

Proactive Release

Date: 26 May 2022

The following Cabinet Minute and related Cabinet paper have been proactively released by the Minister of Foreign Affairs:

Title	Reference
Minute of Decision - Japan - New Zealand Information Sharing Agreement: Proposed Mandate to Commence Negotiations	CAB-22-MIN-0125 ERS-22-MIN-0012
Japan – New Zealand Information Sharing Agreement: Proposed Mandate to Commence Negotiations	Cabinet Paper

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the OIA). Where this is the case, the relevant sections of the OIA that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to OIA redaction codes:

- 6(a): to avoid prejudicing the international relations of the New Zealand Government;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- and



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet External Relations and Security Committee: Period Ended 8 April 2022

On 11 April 2022, Cabinet made the following decisions on the work of the Cabinet External Relations and Security Committee for the period ended 8 April 2022:

ERS-22-MIN-0012 **Japan - New Zealand Information Sharing Agreement:
Proposed Mandate to Commence Negotiations** CONFIRMED
Portfolio: Foreign Affairs

Michael Webster
Secretary of the Cabinet



Cabinet External Relations and Security Committee

Minute of Decision

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Japan - New Zealand Information Sharing Agreement: Proposed Mandate to Commence Negotiations

Portfolio Foreign Affairs

On 5 April 2022, the Cabinet External Relations and Security Committee:

Participation in negotiations

- 1 **noted** that, as a precursor to launching negotiations for a security Information Sharing Agreement (ISA), officials have been working on a Joint Study since Prime Minister Ardern visited Japan in 2019;
- 2 **noted** that Aotearoa New Zealand has previously negotiated ISAs with partners when there were benefits in doing so;
- 3 **noted** that the benefits of an ISA with Japan would include ensuring clarity of standards to be applied when protecting each country's classified information, in turn increasing transparency and assurances in relation to intelligence sharing;
- 4 **agreed** that Aotearoa New Zealand enters into ISA negotiations with Japan;

Mandate for negotiations

- 5 **agreed** to a mandate for negotiations that are consistent with Aotearoa New Zealand's defence and security priorities and policies, and are broadly consistent with the terms of other recent ISA negotiations;
- 6 **invited** the Minister of Foreign Affairs to seek further mandates from Cabinet, if required, as the negotiations progress.

Janine Harvey
Committee Secretary

Present: (see over)

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Kris Faafoi
Hon Peeni Henare
Hon Kiri Allan
Hon Dr David Clark

Officials present from:

Office of the Prime Minister
Officials Committee for ERS
Ministry of Foreign Affairs and Trade

Proactively Released by the Minister of Foreign Affairs

Office of the Minister of Foreign Affairs

Chair, Cabinet External Relations and Security Committee

Japan – New Zealand Information Sharing Agreement: Proposed Mandate to Commence Negotiations

Proposal

- 1 This paper seeks Cabinet approval for Aotearoa New Zealand to enter into negotiations for an Information Sharing Agreement (ISA) with Japan and provides a mandate for those negotiations.

Relation to government priorities

- 2 Following their meeting in September 2019, Prime Minister Ardern and then-Japanese Prime Minister Abe publicly announced an intention to conclude an information sharing agreement. Such an agreement would enhance Aotearoa New Zealand's contribution to regional security. Japan is a key Indo-Pacific partner and strengthening Aotearoa New Zealand's relationship with it is a foreign policy priority. Deepening our security and intelligence partnership with Japan would assist towards the goal of broadening our security relationships with likeminded partners in the region, support our ability to build intelligence assessments, and enhance the safety of New Zealand Defence Force personnel overseas. An ISA would also facilitate cooperation between Aotearoa New Zealand and Japan under the 2019 Joint Declaration on Cooperation in the Pacific.

