

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

Amendments to

the Exchange of Notes constituting an Agreement between
the Government of Australia and the Government of the United States of America
concerning Certain Mutual Defense Commitments

(Chapeau Defense Agreement)

effected by exchange of notes signed at Sydney and Canberra on December 1, 1995

(Canberra 4 December 2008)

Not yet in force

[2008] ATNIF 23

Canberra, 4 December 2008

Minister,

I have the honor to refer to the Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia concerning Certain Mutual Defense Commitments (Chapeau Defense Agreement) effected by exchange of notes signed at Sydney and Canberra on December 1, 1995, and to recent discussions between officials of our two Governments concerning the desirability of amending the Chapeau Defense Agreement to cover the assignment, exchange, or liaison of units and personnel between our respective national defense organizations.

As a result of these discussions, I have the honor to propose that the Chapeau Defense Agreement be amended as follows:

1. Article 1, paragraph (b)(ii) shall be deleted and replaced by the following:

“In the event of claims from third parties for injury or death to persons or damage to or loss of property arising from the performance of official duties, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be handled by the most appropriate Government as mutually determined.”

The Hon Joel Fitzgibbon
Minister for Defence
Parliament House
CANBERRA ACT 2600

2. Insert new Article 6 as follows:

“6. As regards the assignment, exchange, or liaison of units and personnel between our respective national defense organizations pursuant to written arrangements between those organizations, each Party shall fulfill (i) the terms and conditions set forth in this Agreement and in Annex A, and (ii) such other terms and conditions as may be set forth in the written arrangement.”

3. Insert new Article 7 as follows:

“7. The obligations of the Parties under this Agreement regarding liability and claims, ownership, use, transfer and protection of information, lease or loan of materiel or equipment, logistics support, and resolution of disputes shall continue notwithstanding termination of this Agreement.”

4. The second to the last paragraph of the closing formalities shall be deleted and replaced by the following:

“In order for this Agreement, which consists of Articles 1 through 7 and Annex A, to apply to written arrangements between our national defense organizations, it must be explicitly invoked by or for that arrangement.”

5. Insert the following Annex to the Agreement:

“Annex A

The Parties,

NOTING the application of the Agreement concerning the Status of United States Forces in Australia, done on May 9, 1963, to United States forces in Australia or of any other agreement between the Parties concerning the status of forces of one country when in the other which may be concluded hereafter;

RECOGNIZING the mutual benefits to be obtained from the assignment, exchange, or liaison of units and personnel between our respective national defense organizations; and

DESIRING to establish written arrangements to govern the assignment, exchange, or liaison of units and personnel between our respective national defense organizations;

HAVE AGREED that such written arrangements shall be subject to this Agreement as to the matters therein and this Annex as to the following matters, when explicitly invoked by or for such arrangements:

1. The following terms and definitions shall apply when used herein:

(a) “Assigned” and “Assignment” shall mean the assignment, exchange, or liaison of national defense units and personnel of the Parent Defense

Organization to the Host Defense Organization. Personnel, for the purposes of this Agreement, means a military member or members, or a civilian employee or employees of the Parent Defense Organization.

(b) “Classified Information” shall mean information generated by or for a Party that requires protection in the interests of national security of that Party, so designated by that Party by the assignment of a security classification. The information may be in oral, visual, electronic, or documentary form, or in the form of material including, equipment or technology.

(c) “Controlled Unclassified Information” shall mean unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws, regulations or policies. Whether the information is provided or generated under this Agreement or any arrangement thereto, the information will be marked to identify its “sensitive” nature. Such information could include information that has been declassified, but remains controlled.

(d) “Host Government” shall mean the national government of the Host Defense Organization, as well as all political subdivisions thereof.

(e) “Host Defense Organization” shall mean the national defense organization to which a national defense unit or personnel of the Parent Defense Organization is assigned pursuant to a written arrangement between the Parties’ defense organizations.

(f) “Parent Government” shall mean the national government of the Parent Defense Organization, as well as all political subdivisions thereof.

(g) “Parent Defense Organization” shall mean the defense organization that assigns a national defense unit or personnel to the Host Defense Organization, pursuant to a written arrangement between the Parties’ defense organizations.

2. The Parent Defense Organization shall provide the Host Defense Organization with the appropriate security assurance for Assigned personnel prior to the commencement of the Assignment. Security assurances shall be filed through official channels and in accordance with the established visit procedures of the Host Defense Organization. Access to Classified Information and Controlled Unclassified Information shall not occur until such security assurances have been received by the Host Defense Organization.

3. Assigned units and personnel shall comply with the security and disclosure laws, regulations, and policies of both Parties concerning Classified Information and Controlled

Unclassified Information and all applicable international agreements and arrangements between the Parties.

