

Documents tabled on [26 November 2008](#):

National Interest Analysis [2008] ATNIA 27

With attachment on Consultation

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE NORTH ATLANTIC TREATY ORGANISATION ON THE
SECURITY OF INFORMATION, DONE AT NEW YORK ON 26
SEPTEMBER 2007 ([2007] ATNIF 25)**

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information, done At New York on 26 September 2007 ([2007] ATNIF 25)

Nature and timing of proposed treaty action

1. An Agreement between the Government of Australia and the North Atlantic Treaty Organisation (NATO) on the Security of Information (the Agreement) was signed on 26 September 2007.
2. It is proposed that the Agreement will replace the Exchange of Letters between the Australian Minister for Defence and the NATO Secretary-General dated 1 April 2005.
3. Article 6 of the proposed Agreement provides that it will enter into force at the moment Australia communicates to NATO that Australia has completed its domestic requirements to give effect to the Agreement.
4. It is proposed that Australia send written notification to the NATO Office of Security as soon as practicable after the tabling period and subject to recommendation from the Joint Standing Committee on Treaties that binding treaty action be taken

Overview and national interest summary

5. The purpose of the proposed Agreement is to simplify and strengthen the legal framework for the exchange of classified information between the Government of Australia and NATO. The proposed Agreement will set uniform standards and procedures for exchanging classified information between all the departments and agencies of Australia and NATO. The proposed Agreement will facilitate cooperation on political and security related issues. In particular, the Agreement will facilitate operations where the Australian Defence Force is working in coalition with NATO, and provide a basis for Australian access to NATO Headquarters.

Reasons for Australia to take the proposed treaty action

6. Upon entry into force, the proposed Agreement will replace the current Exchange of Letters between the Minister for Defence and the NATO Secretary-General of 1 April 2005. The Exchange of Letters is not legally binding and was introduced as an interim measure to facilitate the exchange of information whilst the Agreement was being negotiated. There is no suggestion that either party has, or would, fail to comply with its commitments under the Exchange of Letters. However, in accordance with its practice for international instruments, NATO requires a legally binding framework to govern our exchange of classified information. Following termination of the Exchange of Letters, any information previously exchanged under them will continue to be protected in accordance with the proposed Agreement.

7. The proposed Agreement sets out security procedures and practices for the exchange and protection of classified information and for visits between Australia and NATO. The proposed Agreement will facilitate future cooperation and assist in strengthening the relationship between Australia and NATO. 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.

8. Classified information that the Government of Australia passes to NATO will, under the proposed Agreement, be protected to an agreed common standard. It will not be used for any purpose other than that for which it is provided and will not be passed to any third party without the written consent of the Australian Government. Australian nationals who require access to information or material exchanged under the Agreement in the course of their duties will need to undergo appropriate security clearance before they are granted access to the information and material.

9. The parties can separately negotiate supplementary implementing arrangements to cover particular departmental or agency issues.

10. The Australian Government currently exchanges a significant amount of classified information with NATO. These exchanges are in support of operational cooperation and other forms of cooperation across various Australian Government departments. The proposed Agreement provides the necessary security assurances to facilitate the exchange of classified information by ensuring that the information is protected by legally binding obligations.

Obligations

11. The underlying obligation placed on the Parties is to protect each other's classified information to an agreed common standard.

12. Under Article 1, the Parties will:

- protect and safeguard the information or material of the other Party;
- ensure that the security classification of information or material will be maintained by each Party to agreed common standards;
- ensure that classified information or material will be protected by each Party to agreed common standards;

- not use the exchanged information or material for purposes other than those laid down in the framework of the co-operative activities and the decisions and resolutions pertaining to these co-operative activities;
- not disclose such information and material to third parties without the consent of the originator.

13. Under Article 2, Australia accepts the commitment to have all persons of its nationality who, in the conduct of their official duties, require or may have access to information or material exchanged under the co-operative activities approved by the North Atlantic Council appropriately cleared before they are granted access to such information and material. Paragraph (ii) of Article 2 sets out what factors must be taken into account in the security clearance procedure.

14. There is no requirement for NATO to conduct security clearances, as all NATO personnel are security cleared to the appropriate level by the security authority of their sponsoring country prior to commencing employment with NATO.

15. Under Article 4, Australia is responsible for security arrangements for the protection of NATO classified information or material exchanged. A proposed implementing arrangement between NATO and the Government of Australia will detail the standards of the reciprocal security protection for the information and material to be exchanged and the liaison between the NATO Office of Security and the DSA.

16. 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.

Costs

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

Regulation Impact Statement

18. The Office of Best Practice Regulation, Department of Finance and Deregulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

19. The proposed Agreement does not provide for the negotiation of any future legally binding instruments. Article 5 envisages that supplementary non-legally binding arrangements may be concluded separately between the responsible security authorities of the parties in relation to the implementation of the Agreement.

20. In the absence of specific provisions on amendments, the proposed Agreement may be amended by agreement between the parties. Amendments to the Agreement would be subject to Australia's domestic treaty approval process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

21. In the absence of specific provisions on termination, the proposed Agreement could be terminated at any time, after consultation and written consent of the Parties. Termination would be subject to Australia's domestic treaty process, including tabling in Parliament and consideration by JSCOT.

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. Consequently, the ongoing protection of classified material would be ensured, including its destruction or return to the originator when no longer required for the purpose for which it was exchanged.

Implementation

23. 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 Laws and Regulations, which set out the procedures necessary for implementing the Agreement. The Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.

24. The Security Authorities responsible for implementing the proposed Agreement are the Head Defence Security Authority, Australian Department of Defence, and the Director, NATO Office of Security, NATO Headquarters, NATO.

Contact details

Director of Security Policy
Defence Security Authority
Department of Defence

ATTACHMENT ON CONSULTATION

Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information, done at New York on 26 September 2007 ([2007] ATNIF 25)

Consultation

25. 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.

26. The States and Territories were advised about the proposed Agreement through the Commonwealth-State 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.