Joint Standing Committee on Treaties
Executive Summary

This Report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- the Framework Agreement between the Government of Australia and the Government of the French Republic concerning Cooperation on the Future Submarine Program (Adelaide, 20 December 2016); and

Both proposed treaty actions were tabled in the Parliament on 7 February 2017. Although both are stand-alone treaty actions, they will work to support Australia’s Future Submarine Program (the FSP).

The Framework Agreement between the Government of Australia and the Government of the French Republic concerning Cooperation on the Future Submarine Program is not an agreement to design or build Australia’s Future Submarine. Rather, the proposed treaty action establishes a framework for cooperation to support the delivery of the FSP.

The treaty action provides for:

- the transfer, ownership and use of technology and information;
- asserting Australia’s sovereign operation and security of supply;
- local industry engagement and cooperation;
- research and technology development; and
- governance and contract performance matters.
The Committee supports the proposed treaty action. However the Committee notes that it is only a first step in ensuring Australia’s national interests in the program are protected and maximised. In particular, the Committee recommends that the full lessons from previous defence capability acquisitions are learnt, including the importance of obtaining all intellectual property necessary for building and sustaining the Future Submarine. The Committee has requested a progress report from the Department of Defence in the 2018 Winter Sittings of Parliament in relation to intellectual property acquisition and management, and in relation to the arrangements that will maximise Australian industry involvement in the FSP.


The treaty action will supersede two previous agreements signed in 1985, and is more comprehensive and prescriptive than its predecessors. The key features of the agreement include:

- requiring the protection of classified information exchange between Australia and France to a standard at least equivalent to the protection afforded domestically;
- providing the mechanisms for the transfer of classified information;
- mutually recognising security clearances issued by the other party; and
- regulating the entry into classified contracts with contractors in the territory of the other party.

The Committee supports the proposed treaty action; however the Committee notes that this support is based on assurances made by the Government to the Committee. In particular, the Committee’s support for the treaty action is reliant on the assurances regarding the equivalency of classified information and the integrity of personnel security clearances issued by France.

The Committee is alarmed by reports of a leak of classified information by a trusted insider within DCNS, the contractor selected by the Australian Government to design and build Australia’s Future Submarine. The treaty action reviewed by the Committee provides for the transfer of Australian classified information to contractors, such as DCNS. The Committee notes concerns about Australia’s current vetting system, both delays in issuing clearances and the
integrity of ongoing vetting of clearance holders. In addition to its relevance in relation to security and program management issues, this process has a bearing on the ability of Australian companies and workers to participate in the FSP. The Committee recommends that the government bring forward as a matter of urgency its work program to connect state and federal law enforcement with personnel security clearance systems.
## Contents

Executive Summary...........................................................................................................................iii

Abbreviations .....................................................................................................................................ix

Members..............................................................................................................................................xi

Terms of Reference ...........................................................................................................................xv

List of Recommendations..............................................................................................................xvii

### The Report

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction ................................................................................. 1</td>
<td>Purpose of the report ................................................................. 1</td>
</tr>
<tr>
<td></td>
<td>Conduct of the Committee’s review ................................................ 2</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Future Submarine Program - France ........................................... 3</td>
<td>Background ......................................................................................... 4</td>
</tr>
<tr>
<td></td>
<td>The Agreement ................................................................................ 8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reasons to take the treaty action .................................................. 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Issues raised in evidence ............................................................. 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Committee comment ........................................................................ 36</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Classified Information Exchange - France .................................. 39</td>
<td>Background ......................................................................................... 39</td>
</tr>
<tr>
<td></td>
<td>The Agreement ................................................................................ 40</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Issues raised in evidence ............................................................. 41</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Committee comment ........................................................................ 51</td>
<td></td>
</tr>
</tbody>
</table>
Appendices

A. Submissions......................................................................................................................53

B. Witnesses ..........................................................................................................................55

