

Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information

Introduction

- 2.1 The proposed treaty action is an *Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information*. The Agreement will replace an existing non-binding Exchange of Letters dated 1 April 2005, fulfilling NATO requirements that international instruments be binding under international law.¹
- 2.2 The proposed Agreement sets mandatory standards and procedures for exchanging classified information between the Government of Australia and NATO.²

Obligations

- 2.3 The primary obligation placed on the Parties is to protect each other's classified information in the same manner as it protects its own classified material.³

1 National Interest Analysis (NIA), paras 1 & 2.

2 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 2.

- 2.4 Article 1 provides that Parties will ensure that classified information will be protected by each Party to agreed common standards, will not be used for purposes outside the framework and will not be disclosed to third parties without the consent of the originator.⁴ If either party fails to comply with this obligation, both Australia and NATO would be able to undertake investigations. The findings of these investigations would then be presented, risk-assessed and the implications of the breach considered.⁵
- 2.5 Article 2 provides that Australia will ensure that all persons of its nationality who require access to information exchanged between the two parties are appropriately cleared before they are granted access to the information. NATO has no requirement to conduct security clearances as all NATO personnel are security cleared to the appropriate level prior to commencing employment with NATO.⁶
- 2.6 Article 4 provides that a proposed implementing arrangement between the Parties will detail the standards of security protection for information exchanged between the Parties and the liaison between the NATO Office of Security and the Defence Security Authority (DSA).⁷
- 2.7 Under Article 5, both Parties are obliged to establish to their satisfaction that the recipient Party is prepared to protect appropriately all classified information received.⁸

Reasons for Australia to take treaty action

- 2.8 The Australian Government currently exchanges a significant amount of classified information with NATO. The proposed Agreement provides for the continued exchange of classified information between the two Parties by ensuring that the information is protected by legally binding obligations.⁹

3 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 2; NIA, para 11.

4 NIA, para 12.

5 Ms Sandra Ragg, *Transcript of Evidence*, 23 February 2009, p. 2.

6 NIA, para 13.

7 NIA, para 15.

8 NIA, para 16.

9 NIA, para 10.

- 2.9 Representatives from the Department of Defence informed the Committee that the benefits to Australia will be twofold. First, the Agreement will facilitate the sharing of classified information in current on-going Australia-NATO operations, primarily in Afghanistan where the Australian military is contributing to the NATO-led International Security Assistance Force. Second, the Agreement will allow for a deeper strategic dialogue between Australia and NATO and increased cooperation on long-term common interests and issues.¹⁰
- 2.10 Any information previously exchanged under the Exchange of Letters of 1 April 2005 will continue to be protected in accordance with the proposed Agreement.¹¹
- 2.11 The proposed Agreement is substantially similar to nine other security of information agreements that Australia has entered into with other countries.¹²

Implementation

- 2.12 No changes to domestic laws or policy are required to put into operation the proposed Agreement which can be implemented through the Commonwealth Protective Security Laws and Regulations. The Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.¹³
- 2.13 A representative from the Department of Defence informed the Committee that both NATO and Australia have examined each other's security standards and are satisfied that the Agreement can be implemented under their current legislative and security classification systems. The Committee was assured that the Agreement would not affect the operations of parliament, particularly the operations of the Joint Committee on Intelligence and Security.¹⁴

10 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 1; Mr Peter West, *Transcript of Evidence*, 23 February 2009, p. 3.

11 NIA, para 6.

12 NIA, para 7. These countries are the US, Sweden, South Africa, Singapore, New Zealand, Germany, France, Canada and Denmark.

13 NIA, para 23.

14 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 2 & p. 4.

- 2.14 The security authorities responsible for implementing the Agreement are the DSA, Australian Department of Defence, and the NATO Office of Security.¹⁵
- 2.15 The implementing arrangements for the Agreement are currently under negotiation and expected to be concluded by June 2009. Australia's implementing arrangements will be consistent with the protective arrangements described in the Australian Government's Protective Security Manual and the Department of Defence's Defence Security Manual.¹⁶

Costs

- 2.16 There are no anticipated costs to the Australian Government in the implementation of the proposed Agreement.¹⁷

Future Treaty Action

- 2.17 Although the proposed Agreement does not provide for the negotiation of any future legally binding instruments, it could be amended by agreement between the Parties.¹⁸
- 2.18 The proposed Agreement also does not identify any specific provisions on withdrawal or denunciation, but could be terminated at any time, after consultation and with the written consent of the Parties.¹⁹
- 2.19 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.²⁰

15 NIA, para 24.

16 Ms Sandra Ragg, *Transcript of Evidence*, 23 February 2009, p. 5.

17 NIA, para 17.

18 NIA, para 20.

19 NIA, para 21.

20 Mr Frank Roberts, *Transcript of Evidence*, 23 February 2009, p. 2; NIA, para 22.

Consultation

- 2.20 The Department of Defence consulted with Commonwealth Government departments to confirm that the proposed Agreement meets the requirements of all departments and agencies that deal with national security classified information.²¹
- 2.21 The States and Territories were advised about the proposed Agreement through the Commonwealth-State Standing Committee on Treaties' Schedule of Treaty Actions. No State or Territory comment has been received to date. The proposed Agreement does not require State or Territory action for its domestic implementation.²²

Conclusion and recommendation

- 2.22 The Committee recognises the value of the proposed Agreement in ensuring that classified information exchanged between the Government of Australia and NATO is kept secure by a legally binding framework. The Committee also recognises that the proposed Agreement positively strengthens the cooperative relationship between Australia and NATO. The Committee therefore supports binding treaty action being taken.

Recommendation 1

The Committee supports the Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information and recommends that binding treaty action be taken.

Kelvin Thomson MP
Chair

21 NIA, para 25.

22 NIA, para 26.

