the default within the period specified in the notice.
- 7.2.2 If this Deed is terminated under clause 7.2.1, the Commonwealth may (in addition to its rights at law):
- a. refuse to gift the Asset to the Recipient; or
 - b. where the Asset has been Removed, recover possession and ownership of the Asset.

EXECUTED AS A DEED

Signed for and on behalf of the Commonwealth by

.....
J.S. Meier
Air Commodore
Director-General History and Heritage-Air Force (DGHH-AF)
RAAF Base AMBERLEY

May 2018

Signed for and on behalf of the South Australian Aviation Museum
Incorporated

.....
David Byrne
President
South Australian Aviation Museum
Box 150
PORT ADELAIDE SA 5015

May 2018

PARTICULARS OF GIFT



DESCRIPTION OF ASSET

Mirage IIID A3-115 Aircraft

NOMINATED LOCATION

RAAF Base Edinburgh

DISPLAY LOCATION

RAAF Base Edinburgh

PARTIES REPRESENTATIVES

The Commonwealth Representative is:

Group Captain P. Norford
Director Air Force Heritage
History & Heritage Branch—Air Force
F4-2-144
PO Box 7933
CANBERRA ACT 2610

The Purchaser's Representative is:

David Byrne
President
South Australian Aviation Museum
Box 150
PORT ADELAIDE SA 5015

DATE OF TRANSFER

Transfer is to occur on a date to be negotiated, but no later than 31 October 2018

INSURANCE

No additional insurance is required to that insurance specified in the conditions of contract.

**CONDITION REPORT OF MIRAGE IIID A3-115
– COMPILED 20 SEPTEMBER 2017**

Background of Aircraft

- Built under licence in Australia at Government Aircraft Factory
- Delivered to RAAF December 1973. Served with 2OCU. Withdrawn December 1986 and was held by DSTO at Adelaide until 1999. Subsequently located at ARDU and painted in ARDU colours.

Condition

- The aircraft is mounted on stands attached to concrete pads.
- The engine is fitted.
- The tyres are flat but could be inflated to a minimum pressure for movement of the aircraft.
- Much of the cockpit instrumentation is still fitted.
- The airframe is in very poor condition with large amounts of exfoliation corrosion evident on the wings and flight controls.
- The canopy has been damaged, with a repair carried out.
- The ejection seats have been removed.

Possible Hazardous Materials in A3-115

Asbestos: The wheel Brakes and bleed air ducts/seals contain asbestos
Magnesium Thorium Alloy: The Mirage may contain components consisting of Magnesium Thorium alloy “ MAG-THOR ”.
Possible Residual fuel: There may be residual fuel.
Hydraulic oil and other lubricants: The under carriage oleos are pressurised and contain H5606 oil. The contents of the hydraulic reservoirs is unknown