4. All Classified Information exchanged or disclosed to Assigned units and personnel pursuant to a written arrangement between the Parties' defense organizations shall be subject to and protected in accordance with the Agreement between the Government of the United States of America and Government of Australia Concerning Security Measures for the Protection of Classified Information, done on June 25, 2002.

5. (a) Access to Controlled Unclassified Information by Assigned units and personnel shall be authorized by the Host Defense Organization and shall be granted only as necessary to fulfill the purpose for the Assignment. Controlled Unclassified Information provided by or produced in cooperation with the Parent Defense Organization will be made available to the Host Defense Organization only on the condition that it will not be released to a third party (as may be defined in a written arrangement) by the Host Defense Organization without the prior written approval of the appropriate authorities of the Parent Government.

(b) Disclosure of Controlled Unclassified Information by the Host Defense Organization to Assigned units and personnel shall not be deemed a license or an authorization to use such information for any purpose other than for the purpose of the Assignment.

6. The status of Assigned personnel while in the country of the Host Government shall be governed by any bilateral agreements between the Parties concerning the status of their forces. Criminal and disciplinary jurisdiction shall be exercised in accordance with any such bilateral agreements between our two Governments; otherwise such jurisdiction shall be exercised in accordance with the governing laws of the Host Government.

7. Assigned personnel shall observe relevant Host Government laws and shall abstain from any activity inconsistent with the intent and provisions of any written arrangement between the Parties, and from all political activity in the territory of the Host Government.

8. Neither the Host Defense Organization nor the armed forces of the Host Government may take disciplinary action against Assigned personnel under the military laws or regulations of the Host Government, nor shall the Host Defense Organization or the armed forces of the Host Government exercise disciplinary powers over the dependents of such Assigned personnel. The Parent Defense Organization shall take such administrative or disciplinary action against its Assigned personnel as may be appropriate in the circumstances, and the Parties shall cooperate in the investigation of any offenses under the laws or regulations of either Party.

9. If any Assigned personnel are unable to perform their duties because of inappropriate behavior, willful violations of obligations or procedures, disciplinary action, illness, unsuitability, or other reason, the Host Defense Organization may request termination of their

Assignment. At the request of the Host Defense Organization, the Parent Defense Organization shall remove the Assigned personnel from the territory of the Host Government. In the event of

the termination of an Assignment, the Parent Defense Organization may fill the terminated Assignment with another individual who meets the requirements of the Assignment, subject to any certification, approval, or training requirements of the Host Defense Organization.

10. Assigned personnel of either Party may possess and carry arms while on duty on the condition that they are authorized to do so by their orders and with the approval of the

appropriate authorities of the Host Government. Parent Defense Organization personnel shall not carry or transport privately owned weapons into the territory of the Host Government, unless authorized to do so by the appropriate authorities of the Host Government, in accordance with the applicable laws of the Host Government.

11. Assigned personnel and their dependents shall be accorded exemptions and privileges to the extent authorized by the governing laws and regulations of the Host Government, and the provisions of any Status of Forces Agreement in force between the Parties or other international agreements or arrangements between the Parties.

12. Medical and dental services shall be subject to the provisions of any applicable international agreements or arrangements between the Parties and, in the absence of such an agreement or arrangement, to the requirements of the laws, regulations, and policies of the Host Government, including the requirement for reimbursement when mandated by such laws, regulations, and policies.

13. Unless the Parent Defense Organization gives written approval, Assigned units and personnel shall not be placed on duty in areas of political sensitivity where their presence might jeopardize the interests of their Parent Defense Organization or Parent Government. Additionally, unless the Parent Defense Organization gives written approval, Assigned units and personnel shall not:

- (a) be placed in duty assignments or in situations in which direct hostilities with forces of third states are likely to occur or have commenced;
- (b) participate in any form of operation, including peacekeeping or combat operations;
- (c) travel to a third country, as part of the duties being performed;
- (d) participate in any law enforcement operations; or
- (e) participate in any civil-military actions.

14. Upon arrival, Assigned units and personnel shall be provided briefings by the Host Defense Organization on the laws, regulations and policies pertaining to Classified Information and Controlled Unclassified Information. Additionally, Assigned units, personnel and their dependents shall be provided information on exemptions and privileges, medical and dental services, and other matters as appropriate.

15. Financial arrangements necessary to carry out the provisions of this Agreement shall be as reflected in written arrangements between the Parties' Defense Organizations, and shall be subject to the availability of funds for such purposes."

I have the honor to propose that, if the foregoing is acceptable to your Government, the present Note and Your Excellency's reply to that effect shall constitute an Agreement between our two Governments, which shall enter into force on the date that the Government of Australia notifies the Government of the United States of America through the diplomatic channel, that all domestic procedures as are necessary to give effect to this Agreement in Australia have been completed.

Accept, your Excellency, the renewed assurances of my highest consideration.