Executive Summary

- 3 A treaty-level ISA would enable more effective and simplified sharing of classified information between all entities of the governments of Japan and Aotearoa New Zealand, significantly enhancing the security partnership.
- 4 Japan and Aotearoa New Zealand have concluded a Joint Study to better understand respective protective security frameworks. The study concluded that a mutual understanding on each other's systems and practices on information security had been reached. Officials now recommend that Aotearoa New Zealand commence ISA negotiations with Japan.
- 5 Concluding an ISA with Japan would have a positive impact on the overall bilateral relationship. In the current regional and global geostrategic climate Japan and Aotearoa New Zealand are close like-minded partners and are seeking to strengthen the relationships^{6(a)}
Entering negotiations towards an ISA would highlight Aotearoa New Zealand and Japan's shared interests and intention to cooperate, in a tangible way, on security matters.

Background and Analysis

Broad outlines of an ISA

- 6 An ISA provides a treaty-level legal framework for the mutual protection of classified government information exchanged between countries. It stipulates the security provisions that would be applied by each signatory state to protect the other's shared classified information. An ISA is an important signal of willingness and intention to share information but it would not require information to be shared.
- 7 Generally, an ISA sets out the parties' obligations in relation to the process of sharing classified information with each other. This includes setting equivalent classification levels, and agreeing to provide the other party's classified information with security protection at least equal to that required for protection of its own classified information at a comparable level of classification. An ISA would also stipulate the required equivalent national security clearance levels in each party for the access and use of shared classified information.
- 8 Prime Ministers Abe and Ardern announced a Joint Study towards an ISA between Japan and Aotearoa New Zealand during Prime Minister Ardern's visit to Tokyo in September 2019.
- 9 The Joint Study has now concluded, and each side is seeking domestic approval to enter into negotiations for an ISA. This Joint Study provides assurance that the two countries' standards for protecting classified information are aligned.
- 10 The proposed ISA would be all-encompassing, enabling classified information exchanges across potentially all government agencies. This presents a much simpler structure than the alternative, whereby every relevant Japanese and New Zealand Government agency would develop and maintain direct information sharing arrangements.
- 11 Consistent with the recent ISA with Spain s6(a) the Japan-New Zealand ISA would require agencies that share information to be 'Competent Security Authorities' (CSAs). Each participating agency, on becoming a CSA, would be listed as part of a separate procedural agreement that can be updated as required, and does not require Cabinet approval. Being a CSA would require each agency to:
 1. be responsible and competent to hold Japanese information to the correct protective security standard as would be defined in the ISA.
 2. extend their requirement under the Cabinet mandated Protective Security Requirements to assure themselves that the New Zealand information that their agency shares with their Japanese counterpart agency is protected to a level that their Chief Security Officer (CSO) is comfortable with. This would require an assessment that the protective security control applied in the Japanese system to New Zealand information is 'substantially equivalent' to the New Zealand standard.

Benefits from New Zealand's participation in ISA negotiations

- 12 Japan is a priority relationship that Aotearoa New Zealand is seeking to strengthen, including in the area of defence and security. An ISA would make the exchange of classified information simpler, provide greater assurance of the security of information we share with each other, and, in the longer term, would make New Zealand and Japan more active and effective security partners, particularly in the Pacific and Indo-Pacific.
- 13 Currently some, but not all, relevant New Zealand agencies share classified information with Japan. To date, classified information sharing between some of these agencies and their counterparts has been ad hoc, and conducted under the guidance of a number of arrangements, some of which are temporary.
- 14 s6(a), s9(2)(g)(i)
- There would be continued challenges for information sharing should an ISA not be progressed. The benefits of an ISA with Japan would include ensuring clarity on the standards to be applied when protecting each country's classified information, in turn increasing transparency and assurances in relation to sharing of this classified information.
- 15 For Aotearoa New Zealand, an ISA could enhance the volume of information New Zealand receives from Japan that is of interest and is aligned with our national security and intelligence priorities. s6(a)
- Classified information sharing during future humanitarian and disaster relief operations may also be further facilitated through an ISA.
- 16 We anticipate that concluding an ISA with Japan would have a positive impact on the overall bilateral relationship. In the context of the evolving regional and global geostrategic situation, both Japan and Aotearoa New Zealand are seeking to strengthen their bilateral security partnership as like-minded democracies in the Indo-Pacific. Announcing an intention to negotiate an ISA would send a strong signal of an intention to cooperate and of shared interests in security matters s6(a)

