

National Interest Analysis [2024] ATNIA 2

with attachment on consultation

**Security Agreement between the Government of Australia and the Organisation for
Joint Armament Cooperation (Organisation Conjointe de Coopération en Matière
d'Armement) (OCCAR) on the Protection of Classified Information**

(Canberra and Bonn on 14 November 2023)

[2024] ATNIF 5

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

Security Agreement between the Government of Australia and the Organisation for Joint Armament Cooperation (Organisation Conjointe de Coopération en Matière d'Armement) (OCCAR) on the Protection of Classified Information

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Nature and timing of proposed treaty action

1. The proposed treaty action is the entry into force of the *Security Agreement between the Government of Australia and the Organisation for Joint Armament Cooperation (Organisation Conjointe de Coopération en Matière d'Armement) (OCCAR) on the Protection of Classified Information* (the proposed Agreement).
2. For the proposed Agreement to enter into force, the Parties must notify each other of the completion of their domestic requirements through an exchange of notes. The proposed Agreement would enter into force on the date of signature of the last note (Article 13(1)).

Overview and national interest summary

3. OCCAR is an inter-governmental organisation based in Europe that manages defence equipment procurement and sustainment programmes for the benefit of OCCAR Member States (Belgium, France, Germany, Italy, Spain and the United Kingdom) and Non-Member Participating States in OCCAR-managed Programmes (Finland, Lithuania, the Netherlands, Poland, Sweden, Türkiye, Luxembourg, Norway and Greece).
4. The framework supporting Australian participation in OCCAR-managed Programmes was established pursuant to the *Framework Agreement between the Government of Australia and OCCAR for the Participation of Australia in OCCAR Managed Programmes*, which entered into force on 25 January 2022 (the Framework Agreement). Australia currently participates in the OCCAR Light Weight Torpedo Programme, is an Observer to the OCCAR Tiger and Boxer Programmes, and may participate in other OCCAR-managed Programmes in the future.
5. The need to generate, exchange and use OCCAR and Australian Classified Information would arise from Australia's involvement with OCCAR-managed Programmes. The purpose of the proposed Agreement is to set out the security measures that each Party would apply to protect the other Party's Classified Information within this context.
6. The proposed Agreement would contribute to Australia's national interest by protecting Australian Classified Information and ensuring access to the full benefits of formal participation in OCCAR-managed Programmes, including in terms of

cost efficiencies, programme risk reduction, scheduling, promotion of global competition among suppliers, and opportunities for Australian defence industry.

Reasons for Australia to take the proposed treaty action

7. The proposed Agreement is a requirement under OCCAR Rules (comprising the OCCAR Convention, Security Agreement, and the OCCAR Management Procedures (OMP)) to enable Australia's longer-term participation in OCCAR-managed Programmes. The proposed Agreement is also envisaged in Article 16(1) of the Framework Agreement, and is the final treaty level instrument required in order to support Australian participation in OCCAR-managed Programmes.
8. Until this Agreement is in force, Australia must rely on interim security assurances on a programme-by-programme basis to receive OCCAR Classified Information, and the foreign release process to provide Australian Classified Information to OCCAR. The proposed Agreement would remove the need for interim assurances, and provide an enduring basis for the exchange of Classified Information between Australia and OCCAR.
9. The proposed Agreement would ensure protection of Australian Classified Information (up to and including SECRET) within OCCAR-managed Programmes, and facilitate necessary access by the Australian Government to OCCAR Classified Information. Australia would protect OCCAR Classified Information it receives in a manner no less stringent than that which Australia provides to its own equivalent Classified Information.

Obligations

10. The obligations in the proposed Agreement are similar to those found in comparable Security of Information Agreements into which Australia has entered with other countries and international organisations. The proposed Agreement does not oblige either Party to share Classified Information. Rather, it facilitates the sharing of Classified Information between the Parties by ensuring it is protected to an agreed equivalent standard. Having examined each other's security policies and standards, both Parties are satisfied these obligations can be met by the other.

Definitions

11. Article 1 sets out the definitions used in the proposed Agreement. Definitions of terms contained in the OCCAR Rules would also apply to the proposed Agreement. 'Australian Classified Information' means any information, document or material the unauthorised disclosure of which, would cause prejudice to the interests of Australia, and which has been designated by an Australian security classification marking. 'Originating Party' is defined as the party that provides Classified Information under the Agreement. 'Receiving Party' is the party that receives the Classified Information and assumes responsibility for its protection.