Additional Comments - Labor Members .............................................................................59
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGD</td>
<td>Attorney-General’s Department</td>
</tr>
<tr>
<td>AGSVA</td>
<td>Australian Government Security Vetting Agency</td>
</tr>
<tr>
<td>AIDN-WA</td>
<td>Australian Industry and Defence Network Western Australia</td>
</tr>
<tr>
<td>AMWU</td>
<td>Australian Manufacturing Workers’ Union</td>
</tr>
<tr>
<td>ANU</td>
<td>Australian National University</td>
</tr>
<tr>
<td>ASC</td>
<td>Australian Submarine Corporation</td>
</tr>
<tr>
<td>CDIC</td>
<td>Centre for Defence Industry Capability</td>
</tr>
<tr>
<td>DSTG</td>
<td>Defence Science and Technology Group</td>
</tr>
<tr>
<td>FSP</td>
<td>Future Submarine Program</td>
</tr>
<tr>
<td>IP</td>
<td>Intellectual property</td>
</tr>
<tr>
<td>NIA</td>
<td>National Interest Analysis</td>
</tr>
<tr>
<td>NV1</td>
<td>Negative Vetting Level 1</td>
</tr>
<tr>
<td>NV2</td>
<td>Negative Vetting Level 2</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>PSPF</td>
<td>Protective Security Policy Framework</td>
</tr>
<tr>
<td>PV</td>
<td>Positive Vetting</td>
</tr>
<tr>
<td>RIS</td>
<td>Regulatory Impact Statement</td>
</tr>
<tr>
<td>SA</td>
<td>South Australia</td>
</tr>
<tr>
<td>UNSW</td>
<td>University of New South Wales</td>
</tr>
</tbody>
</table>
Members

Chair
Hon Stuart Robert MP

Deputy Chair
Hon Michael Danby MP

Members
Mr John Alexander OAM, MP
Senator Chris Back
Mr Chris Crewther MP
Senator Sam Dastyari
Senator David Fawcett
Senator Sarah Hanson-Young
Senator Kimberley Kitching
Senator the Hon Ian Macdonald
Ms Nola Marino MP
Senator Jenny McAllister
Ms Susan Templeman MP
Mr Ross Vasta MP

Mr Andrew Wallace MP

Mr Josh Wilson MP
Committee Secretariat

Ms Lynley Ducker, Committee Secretary

Ms Lauren Brasier, Inquiry Secretary

Mr Kevin Bodel, Senior Researcher

Ms Stephanie Limm, Researcher

Mrs Cathy Rouland, Office Manager
Terms of Reference

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquiry into and report on:

- matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - either House of the Parliament, or
  - a Minister; and
  - such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.
List of Recommendations

Recommendation 1

2.152 The Committee recommends that the Department of Defence ensures that the full lessons from the design, acquisition and sustainment of the Collins Class Submarine are learned, in particular, to ensure that the intellectual property is appropriately managed to maintain Australia’s sovereign operation of the Future Submarine. The Committee requests that the Department of Defence provides a report back to the Committee during the 2018 Winter Sittings of the Parliament on the progress of obtaining the necessary intellectual property and its ongoing management, and in relation to the contractual and other arrangements that will secure maximal opportunities for Australian industry involvement.

Recommendation 2

2.153 In reference to Article 13(2)(b), the Committee recommends the Government seeks to ensure that the further detailed agreements and arrangements have the effect of allowing Australian companies to bid for work in all phases of the Future Submarine Program on a preferred basis, all other things being equal.

Recommendation 3

Recommendation 4

3.55 The Committee recommends that the government bring forward, as a matter of urgency, its work program to connect State and Federal law enforcement and judicial information systems with the personnel security clearance systems in order to maximise the information available to the vetting agency to monitor changes in circumstances.

Recommendation 5

3.56 The Committee supports the Agreement between the Government of Australia and the Government of the French Republic relating to the Exchange and Reciprocal Protection of Classified Information and recommends that binding treaty action be taken.
1. Introduction

Purpose of the report

1.1 This report contains the Joint Standing Committee on Treaties’ reviews of the following treaty actions, both with the French Republic:

- the *Framework Agreement between the Government of Australia and the Government of the French Republic concerning Cooperation on the Future Submarine Program* (Adelaide, 20 December 2016) which was tabled in Parliament on 7 February 2017; and


1.2 The Committee’s resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in Parliament.

1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.

1.4 Prior to tabling, these treaty actions were subject to at *National Interest Analysis* (NIA), prepared by Government. These documents consider arguments for and against the treaty, outline the treaty obligations and any regulatory or financial implications, and report the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
1.5 A *Regulation Impact Statement* (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty actions where adoption of the treaty will involve a change in the regulatory environment for Australian businesses. The treaty actions examined in this report did not require a RIS.

1.6 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.

1.7 Copies of the treaty actions considered in this report, and the associated documentation may be obtained from the Committee Secretariat or accessed through the Committee’s website at:

- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/FutureSubmarine-France; and

**Conduct of the Committee’s review**

1.8 The treaty actions reviewed in this report were advertised on the Committee’s website from the date of tabling. Submissions for the treaties were requested by 3 March 2017.

1.9 Invitations were made to all State Premiers, Territory Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the treaties under review.