Scope of negotiations

- 17 An Information Sharing Agreement envisages sharing, but does not require sharing, of classified information between all entities of the governments of Japan and Aotearoa New Zealand. Under such an agreement all classified government information sharing between Japan and Aotearoa New Zealand would be mutually protected under the legal framework of the ISA. For Aotearoa New Zealand, this would be in line with our own Protective Security Requirements.
- 18 Officials propose that the classification level of information sharing is set at Top Secret in line with the recent ISA with Spain s6(a)

- 19 The mandate for negotiations towards an ISA with Japan should direct that these are conducted in accordance with Aotearoa New Zealand's defence and security priorities and policies, and are broadly consistent with the terms of other recent Information Sharing Agreement negotiations.

Next steps

- 20 If Cabinet approves this mandate, negotiators would work with Japan to finalise the agreement. This is likely to involve in-person meetings between experts in Japan and Aotearoa New Zealand, and must include reciprocal site visits as part of the due diligence process. s6(a)

Te Tiriti/Treaty Implications

- 21 The proposed ISA with Japan is not currently assessed to have any Tiriti implications but this would be kept under review as negotiations proceed.

Financial Implications

- 22 Minor costs would be incurred during ISA negotiations as agencies undertake travel, consultation and outreach during this phase. These costs may be incurred across different departments and would be met from within existing departmental baselines. Implementation costs are likely also to be modest as requirements under the ISA are expected to align with current departmental practice and policy. There would also likely be some costs incurred around legal support, development of standard operating procedures, and staffing as this agreement is implemented by agencies but it is expected that these too would be met from within baselines.

Legislative Implications

- 23 There are no legislative implications at this stage.

Impact Analysis

Regulatory Impact Statement

- 24 Not required.

Population Implications

- 25 There are no population implications at this stage.

Human Rights

- 26 Sharing classified information with other countries does involve a risk that either party may use information in a way that breaches human rights, although the existence of an ISA does not impose any obligation to share classified information with Japan. Where there is a substantial risk of breaching our human rights obligations under domestic and/or international law, New Zealand would be unable to share certain classified information with Japan. Any specific relevant concerns (and corresponding rights within the New Zealand Bill of Rights 1990 and the Human Rights Act 1993) would be

addressed during the course of ISA negotiations on a case-by-case basis, including where relevant, seeking assurances from Japan about how shared information would and would not be used. The Agreement would also need to be consistent with human rights and other obligations under the Intelligence and Security Act 2017.

Consultation

27 The following agencies have been consulted in the preparation of this paper and concur with its recommendations: Ministry of Foreign Affairs and Trade, Ministry of Defence and New Zealand Defence Force, GCSB and NZSIS, New Zealand Police, New Zealand Customs Service, Department of the Prime Minister and Cabinet (National Assessments Bureau), Ministry of Primary Industries and Civil Aviation Authority.

Communications

28 Prime Ministers Ardern and Kishida could announce the start of negotiations if a proposed visit to Japan goes ahead in late April 2022. Communications would be agreed with the Prime Minister's Office.

Proactive Release

29 This paper can be proactively released subject to redactions under relevant provisions of the Official Information Act.

Recommendations

30 The Minister of Foreign Affairs recommend(s) that the Committee:

Approve New Zealand's Participation in ISA negotiations

1. **Note** that, as a precursor to launching negotiations for a security Information Sharing Agreement (ISA), officials have been working on a Joint Study since Prime Minister Ardern visited Japan in 2019;
2. **Note** that Aotearoa New Zealand has previously negotiated ISAs with partners when there were benefits in doing so;
3. **Note** that the benefits of an ISA with Japan would include ensuring clarity of standards to be applied when protecting each country's classified information, in turn increasing transparency and assurances in relation to intelligence sharing.;
4. **Agree** that Aotearoa New Zealand enters into ISA negotiations with Japan;

Approve a mandate for ISA negotiations

5. **Agree** a mandate allowing for negotiations that are consistent with Aotearoa New Zealand's defence and security priorities and policies, and are broadly

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consistent with the terms of other recent Information Sharing Agreement negotiations;

6. **Invite** the Minister of Foreign Affairs to seek further mandates from Cabinet, if required, as the negotiations progress.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Foreign Affairs

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