Objective

12. Article 2 sets out the objective of the proposed Agreement as being to define the security measures required for the protection of Australian and OCCAR Classified Information provided to or generated by the Parties in connection with OCCAR-

managed Programmes. Article 2 also clarifies that the proposed Agreement does not apply to Classified Information that is exchanged between Australia and individual OCCAR Member States or Programme Participating States under separate bilateral security agreements or arrangements in place with those States.

Equivalent Security Classifications

13. Article 3(1) provides that an Originating Party would designate and mark any Classified Information using the appropriate security classification according to its Regulations and Policies (defined in Article 1(10)) and the applicable Programme Security Classification Guide.
14. Article 3(2) sets out the equivalences of the Parties' Security Classifications. In particular:
 - a. OCCAR SECRET and Australian SECRET will be treated as equivalent;
 - b. Australia would treat OCCAR CONFIDENTIAL as Australian SECRET;
 - c. OCCAR would treat Australian PROTECTED as OCCAR CONFIDENTIAL; and
 - d. Australia would protect OCCAR RESTRICTED information in accordance with OMP 11 (OCCAR Security Regulations) (OMP 11, which is publicly available, provides basic security standards for application by OCCAR, Programme Participating States and Programme Contractors to ensure a common standard of protection is afforded to all Classified Information furnished or generated in connection with an OCCAR Programme).
15. Article 3(3) provides that OCCAR would protect Australian OFFICIAL: Sensitive information in accordance with the security measures outlined in OMP 12 (Handling of Unclassified Sensitive Information). OMP 12, which is publicly available, provides minimum standards of protection for application by OCCAR, Programme Participating States and Programme Contractors to ensure unclassified sensitive information furnished or generated in connection with an OCCAR Programme is appropriately protected. Australia would protect OCCAR Unclassified Sensitive Information as Australian OFFICIAL: Sensitive.
16. Article 3(4) acknowledges that the security classifications may be updated from time to time in line with applicable Regulations and Policies. The Parties would notify each other in writing of such changes, and may mutually decide to take these changes into account in interpreting Article 3.

Competent Authorities

17. Under Article 4, immediately after entry into force of the proposed Agreement, each Party would be obliged to notify the other Party of its competent authorities responsible for implementing the Agreement, and to continue to notify the other Party of subsequent changes.

Protection of Classified Information

18. Article 5 of the proposed Agreement sets out the key obligations of a Party for the protection of the other Party's Classified Information that is provided or generated under the Agreement. In particular, a Party must:
 - a. ensure that such Classified Information is protected from unauthorised disclosure, loss or compromise, and take all necessary measures to ensure that legal or other appropriate action can be taken against the individuals or entities responsible for any unauthorised disclosure, loss or compromise, in accordance with applicable Regulations and Policies (Article 5(1)-(2));
 - b. ensure such Classified Information is handled in a manner no less stringent than its own equivalent Classified Information, and in accordance with the provisions of OMP 11 (OCCAR Security Regulations) (as applicable) (Article 5(3));
 - c. ensure that the security classification of such Classified Information is maintained and respected (Article 5(5)), and not downgrade or declassify such Classified Information without the consent of the Originating Party (Article 5(6));
 - d. not use such Classified Information for purposes other than that for which it was provided, without the written consent of the Originating Party (Article 5(7));
 - e. not release such Classified Information without the written consent of the Originating Party, except to States or International Organisations participating in the OCCAR Programme for which the Classified Information was provided, or to Contractors or sub-contractors located in those other States that are contracted to provide supplies or services to the OCCAR Programme for which the Classified Information was provided (Article 5(8));
 - f. ensure that access to such Classified Information is limited to those persons who have a Need-to-Know, in accordance with applicable Regulations and Policies (Article 5(9));
 - g. ensure that all persons having access to such Classified Information are aware of their responsibilities to adequately protect the information (Article 5(12));
 - h. ensure that, when such Classified Information is no longer required, it is returned to the Originating Party or destroyed in accordance with applicable Regulations and Policies (provided they are no less stringent than that stated in OMP 11 (OCCAR Security Regulations)) (Article 5(13)); and
 - i. ensure that reproductions and translations of such Classified Information bear the original security classification markings, are protected as per the

original Classified Information, and that reproductions and translations are limited to the minimum needed (Article 5(14)).