Robert McCallum, Jr
United States Ambassador to Australia

Canberra, 4 December 2008

Excellency,

I have the honour to refer to your Note dated 4 December 2008 concerning amendment of the Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defense Commitments (the “Chapeau Defense Agreement”) which reads as follows:

“I have the honor to refer to the Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia concerning Certain Mutual Defense Commitments (Chapeau Defense Agreement) effected by exchange of notes signed at Sydney and Canberra on December 1, 1995, and to recent discussions between officials of our two Governments concerning the desirability of amending the Chapeau Defense Agreement to cover the assignment, exchange, or liaison of units and personnel between our respective national defense organizations.

As a result of these discussions, I have the honor to propose that the Chapeau Defense Agreement be amended as follows:

1. Article 1, paragraph (b)(ii) shall be deleted and replaced by the following:

“In the event of claims from third parties for injury or death to persons or damage to or loss of property arising from the performance of official duties, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be handled by the most appropriate Government as mutually determined.”

His Excellency Mr Robert McCallum Jr
Ambassador Extraordinary and Plenipotentiary
of the United States of America
CANBERRA ACT 2600

2. *Insert new Article 6 as follows:*

“6. As regards the assignment, exchange, or liaison of units and personnel between our respective national defense organizations pursuant to written arrangements between those organizations, each Party shall fulfill (i) the terms and conditions set forth in this Agreement and in Annex A, and (ii) such other terms and conditions as may be set forth in the written arrangement.”

3. *Insert new Article 7 as follows:*

“7. The obligations of the Parties under this Agreement regarding liability and claims, ownership, use, transfer and protection of information, lease or loan of materiel or equipment, logistics support, and resolution of disputes shall continue notwithstanding termination of this Agreement.”

4. *The second to the last paragraph of the closing formalities shall be deleted and replaced by the following:*

“In order for this Agreement, which consists of Articles 1 through 7 and Annex A, to apply to written arrangements between our national defense organizations, it must be explicitly invoked by or for that arrangement.”

5. *Insert the following Annex to the Agreement:*

“Annex A

The Parties,

NOTING the application of the Agreement concerning the Status of United States Forces in Australia, done on May 9, 1963, to United States forces in Australia or of any other agreement between the Parties concerning the status of forces of one country when in the other which may be concluded hereafter;

RECOGNIZING the mutual benefits to be obtained from the assignment, exchange, or liaison of units and personnel between our respective national defense organizations; and

DESIRING to establish written arrangements to govern the assignment, exchange, or liaison of units and personnel between our respective national defense organizations;

HAVE AGREED that such written arrangements shall be subject to this Agreement as to the matters therein and this Annex as to the following matters, when explicitly invoked by or for such arrangements:

1. *The following terms and definitions shall apply when used herein:*

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Organization to the Host Defense Organization. Personnel, for the purposes of this Agreement, means a military member or members, or a civilian employee or employees of the Parent Defense Organization.

(b) "Classified Information" shall mean information generated by or for a Party that requires protection in the interests of national security of that Party, so designated by that Party by the assignment of a security classification. The information may be in oral, visual, electronic, or documentary form, or in the form of material including, equipment or technology.

(c) "Controlled Unclassified Information" shall mean unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws, regulations or policies. Whether the information is provided or generated under this Agreement or any arrangement thereto, the information will be marked to identify its "sensitive" nature. Such information could include information that has been declassified, but remains controlled.

(d) "Host Government" shall mean the national government of the Host Defense Organization, as well as all political subdivisions thereof.

(e) "Host Defense Organization" shall mean the national defense organization to which a national defense unit or personnel of the Parent Defense Organization is assigned pursuant to a written arrangement between the Parties' defense organizations.

(f) "Parent Government" shall mean the national government of the Parent Defense Organization, as well as all political subdivisions thereof.

(g) "Parent Defense Organization" shall mean the defense organization that assigns a national defense unit or personnel to the Host Defense Organization, pursuant to a written arrangement between the Parties' defense organizations.

2. The Parent Defense Organization shall provide the Host Defense Organization with the appropriate security assurance for Assigned personnel prior to the commencement of the Assignment. Security assurances shall be filed through official channels and in accordance with the established visit procedures of the Host Defense Organization. Access to Classified Information and Controlled Unclassified Information shall not occur until such security assurances have been received by the Host Defense Organization.

3. Assigned units and personnel shall comply with the security and disclosure laws, regulations, and policies of both Parties concerning Classified Information and Controlled Unclassified Information and all applicable international agreements and arrangements between the Parties.

4. All Classified Information exchanged or disclosed to Assigned units and personnel pursuant to a written arrangement between the Parties' defense organizations shall be subject to and protected in accordance with the Agreement between the Government of the United States of America and Government of

Australia Concerning Security Measures for the Protection of Classified Information, done on June 25, 2002.