1.10 The Committee held public hearings into the treaty actions in Adelaide on 8 March 2017 and in Canberra on 14 March 2017 and 20 March 2017.

1.11 The transcript of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee’s website.

1.12 A list of submissions received is listed at Appendix A.

1.13 A list of witnesses who appeared at public hearings is at Appendix B.
2. Future Submarine Program - France


2.1 This chapter examines the *Framework Agreement between the Government of Australia and the Government of the French Republic concerning Cooperation on the Future Submarine Program* (the proposed Framework Agreement), which was signed on 20 December 2016 and tabled in the Parliament on 7 February 2017.

2.2 The proposed Framework Agreement is not an agreement to design or build Australia’s Future Submarine. Rather, the proposed Framework Agreement establishes a framework for cooperation to support the delivery of the Future Submarine Program (the FSP). The design and construction of the Future Submarine was awarded to the French Government-majority owned company DCNS in April 2016.

2.3 This chapter will present background information on the FSP, before providing an overview of the Agreement, focussing on:

- transfer, ownership and use of technology and information;
Australia’s sovereign operation and security of supply;
• local industry engagement and cooperation;
• research and technology development;
• governance and contract performance matters;
• dispute resolution mechanisms;
• withdrawal or denunciation; and
• costs.

2.4 The Chapter will then present the Government’s reasons to take the proposed treaty action, and discuss the issues raised by the evidence received in the Committee’s review.

Background

The Future Submarine Program

2.5 Submarines are ‘the most complex, sensitive and expensive defence capability acquisition government can make’,1 with over 70 systems incorporated into a conventionally powered submarine.2 Submarines are a ‘critical element’ in Australia’s national security and its maritime security planning. Australia’s $1.6 trillion economy ‘depends on secure sea lanes’.3

2.6 The Department of Defence (the Department) states that the FSP will deliver ‘an affordable, regionally superior, conventional submarine capability, [that is] sustainable into the foreseeable future’.4 At $50 billion, the FSP is the largest defence capability acquisition ever undertaken in Australia.5

---

5 Ms Rebecca Skinner, Deputy Secretary, Strategic Policy and Intelligence, Department of Defence, Proof Committee Hansard, Canberra, 14 March 2017, p. 28.
2.7 The acquisition of 12 submarines was announced in the 2016 Defence White Paper. The Department states that the first submarines are likely to enter service in the early 2030s. Construction will extend into the 2050s.\textsuperscript{6}

2.8 The FSP will replace Australia’s current fleet of Collins Class submarines. The 2009 Defence White Paper forecast the replacement of the Collins Class with a ‘more capable class of submarine’ with longer range, higher endurance and a greater breadth of capabilities.\textsuperscript{7} The Future Submarine will be a ‘unique design for Australia’ as there are no ‘off-the-shelf solutions that meet our unique capability requirements’.\textsuperscript{8}

2.9 At a public hearing, the Department stated that Australia’s objectives in the FSP include:

- ‘developing a regionally superior submarine capability’; and
- ‘maximising Australian industry involvement in the submarine program without compromising cost, capability, schedule or risk’.\textsuperscript{9}

2.10 Following a competitive evaluation process, in April 2016 the Government announced that DCNS was selected as the international design partner for the Future Submarine.\textsuperscript{10} In selecting DCNS, Australia has chosen the Barracuda class which is the ‘latest, state-of-the-art, nuclear attack submarine’ developed in France. The Barracuda class will be modified to meet Australia’s design requirements and will be converted to a conventionally-powered submarine.

2.11 DCNS Australia explained that the French Government is providing Australia with its leading submarine technology:

The French government has offered Australia the Suffren class, or the Barracuda class—which you would probably be more familiar with. That is the latest, state-of-the-art, nuclear attack submarine that France has. France is transferring the knowledge of that submarine to Australia. That is not a trivial

\textsuperscript{9} Ms Skinner, Department of Defence, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 28.
\textsuperscript{10} Ms Skinner, Department of Defence, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 28.
thing. This is not an export submarine; this is France’s best submarine technology.\textsuperscript{11}

2.12 A contract for the design and mobilisation of the new submarine was signed in September 2016 between the Australian Government and DCNS.\textsuperscript{12}

2.13 The full contract is not publically available. A redacted copy was tabled in the Senate on 1 December 2016 where the Minister for Defence, Senator the Hon Marise Payne, made a public interest immunity claim on the removed text.\textsuperscript{13}

2.14 The Department advised that Australia’s objectives in the FSP as listed above ‘have been facilitated through commercial arrangements between Australia and DCNS as well as the Framework Agreement’.\textsuperscript{14}

2.15 It was further announced in September 2016 that Lockheed Martin Australia had been selected as the Combat System Integrator for the FSP.\textsuperscript{15}

2.16 The FSP was described by participants in the inquiry as ‘an unprecedented opportunity’.\textsuperscript{16} Defence SA commented that the scope, time span and complexity will ‘dwarf’ all previous defence acquisition programs:

\textsuperscript{11} Mr Brent Clark, Chief Operating Officer, DCNS Australia, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 43.