19. In addition, Australia must:
 - a. establish a registry system allowing compartmentalisation of Classified Information at the level of OCCAR CONFIDENTIAL and OCCAR SECRET (Article 5(4));
 - b. limit access to Classified Information at the level of OCCAR CONFIDENTIAL or above only to those government and Contractor employees who hold Australian nationality or the nationality of the OCCAR Programme Participating States to which the Programme Classified Information relates, unless otherwise specified in the Programme Security Instructions (Article 5(10));
 - c. ensure that the approval of the Originating Party is obtained prior to releasing Classified Information at the level of OCCAR CONFIDENTIAL or above to persons not holding an approved nationality (Article 5(11));

Classified Contracts

20. Article 6 provides obligations for both Parties in respect of the award by OCCAR of contracts which contain or involve the generation, use or provision of Classified Information to Contractors in Australia (Classified Contracts).
21. OCCAR would be required to notify Australia of the awarding of such Classified Contracts involving Classified Information at the level of OCCAR RESTRICTED and above (Article 6(1)). Australia would be required (in accordance with its applicable Regulations and Policies) to:
 - a. administer relevant security measures set out in the proposed Agreement for the protection of the OCCAR Classified Information provided or generated under Classified Contracts (Article 6(2)(a));
 - b. nominate and identify the competent authority responsible for implementing and overseeing the security measures at Contractor facilities within Australia to OCCAR (Article 6(2)(b));
 - c. ensure that Contractors with access to Classified Information at the level of OCCAR CONFIDENTIAL or OCCAR SECRET provided or generated under a Classified Contract are capable of handling and protecting such Classified Information in accordance with the terms of the Agreement, and that their facilities have been granted a Facility Security Clearance at the appropriate level (Article 6(2)(c)); and
 - d. verify the compliance of Contractors with the security requirements under the Agreement and with the relevant Programme Security Instructions through appropriate means (Article 6(2)(d)).

Movement of Classified Information

22. Article 7 provides that the international transfer of Classified Information between the Parties and a government establishment or a Contractor would be conducted in

accordance with each Party's Regulations and Policies as well as the relevant OCCAR Programme Security Instructions. The OCCAR Programme Security Instructions provide methods and standards for both electronic and physical movement of Classified Information.

International Visits

23. A Party would permit visits to its (or its Contractor's) facilities by the other Party's representatives or its Contractors, as well as by government or Contractor representatives of relevant OCCAR Programme Participating States (Article 8(1)). Such visits are subject to the rules and regulations of the Party or facility being visited. Article 8(2)-(3) also sets out the procedures of how such visits should be requested.

Loss, Breach or Compromise

24. Article 9 requires that, in the event of an actual or suspected Breach of Security (such as a loss, compromise, unauthorised disclosure of Classified Information or an incident that could cause damage to the interests of the Parties), the Receiving Party where the Breach occurred would be required to:
 - a. report the Breach to the Originating Party without delay (Article 9(1));
 - b. conduct an immediate investigation with the assistance of the Originating Party (if required) (Article 9(2)); and
 - c. inform the Originating Party of the outcome of the investigation, including any corrective action taken to preclude recurrences, as soon as practicable (Article 9(2)).

Disputes

25. Article 11 of the proposed Agreement provides that any difference or dispute between the Parties concerning the interpretation, implementation or application of the provisions of the Agreement would be settled amicably through mutual consultation and/or negotiations between the Parties, without reference to any third party, including any international tribunal.

Final Provisions

26. Under the proposed Agreement, OCCAR would be obliged to provide Australia with a copy of the OCCAR Security Regulations (OMP 11) including any subsequent editions (Article 12(1)).
27. Each Party would be required to notify the other of any changes in its applicable Regulations and Policies that could affect the protection of Classified Information referred to in the proposed Agreement (Article 12(2)).
28. Article 12(3) would oblige a Party to accommodate visits by the other Party's competent authority for briefings on the Receiving Party's security regime and the measures to implement the security requirements under the Agreement.

Implementation

29. The proposed Agreement would be implemented under Australian laws and policies already in place related to protective security, including the Protective Security

Policy Framework. The Protective Security Policy Framework requires agencies to adhere to the provisions of any international security of information agreements.

Costs

30. The Parties would be responsible for their own costs in the implementation of the Agreement (Article 10).

Future Treaty Action

31. In accordance with Article 13(2), the proposed Agreement may be amended by written mutual agreement between the Parties. Any amendment to the proposed Agreement would enter into force in accordance with the procedure in Article 13(1), that is, the exchange of notes.

Termination

32. Article 13(3) provides that the proposed Agreement may be terminated by the Parties at any time by mutual agreement in writing, or by either Party giving the other six months' written notice of its intention to terminate.
33. In accordance with Article 13(4), if the proposed Agreement were terminated, the obligations in respect of the protection, disclosure and use of Classified Information provided under the Agreement would continue to apply.

Contact details:

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ATTACHMENT ON CONSULTATION

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CONSULTATION

1. The State and Territory Governments have been consulted through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). No requests for further information or comments on the proposed Agreement have been received to date from the State and Territory Governments. No action will be required from States or Territories to implement the proposed Agreement.