

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING SECURITY MEASURES FOR THE
RECIPROCAL PROTECTION OF CLASSIFIED INFORMATION,
DONE AT CANBERRA ON 25 JUNE 2002**

Documents tabled on 27 August 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**
- **Diplomatic Note constituting an arrangement of
less than treaty status concerning the interpretation
of the proposed Agreement**

Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Reciprocal Protection of Classified Information, done at Canberra on 25 June 2002

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed to bring into force the Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Reciprocal Protection of Classified Information (the Agreement), done at Canberra on 25 June 2002. In accordance with Article 21, the proposed Agreement shall enter into force upon notification by the Australian Government to the Government of the United States of America that Australia has completed all its internal procedures for entry into force.

2. Pursuant to Article 20, the proposed Agreement will supercede a number of existing non-legally binding instruments with the United States regulating classified information (see paragraph 7 below).

Date of proposed binding treaty action

3. The proposed Agreement was signed on 25 June 2002.

4. It is proposed that Australia send written notification to the United States of America confirming Australia's completion of its internal procedures for entry into force, as soon as practicable after the tabling of the proposed Agreement in Parliament and its consideration by the Joint Standing Committee on Treaties (JSCOT).

Date of tabling of the proposed treaty action

5. 27 August 2002

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

6. The purpose of the proposed Agreement is to update, simplify and strengthen the legal framework for the exchange of classified information between the Governments of Australia and the United States of America. The proposed Agreement will set uniform standards and procedures for exchanging classified information between all Government departments and agencies in the two countries. The proposed Agreement will facilitate bilateral cooperation and further strengthen the bilateral relationship between Australia and the United States. It will also benefit industry in both countries, by enabling companies to tender for, and participate in, contracts which involve access to security classified information.

Reasons for Australia to take the proposed treaty action

7. The proposed Agreement, which is a joint Australian-United States initiative, will replace a number of existing bilateral instruments with one “umbrella” Agreement that will cover the reciprocal protection of classified information exchanged between the Government of Australia and the Government of the United States of America. Upon entry into force, the proposed Agreement will terminate the “Security Agreement” between the Department of Defense of the United States of America and the Department of Defence of Australia which came into effect on 29 August 1950, as amended; the United States-Australian Arrangements for facilitating Disclosure of Classified Military Information to Commonwealth Nations which came into effect on 29 August 1950; and the “General Security of Information Agreement” between the Government of Australia and the Government of the United States of America concluded by an exchange of notes dated 2 May 1962, as amended. These existing instruments were, in Australian terms, non-legally binding arrangements. Whilst there is no suggestion that either party has, or would, fail to comply with its commitments under the existing instruments, the US has indicated that it requires a legally binding agreement. Following termination of these existing instruments, any information previously exchanged under those instruments shall continue to be protected in accordance with the proposed Agreement.

8. The proposed Agreement sets out security procedures and practices for the exchange and protection of classified information and for visits between Australia and the United States of America. The proposed Agreement will facilitate future cooperation and assist in strengthening the alliance between the Australian and United States Governments. The proposed Agreement is not controversial in nature and is substantially similar to other legally binding Agreements that Australia has entered into with a wide range of countries with which Australia exchanges classified information. Similar Agreements recently reviewed by JSCOT and recommended for ratification were the Agreement between the Government of Australia and the Government of the Republic of South Africa for the Reciprocal Protection of Classified Information of Defence Interest, done at Canberra on 11 May 2002, and the Agreement between the Government of Australia and the Government of Kingdom of Denmark for the Reciprocal Protection of Classified Information of Defence Interests, done at Copenhagen on 27 September 1999.

9. Under the proposed Agreement, classified information which the Government of Australia passes to the Government of the United States of America will be afforded protection similar to United States information of corresponding security classification, will not be used for a purpose other than that for which it was provided and will not be passed to any third party without the written consent of the Australian Government. Access to Australian classified information will be limited to those United States Government officers whose official duties require such access. Equally, information passed under the proposed Agreement from the United States Government to the Australian Government must be protected in the same manner. Supplementary Implementing Arrangements can be separately negotiated to cover particular departmental or agency issues.

10. The Australian Government currently exchanges a large amount of classified information with the United States. These exchanges include government to government information, details of defence acquisition projects (permitting the other country’s industry to tender for, or participate in, classified contracts), and information related to cooperation between the two countries’ armed forces. The proposed Agreement provides the necessary protocols and security assurances to facilitate the exchange of classified information by ensuring that the information is protected by legally binding obligations.

11. The Parties have also exchanged Diplomatic Notes which express the understandings of Australia and the United States in relation to the proposed Agreement. The Diplomatic Notes constitute a non-legally binding arrangement and are intended to aid in the interpretation of the proposed Agreement. Such aides memoir for the interpretation of agreements, sometimes called Minutes of Interpretation, are a common method used in international law to ensure that the Parties have a clear understanding of how an Agreement is to be interpreted and applied. A copy of the Diplomatic Note has been attached for the information of the Committee.

Obligations

12. The terms of the proposed Agreement are substantially similar to the terms of other security of classified information Agreements to which Australia is a party. The underlying obligation placed on Australia and the United States is to protect each other's classified information in a similar manner to how it protects its own classified information of corresponding security classification. Having examined each other's security policy and standards, both Australia and the United States are satisfied that this obligation can be met.