\textsuperscript{13} Senate orders for production of documents—Defence—Future Submarine Project—Design and Mobilisation Contract—Letter to the President of the Senate from the Minister for Defence (Senator Payne), dated 1 December 2016, responding to the order of the Senate of 9 November 2016 and raising public interest immunity claims, and attachments. Available at, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Flabledpapers%2F1962601b-6d5a-4b18-b68b-b3bfef60f3f%22, accessed on 28 February 2017.

\textsuperscript{14} Ms Skinner, Department of Defence, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 28.


\textsuperscript{16} Mr Andy Keough, Chief Executive, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 13.
It is important to recognise right from the start that this is an Australian submarine being built by design partners from France, the US and across the globe. It is not a French submarine. Consequently, the program will inevitably undergo many challenges. This should come as no surprise, as we are building one of the most complex articles ever manufactured in Australia...I have absolute confidence in Australia to overcome these challenges.17

2.17 The Australian Manufacturing Workers’ Union (AMWU) also commented that the FSP will be ‘a driver of high-tech research, high-skilled jobs and economic growth for the export of high-value products for decades to come’.18

**Local industry involvement**

2.18 Upon announcing the selection of DCNS in April 2016, the Prime Minister, the Hon Malcolm Turnbull MP stated that the FSP would ‘directly sustain around 1,100 Australian jobs and a further 1,700 Australian jobs through the supply chain’.19

2.19 The involvement of the Australian defence industry was a factor in the competitive evaluation process that selected DCNS.20 The 2016 Defence Industry Policy Statement states that Australian industry involvement is critical to the construction and sustainment of the FSP into the future.

2.20 In April 2016, the Government also confirmed that the submarine fleet will be constructed in Adelaide.21 Adelaide is the home of Australia’s largest naval shipbuilding hub, Techport Australia, owned by the Government of South Australia. The Commonwealth-owned Australian Submarine Corporation (ASC) is the anchor tenant at the site.

---


2.21 The role of the ASC in the build of the Future Submarine has not been announced by DCNS or DCNS Australia. At a public hearing, ASC commented that the company is in ‘ongoing discussions with DCNS and look forward to those continuing’. ASC continued:

ASC is happy to provide our expertise and experience and the benefit of the lessons learned from the Collins to assist DCNS and the nation into the future… and we look forward to continuing our role as a platform lead in the submarine enterprise and, in coming years, supporting the transition to the Future Submarine Program as an integral part of Australia’s sovereign submarine capability.22

2.22 Acknowledging that its role will be determined by DCNS and the Government, ASC stated that it is unlikely to be involved in the FSP for another 12 to 18 months, until the project enters a construction phase.23

2.23 The proposed Framework Agreement establishes general obligations to engage Australia’s local industry, and this is examined below.

The Agreement

2.24 The objectives of the proposed Framework Agreement are set out in Article 3 and can be grouped into the following categories:

- the transfer, ownership and use of technology and information;
- asserting Australia’s sovereign operation and security of supply;
- local industry engagement and cooperation;
- research and technology development; and
- governance and contract performance matters.

2.25 Significantly, the obligations contained within the proposed Framework Agreement extend to DCNS. The Department advised that it is their understanding that DCNS, as a French Government-owned company, will be required to comply with the terms of the Framework Agreement.24

---

23 Mr Edwards, ASC, Proof Committee Hansard, Adelaide, 8 March 2017, p. 11.
24 Ms Skinner, Department of Defence, Proof Committee Hansard, Canberra, 14 March 2017, p. 29.
2.26 DCNS Australia also confirmed that the obligations in the Framework Agreement between the two governments are represented in the commercial contract between the Australian Government and DCNS.\(^{25}\)

### Transfer, ownership and use of technology and information

2.27 First and foremost, the proposed Framework Agreement facilitates the transfer of French-Government owned information that is ‘critical to the design, build, operation and sustainment’ of the FSP.\(^{26}\)

2.28 **Article 5** commits Australia and France to facilitate the transfer of technologies required for the purposes of the design, development, build, operation, sustainment and disposal of the Future Submarine. The NIA states that in so doing, the Agreement ‘will provide Australia with all necessary rights to use or own the information, and to share such information as needed with its contractors and other third parties participating in the FSP’.\(^{27}\)

2.29 This obligation is further enhanced by **Article 6(1)** which obliges France to do all things necessary, and take all action required, to ensure Australia obtains all relevant information owned by France required to design, build and enable Australia’s sovereign operational and sustainment capability for the Future Submarine.