5. (a) *Access to Controlled Unclassified Information by Assigned units and personnel shall be authorized by the Host Defense Organization and shall be granted only as necessary to fulfill the purpose for the Assignment. Controlled Unclassified Information provided by or produced in cooperation with the Parent Defense Organization will be made available to the Host Defense Organization only on the condition that it will not be released to a third party (as may be defined in a written arrangement) by the Host Defense Organization without the prior written approval of the appropriate authorities of the Parent Government.*

(b) *Disclosure of Controlled Unclassified Information by the Host Defense Organization to Assigned units and personnel shall not be deemed a license or an authorization to use such information for any purpose other than for the purpose of the Assignment.*

6. *The status of Assigned personnel while in the country of the Host Government shall be governed by any bilateral agreements between the Parties concerning the status of their forces. Criminal and disciplinary jurisdiction shall be exercised in accordance with any such bilateral agreements between our two Governments; otherwise such jurisdiction shall be exercised in accordance with the governing laws of the Host Government.*

7. *Assigned personnel shall observe relevant Host Government laws and shall abstain from any activity inconsistent with the intent and provisions of any written arrangement between the Parties, and from all political activity in the territory of the Host Government.*

8. *Neither the Host Defense Organization nor the armed forces of the Host Government may take disciplinary action against Assigned personnel under the military laws or regulations of the Host Government, nor shall the Host Defense Organization or the armed forces of the Host Government exercise disciplinary powers over the dependents of such Assigned personnel. The Parent Defense Organization shall take such administrative or disciplinary action against its Assigned personnel as may be appropriate in the circumstances, and the Parties shall cooperate in the investigation of any offenses under the laws or regulations of either Party.*

9. *If any Assigned personnel are unable to perform their duties because of inappropriate behavior, willful violations of obligations or procedures, disciplinary action, illness, unsuitability, or other reason, the Host Defense Organization may request termination of their Assignment. At the request of the Host Defense Organization, the Parent Defense Organization shall remove the Assigned personnel from the territory of the Host Government. In the event of the termination of an Assignment, the Parent Defense Organization may fill the terminated Assignment with another individual who meets the requirements of the Assignment, subject to any certification, approval, or training requirements of the Host Defense Organization.*

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11. *Assigned personnel and their dependents shall be accorded exemptions and privileges to the extent authorized by the governing laws and regulations of the Host Government, and the provisions of any Status of Forces Agreement in force between the Parties or other international agreements or arrangements between the Parties.*

12. *Medical and dental services shall be subject to the provisions of any applicable international agreements or arrangements between the Parties and, in the absence of such an agreement or arrangement, to the requirements of the laws, regulations, and policies of the Host Government, including the requirement for reimbursement when mandated by such laws, regulations, and policies.*

13. *Unless the Parent Defense Organization gives written approval, Assigned units and personnel shall not be placed on duty in areas of political sensitivity where their presence might jeopardize the interests of their Parent Defense Organization or Parent Government. Additionally, unless the Parent Defense Organization gives written approval, Assigned units and personnel shall not:*

- (a) be placed in duty assignments or in situations in which direct hostilities with forces of third states are likely to occur or have commenced;*
- (b) participate in any form of operation, including peacekeeping or combat operations;*
- (c) travel to a third country, as part of the duties being performed;*
- (d) participate in any law enforcement operations; or*
- (e) participate in any civil-military actions.*

14. *Upon arrival, Assigned units and personnel shall be provided briefings by the Host Defense Organization on the laws, regulations and policies pertaining to Classified Information and Controlled Unclassified Information. Additionally, Assigned units, personnel and their dependents shall be provided information on exemptions and privileges, medical and dental services, and other matters as appropriate.*

15. *Financial arrangements necessary to carry out the provisions of this Agreement shall be as reflected in written arrangements between the Parties' Defense Organizations, and shall be subject to the availability of funds for such purposes."*

I have the honor to propose that, if the foregoing is acceptable to your Government, the present Note and Your Excellency's reply to that effect shall constitute an Agreement between our two Governments, which shall enter into force on the date that the Government of Australia notifies the Government of the

United States of America through the diplomatic channel, that all domestic procedures as are necessary to give effect to this Agreement in Australia have been completed.

Accept, Excellency, the renewed assurances of my highest consideration.”

I have the honour to confirm that the proposals set out in your Note are acceptable to the Government of Australia and agree that your Note together with this reply shall constitute an Agreement between Australia and the United States of America which shall enter into force on the date that the Government of Australia notifies the Government of the United States of America through the diplomatic channel that all domestic procedures as are necessary to give effect to this Agreement in Australia have been completed.

Accept, Excellency, the renewed assurances of my highest consideration.

Joel Fitzgibbon

Minister for Defence