

Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information

Background

- 3.1 The *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information* establishes a legal framework for the transfer of Classified Military Information (CMI) between the Parties.
- 3.2 The Australian Department of Defence currently exchanges information of this nature with the Korean Ministry of National Defence through a non-binding arrangement.¹ This arrangement was signed in 2008 as an interim measure, pending the conclusion of a legally binding instrument.²
- 3.3 The new Agreement was signed by the Parties at the Shangri-La Dialogue on 30 May 2009. It represents a further milestone in the expanding security relationship between Australia and Korea.³

1 National Interest Analysis (NIA), para. 4.

2 NIA, para. 7; Mr Frank Roberts, *Transcript of Evidence*, 21 June 2010, pp. 12-13.

3 NIA, para. 5.

Reasons to take treaty action

- 3.4 The proposed Agreement does not create an obligation for Australia to transmit information to Korea; nor an entitlement to request material.⁴ It seeks instead to safeguard the integrity of voluntary information transfers.⁵
- 3.5 The protections outlined in the Agreement are substantially similar to those provided by information exchange agreements Australia has entered with Canada, Singapore, Denmark, South Africa, the United States, and the North Atlantic Treaty Organisation.⁶ JSCOT recommended entry into each of these treaties.⁷ The National Interest Analysis contemplates that the new Agreement will facilitate security cooperation and strengthen broader bilateral relations between Australia and Korea.⁸

Obligations

- 3.6 The Agreement ensures that information transferred under the Agreement is afforded a standard of physical and legal protection no less stringent than applies to materials of the corresponding classification in the receiving State.⁹
- 3.7 Corresponding classifications are identified in the Agreement.¹⁰ Pursuant to this matrix, the Australian Defence Security Authority is satisfied that the national security standards maintained by Korea will provide equivalent protection to that received under Australian laws, regulations and policies.¹¹

4 Art. 7.5.

5 NIA, para. 4.

6 *Agreement between the Governments of Australia and Canada concerning Defence Related Information; Agreement between the Governments of Australia and Singapore concerning Defence-Related Material; Agreement with Denmark for the Reciprocal Protection of Classified Information of Defence Interest; Agreement with South Africa for the Reciprocal Protection of Classified Information of Defence Interest; Agreement between Australia and the USA concerning Security Measures for the Reciprocal Protection of Classified Information; Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information.*

7 JSCOT Report No. 2, paras 1.43-1.49; JSCOT Report No. 4, paras 2.4-2.9; JSCOT Report No. 39, Chap. 7; JSCOT Report 48, Chap. 4; JSCOT Report 98, Chap. 2.

8 NIA, para. 5.

9 Art. 5.1.4.

10 Art. 4.5.

11 NIA, para. 6.

- 3.8 Materials to be transmitted must be classified and marked by the sending party.¹² The recipient cannot downgrade the assigned classification without the sender's written consent.¹³ The recipient is also obliged to restrict the use of the material to the purpose for which it was transferred.¹⁴ It must be returned or destroyed when no longer required for this purpose.¹⁵
- 3.9 If the loss or compromise of material is suspected, the recipient must advise the sending Party and undertake an investigation immediately.¹⁶
- 3.10 The Agreement also establishes a supporting framework of monitoring and notification requirements. Each Party must permit visits by the other's Security Personnel to facilities within its territory where CMI is stored.¹⁷ The Committee was advised that standard visiting processes were in place for all Australia's international partnerships.¹⁸ Changes to national security standards which could affect the protection of transferred information must also be communicated in writing.¹⁹

Security cooperation between Australia and Korea

- 3.11 The Committee noted that Australia had not identified a Korean classification equivalent to 'Top Secret'.²⁰ Mr Roberts of the Department of Defence noted that Australia did not envisage a need to transfer material of this classification under the Agreement.²¹ It was put to the Committee that the similar channels and processes could be used if such a need arose in the future.²²
- 3.12 The Committee also queried the timing of negotiations, noting that JSCOT had received evidence in 2001 that Australia was contemplating an information exchange agreement with Korea.²³ Ms Ragg of the

12 Art. 4.1.

13 Art. 5.1.2.

14 Art. 5.1.7.

15 Art. 5.2.

16 Art. 14.1.

17 Art. 11 and Art. 12.

18 Ms Sandra Ragg, *Transcript of Evidence*, 21 June 2010, p. 14.

19 Art. 10.

20 *Transcript of Evidence*, 21 June 2010, p. 15.

21 Mr Frank Roberts, *Transcript of Evidence*, 21 June 2010, pp. 15- 16.

22 Ms Sandra Ragg, *Transcript of Evidence*, 21 June 2010, p. 16.

23 JSCOT Report 39, para. 7.14.

Department of Defence advised the Committee that the impetus for adopting a legally binding instrument was dependent on the requirements of the relationship.²⁴ Negotiations had been ongoing, subject to the process of managing both countries' bureaucracies.²⁵

Conclusion and recommendation

- 3.13 The Committee is satisfied that Australia has already established a beneficial information sharing relationship with Korea. This relationship provides a solid platform for mutual trust and confidence in future dealings. Whilst the negotiation process has evidently been protracted, entry into the treaty will ensure information exchanges take place within an appropriate legal framework.

Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information* and recommends that binding treaty action be taken.

24 Ms Sandra Ragg, *Transcript of Evidence*, 21 June 2010, p. 13.

25 Ms Kim Arthur, *Transcript of Evidence*, 21 June 2010, p. 16.