2.30 Information that was created prior to the entry into force of this proposed Framework Agreement will remain the property of France (**Article 6(2)**). Australia may use such information for the purposes of the FSP (**Article 6(3)**). Australia may only transfer French-owned information to a third-party where France has provided its written approval to do so (**Article 6(5)**). The use of such information by a third party will be subject to strict conditions on access, use and disclosure (**Article 6(6)**). Australia will not be required to pay a licence fee or royalty for the use of this information (**Article 6(8)**).

---


\(^{27}\) NIA, para 6.
2.31 Any information that is created by either Australia or France under the proposed Framework Agreement or, otherwise created in the performance of the FSP, will be owned by Australia except information generated under collaborative research and development activities (Article 6(9)). France may only use Australian-owned information for the purpose of performing tasks required by Australia and under specific circumstances (Article 6(10)).

2.32 Australia and France must also protect classified information provided or generated under the proposed Framework Agreement in accordance with a separate agreement signed in 1985 (Article 9). The Committee has also examined a new classified information agreement with France. The Committee’s report on its inquiry is in Chapter 3 of this Report.

2.33 The proposed Framework Agreement requires Australia and France to administer export control rules and licences in a manner that supports the FSP and promotes efficiency (Article 7). The NIA states that this will ‘reduce disruptions and delays to transfers of technology and information critical to the FSP’. Similarly, the Agreement obliges Australia and France to minimise the impacts of customs duties, as well as import and export taxes which may be applicable to the FSP (Article 18).

**Australia’s sovereign operation and security of supply**

2.34 Security of supply is critical to the delivery of the FSP and Australia’s ability to maintain sovereign operational and sustainment capability. Article 8 states that France will not ‘interfere’ with Australia’s free use of the Future Submarine and shall not hinder the supply chain of the technology necessary for the ‘design, build, delivery, operation and sustainment of the Future Submarine, including in times of peace, crisis or armed conflict’ (Article 8(2)).

2.35 The proposed Framework Agreement also requires Australia and France to inform each other of proposed significant changes to their controlling interests in the major industrial entities involved in the FSP. This obligation would extend, for example, to the French-Government owned DCNS. More

---


29 NIA, para 7.
specifically, should the French Government no longer hold the controlling interests in DCNS, France will be obliged to ensure its obligations under this Agreement will continue to be met (Article 8(3)).

**Local industry engagement and cooperation**

2.36 Article 13 recognises ‘the importance of maximising Australian industry involvement in the FSP and developing Australian-French industry partnerships through their respective industry policies’.

2.37 The proposed Framework Agreement confirms Australia’s authority and responsibility for decision-making under contracts and sub-contracts for the FSP (Article 13(2)). The NIA does not address how Australia will exercise its decision-making role with respect to sub-contracts that are entered into between subcontractors and DCNS for the design and mobilisation of the FSP; or between subcontractors and Lockheed Martin Australia for the combat systems integration for the Future Submarine.

2.38 Under the proposed Framework Agreement, France is required to:

- provide advice to, share information, know-how, know-why, skills and experience with Australia particularly on industry policy and industrial environment to assist Australia manage and develop local industry involved in the FSP (Article 13(2)(a)); and
- not hinder French industry efforts to involve Australian industry in the design, build and sustainment of the Future Submarine and as such, Australian companies will be able to bid for work in all phases of the FSP on an equal basis with French companies (Article 13(2)(b)).

2.39 Both Australia and France are obliged under Article 13(3) to facilitate the exchange of information, skills and expertise relevant to the FSP between their respective industries and foster innovation, research and technology development.

**Research and technology development**

2.40 The proposed Framework Agreement requires Australia and France to coordinate and collaborate on research and development activities with the aim of generating innovating technological solutions needed for the FSP (Article 14).

**Governance and contract performance**
Governance Framework

2.41 The governance framework for the FSP is established in Article 4. It recognises that proper governance will be ‘crucial to the effective implementation of this Agreement’ (Article 4(1)). The Article provides that the respective Ministers of Defence, or their representatives, will meet at least annually.