13. The provisions of the Agreement include the following matters:

a) *Marking of classified information* (Article 3)

- Both Parties must specify the name of the originating government on all classified information they receive from each other. Both the originating Party before transmission and the recipient Party on receipt must assign national security classifications to all classified information.

b) *Protection of classified information* (Article 4)

- Each Party must accord classified information, or anything containing classified information, received from the other Party a standard of physical and legal protection no less stringent than that which it provides to its own classified information of corresponding classification.
- The recipient Party shall only disclose, release or provide access to classified information received from the other Party to individuals who require access in order to perform their official duties and hold an appropriate personnel security clearance.
- The recipient Party must ensure that each facility or establishment that handles classified information maintains a registry of the clearance of individuals at the facility or establishment who are authorised to have access to the information.
- The recipient Party must ensure that accountability and control procedures are established to manage the dissemination of and access to classified information.
- The recipient Party shall comply with any additional limitations on the use, disclosure, release and access to classified information which may be specified by the originating Party.

c) *Personnel Security Clearances* (Article 5)

- Article 5 sets out the criteria for granting personnel security clearances, requires the Parties to investigate adherence to the criteria and obliges them to provide assurances to the other Party about the classifications of persons receiving information.

d) *Release of Classified Information to Contractors* (Article 6)

- Prior to any release of classified information to contractors or prospective contractors each Party shall ensure that the contractor's personnel and facility have the capacity to protect the information in accordance with that country's national laws and regulations.

e) *Responsibility for Classified Information* (Article 7)

- Each Party is responsible for all classified information it receives from the other Party while the information is under its jurisdiction and control. During the transmission of information the transiting Party retains responsibility until the custody of the information is formally transferred to the other Party.

f) *Responsibility for Facilities* (Article 8)

- Each Party is responsible for ensuring that all facilities, where the classified information of the other Party is kept, are secure. Each Party must also ensure that while the information is kept in these facilities it is under the control and protection of qualified individuals.

g) *Transmission of classified information* (Article 10)

- Classified information shall be transmitted between the Parties through government-to-government channels or channels mutually approved in advance in writing by both Parties. The minimum standards for packaging the classified information are detailed in the proposed Agreement.

h) *Visits* (Article 11)

- Visits by representatives of one Party to facilities and establishments of the other Party, that require access to classified information, or where a security clearance is required to permit such access, shall be limited to those necessary for official purposes and to representatives who hold a valid security clearance. All requests, with details of the visit, will be forwarded through each Party's embassy prior to such visit.

i) *Security standards* (Article 13)

- On request, each Party must provide to the other Party information concerning its security standards, practices and procedures for the safeguarding of classified information, including those relating to industrial operations.

- Each Party must inform the other Party of any changes to its laws and regulations that would affect the manner in which classified information is protected under the proposed Agreement.
- j) *Reproduction of Classified Information* (Article 14)
- Each Party must ensure that any reproductions made of classified information are marked with all original security markings, placed under the same control as the originals and are limited to the numbers required for official purposes.
- k) *Destruction of Classified Information* (Article 15)
- The destruction of classified information must be done by means that will prevent the reconstruction of the classified information.
- l) *Downgrading and Declassification* (Article 16)
- Each Party must not downgrade the security classification of the classified information received from the other Party without prior written consent of the originating Party.
- m) *Loss or compromise* (Article 17)
- To minimize any risk of damage through the loss or compromise of exchanged classified information the receiving Party shall immediately inform the originating Party of any loss of, or known or suspected compromise of, such information. The receiving Party shall then investigate the circumstances of such loss or compromise and inform the originating Party of the finding of the investigation and corrective action taken or to be taken.
- n) *Disputes* (Article 18)
- Any disputes shall be resolved by the Parties through consultation and shall not be referred to any national court, international tribunal or third party for settlement.

Implementation

14. No changes to domestic laws or policy are required to implement the proposed Agreement. The proposed Agreement can be implemented through the Commonwealth Protective Security Manual, which sets out the procedures covered by the Agreement. The Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.

15. The Security Authorities responsible for implementing the proposed Agreement are the Head Defence Security Authority, Australian Department of Defence, and the Director International Security Programs, USA Department of Defense.

Costs

16. The proposed Agreement imposes no foreseeable direct financial costs on Australia. Article 19 of the proposed Agreement provides for each Party to be responsible for meeting its own costs incurred in implementing the proposed Agreement.

Consultation

17. The Minister for Foreign Affairs provided approval for the Department of Defence to be the coordinating authority for the Commonwealth in the implementation of this proposed Agreement. The Department of Defence consulted with Department of Prime Minister and Cabinet, the Attorney-General's Department and Department of Foreign Affairs and Trade throughout the negotiation process and they have confirmed that the proposed Agreement meets the requirements of all Australian Government departments and agencies that deal with national security classified information.

18. The States and Territories were advised about the proposed Agreement through the Commonwealth-States-Territories Standing Committee on Treaties' Schedule of Treaty Action. No State or Territory comment has been received to date. The Agreement does not require State or Territory action for its domestic implementation.

Regulation Impact Statement

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

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

20. The proposed Agreement does not provide for the negotiation of any future legally binding instruments. Supplementary non-legally binding Implementing Arrangements can be separately negotiated to cover particular departmental or agency issues. The proposed Agreement may be amended at any time by the mutual agreement of the Parties expressed in writing (Article 21).

Withdrawal or denunciation

21. The proposed Agreement may be terminated at any time by mutual agreement in writing or by either Party giving the other Party written notice of its intention to terminate, in which case it shall terminate ninety days after the giving of such notice.

22. If the proposed Agreement is terminated, the responsibilities and obligations of the Parties in relation to the protection, disclosure and use of classified information already exchanged shall continue to apply, irrespective of the termination. This provision ensures the ongoing protection of classified material including its destruction or return to the originator when no longer required for the purpose for which it was exchanged.

Contact details

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