2.42 Article 4 also establishes a Steering Committee to be co-chaired by representatives of both Australia and France. The Steering Committee will meet at least twice yearly and report regularly to the respective Ministers of Defence. As an advisory body, the Steering Committee will be responsible for:

- monitoring and coordinating the implementation of the proposed Framework Agreement;
- overseeing the progress of the FSP;
- identifying and resolving issues related to the implementation of the proposed Framework Agreement, including any changes to domestic laws and policies that will have an impact on the performance of the Agreement and contracts (including subcontracts) relating to the FSP design and construction;
- developing and recommending measures that would enhance the effective implementation of the proposed Framework Agreement; and
- maintaining oversight of the security aspects of the FSP.

2.43 Contractors may also be invited to participate in the Steering Committee.

Cost, quality and performance monitoring

2.44 The proposed Framework Agreement also sets out matters for program management support to be provided by France (Article 10). This support covers technical expertise and management issues including:

- monitoring contract performance including progress, risk, schedules and costs of contracts entered into between Australia and contractors located in France; and
- assisting to resolve any issues or concerns raised by Australia in relation to the performance of any contract or sub-contract for the FSP.
2.45 Similarly, under Article 11 France may not hinder the access of authorised personnel from Australia to information relating to the cost transparency and performance monitoring of the FSP.

2.46 Australia and France will also develop specific government quality assurance services to determine that contractual requirements regarding quality of material and services are met under the FSP (Article 12).

Dispute resolution

2.47 All disputes arising under the proposed Framework Agreement must be settled by consultation and negotiation between the Australia and France (Article 20).

2.48 If a dispute arose regarding the compliance of DCNS with the terms of the proposed Framework Agreement, the Department advised that Australia would seek to resolve that dispute through the governance framework. The Department stated:

Should there be some concern that DCNS were not acting in a way that was in the spirit of the [Framework Agreement] and limiting Australia’s ability to deliver what it wants to deliver, then there is certainly... a mechanism by which we would have the ability to raise that. And we would raise that with the French Government with an expectation that the French Government would keep to the treaty conditions and seek to resolve it.\(^{30}\)

Withdrawal or denunciation

2.49 The proposed Framework Agreement may be terminated by mutual written agreement (Article 23(4)), or unilaterally where a Party’s ability to implement the Agreement is ‘fundamentally impacted by exceptional events, circumstances or matters’ (Article 23(5)).

2.50 Were the proposed Framework Agreement to be terminated unilaterally, the Parties will consult to determine if common ground can be found to allow continuation of the Agreement. If no common ground is found within 12 months, the termination will take effect 24 months after receipt of the original notice to terminate (Article 23(6)). The NIA explains ‘this period would allow the Parties to appropriately manage the consequences of

\(^{30}\) Ms Skinner, Department of Defence, Proof Committee Hansard, Canberra, 14 March 2017, p. 29.
Obligations with respect to ownership and use of information and security will continue beyond termination (Article 23(10)).

Costs

2.51 The FSP is a $50 billion defence capability acquisition. Specific costs associated with the implementation of this proposed Framework Agreement are not stated in the NIA.

2.52 Rather, the NIA states:

The Parties will bear their own costs of implementing their obligations under the Agreement. Australia will incur costs associated with implementation of the governance framework (Article 4), for any FSP management support (Article 10), and in the event of certain claims (Article 19). Costs arising under separate instruments referred to in the Agreement will be governed by those instruments.

Reasons to take the treaty action

2.53 The NIA asserts that the proposed Framework Agreement serves the national interest ‘by formalising assurances from the French Government that are critical to the design, build, operation and sustainment of the Future Submarine’.

2.54 At a public hearing, the Department elaborated:

The agreement provides a robust framework to underpin the delivery of the Future Submarine Program, and I consider it to be unequivocally in our national interest.

2.55 The Department was of the view that the key legal risk – the acquisition of intellectual property – is ‘very well traversed’ in the proposed Framework

---

31 NIA, para 42.
32 NIA, paras 36-37.
33 NIA, para 4.
34 Ms Skinner, Department of Defence, Proof Committee Hansard, Canberra, 14 March 2017, p. 29.
Agreement. The Department is ‘confident that the document actually equips Defence to manage the legal risks’.  

**Issues raised in evidence**

2.56 Participants in the inquiry were generally supportive of the proposed Framework Agreement. For example, the ASC noted that a treaty-level agreement will provide for the ‘strong, ongoing government-to-government cooperation [that] is required to underpin a project that will span many decades’.

2.57 However, it was noted that the terms of Framework Agreement must be reflected within the terms of the contract between the Government and DCNS, as well as in supplementary agreements with the French Government, in order to be effective and in Australia’s national interest.

2.58 For example, Defence SA commented that the Framework Agreement ‘needs to be prepared for the best of good days and the worst of bad days,’ and ‘must be linked to the contract in order to really hit the ground’. Similarly, the Australian Industry and Defence Network Western Australia commented that the proposed Framework Agreement ‘will have a significant effect on the Future Submarine contract’, elaborating:

> It establishes the culture and behaviours and that culture needs to flow down. The contractor and the contracting parties need to be aware of the intent and the substance of the treaty.

---


38 Mr Keough, Defence SA, *Proof Committee Hansard*, Adelaide, 8 March 2017, p. 16.


Dr Andrew Davies was of the view that the supplementary agreements and arrangements foreshadowed in the proposed Framework Agreement will be ‘critical to how [the Framework Agreement will] work in practice’. Dr Davies explained:

The treaty is really a statement of principle. How things work in practice and how technologies and intellectual property are transferred will be absolutely critical… So it is the operationalisation of those sorts of transfers that are absolutely critical to setting up an effective and efficient build process.\(^\text{41}\)

The Department confirmed that ‘further instruments between Australia and France will need to be negotiated over the coming months and years to implement and supplement this agreement’.\(^\text{42}\)

In addition to these general comments, four critical issues were raised in evidence to the Committee:

- the importance of intellectual property acquisition;
- how, and to what extent, local industry participation can be maximised;
- opportunities and focus of research and innovation collaborations; and
- security and integrity of information.

Each of these issues is examined below.

**Intellectual property acquisition**

The proposed Framework Agreement’s articles on intellectual property (IP) acquisition were a focus of the Committee’s inquiry.

Mr Brett Walker, a former chief legal officer at the Commonwealth Scientific and Industrial Research Organisation commented that in a project of this scale, it is ‘critical’ that appropriate technology transfer provisions are put in place to ensure that Australia has sufficient rights to operate, maintain, repair and upgrade the Future Submarine.\(^\text{43}\)


2.65 Similarly, Defence SA emphasised the need for clarity in what constitutes ‘background intellectual property’, that is owned by France, and ‘foreground intellectual property’ that is owned by Australia:

But, as we go into elements of it, particularly critical elements, we should be very clear about the IP—what we own, what they own and our rights and access to that—because it is fundamental for us maintaining our sovereign submarine capability.44

2.66 This was a critical lesson from the design, build and sustainment of the Collins Class Submarine.

**Lessons learned from Collins Class Submarine**

2.67 A number of participants expressed concern that Australia must not repeat mistakes made during the design, construction and sustainment of Australia’s existing submarine fleet, the Collins Class submarine.

2.68 In 1987, Swedish company, Kockums was selected to design and build the Collins Class Submarine, integrating a combat system from Rockwell International. The intellectual property that was acquired in the Kockums’ contract was sufficient for construction but did not provide Australia with the necessary rights or information for the sustainment of the fleet.45

2.69 In the late 1990s, cracking problems were discovered in the Collins Class propellers. Contrary to the contract, Australia shipped the defective equipment to the United States for analysis and advice. Dr Davies explained the significance of this action:

Propeller configuration is one of the crown jewels of submarine design, and Kockums took court action in 2001 when another propeller was to be shipped, resulting in the unedifying spectacle of the ship carrying the article being held off the US coast while the court action was resolved. The court found in favour of the Commonwealth, but a substantial reason for the decision was that the harm to Kockums’ position had already been done by an earlier shipment, which was hardly the basis for a trust-based relationship between the parties involved.46

---

44 Mr Keough, Defence SA, *Proof Committee Hansard*, Adelaide, 8 March 2017, p. 16.
2.70 The ASC also reflected on this experience, commenting that ‘going forward, we would want to ensure that there was no ambiguity in those intellectual property clauses.’

2.71 The Department acknowledged that Australia’s capacity to share information with industry and international partners was ‘severely constrained’ because, ‘there was not such a framework’ to enable its transfer. The Department also noted that, in some cases, ‘not all of the technical data flowed’ to Australia to enable the ongoing sustainment of the Collins Class.

2.72 Participants also cautioned that not all intellectual property and know-how is vested in drawings and documents. To fully understand the submarines, Australia must be involved in the design phase. ASC noted that:

... [this knowledge] comes from your complex understanding of how things operate and your experience in maintaining them... That technology transfer from the people who may have been doing something for a period of time to Australians is, I feel, one of the key lessons learnt and something that is the strength behind ASC that we have developed over the last 30 years.

2.73 Defence SA expanded on this point, acknowledging the differences between the initial design phases of the Collins Class and Future Submarine and the impact on the delivery of that capability:

One of the differences between Collins and Future Submarine is that Collins was designed by an output of a competition between two offers. Based on that winning bid, the company, Kockums, went and designed a submarine to it. There was little interaction between the designers in Kockums, having agreed on the requirements, and the end user to understand the implications of those requirements.

2.74 Mr Deeks recommended that these past experiences could be overcome by embedding Royal Australian Navy personnel in the design and build phases of the FSP, ‘so that they can gain a fundamental understanding of the design

47 Mr Jared Siviour, Future Submarine Commercial Manager, ASC Pty Ltd, Proof Committee Hansard, Adelaide, 8 March 2017, pp. 9-10.
49 Mr Edwards, ASC, Proof Committee Hansard, Adelaide, 8 March 2017, p. 10.
velocity and the build methodology to enable them to better support the submarines at sea after they become operational’. 51 Mr Deeks explained:

We must never lose sight of the fact that we build these platforms, these vessels, ultimately, to be used by operators at sea and it is they who are the ultimate customer. So we should go out of our way to make sure the customer is provided with all the information they need to be able to operate them in circumstances that we cannot predict, at this stage, how they might be used. 52

2.75 The AMWU also advocated for Australian involvement in the design phase, noting that:

… the multiplier effect of design work is much higher than for building work or maintenance work, and the opportunities for spin-offs and spill overs are much greater in the design phase that they are another phases… As we all acknowledge, we want the 12th submarine off the line to be better than the first submarine off the line. That is going to come out of having that concentrated design knowledge, know-how and 'know why,' combined with the feedback we are getting from the submariners who are on them. 53

2.76 The Department advised that uniformed defence personnel will be working in the design of the Future Submarine, which will be overseen by the Chief of Navy. 54

Importance of intellectual property through life-of-type

2.77 Access to intellectual property is also critical to the long-term sustainment of the Future Submarine. Mr Walker explained:

You do not want to, essentially, buy a black box which your contractors cannot access and, therefore, you cannot properly maintain and upgrade, and that is the same in any check-transfer project. You need to have those ongoing rights to access the information and IP to upgrade, maintain et cetera. 55

2.78 A number of witnesses reflected on the experience of the long-term sustainment of the Collins Class, commenting that that program focussed

---

51 Mr Mike Deeks, Proof Committee Hansard, Canberra, 14 March 2017, p. 23.
52 Mr Deeks, Proof Committee Hansard, Canberra, 14 March 2017, p. 23.
53 Mr Tegg, AMWU, Proof Committee Hansard, Canberra, 14 March 2017, p. 7.
54 Rear Admiral Sammut, Department of Defence, Proof Committee Hansard, Canberra, 14 March 2017, p. 32.
55 Mr Walker, ANU, Proof Committee Hansard, Canberra, 14 March 2017, p. 2.
primarily on the build and delivery into service of the submarine, and not how the fleet would be sustained through life-of type.\textsuperscript{56} Indeed, under the program, the first submarine was commissioned in 1996 however it was not until 2003 that the through-life support arrangements were signed.\textsuperscript{57}

2.79 The ASC stated it was important to have learned from the Collins Class program that ‘managing the transition into service is a key. If we build the capability, it has to be there for the long-term sustainment’.\textsuperscript{58}

2.80 Mr Deeks, an Australian submarine commander from 2001 to 2004, also identified the lack of access to the requisite intellectual property to allow submariners to undertake on-board repairs. In some cases, Kockums personnel had to undertake the work as no Australian personnel or industry had the necessary intellectual property to repair defects.

2.81 Mr Deeks was of the view that the lack of access to intellectual property to undertake repairs reduced the effectiveness of Australia’s defence capability:

> The impact this had was poor operational availability and limited sea time and it had an adverse effect on recruiting, retention, training and morale. An ability to conduct underway repairs is equivalent to having more submarines in the force. If a submarine can remain on station operating independently of any shore based support, despite experiencing significant defects, it is like having additional submarines in inventory.\textsuperscript{59}

2.82 To maximise the capability of all twelve submarines, Mr Deeks emphasised the need to obtain all necessary intellectual property to allow Australian industry access to undertake all repairs and maintenance. He further recommended that this information be forwarded to submariners operating the Future Submarine so that significant defects can be repaired without external assistance.\textsuperscript{60}

\textsuperscript{56} Mr Edwards, ASC, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 8; Mr Keough, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 13.

\textsuperscript{57} Mr Keough, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 13.

\textsuperscript{58} Mr Edwards, ASC, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 8.

\textsuperscript{59} Mr Deeks, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 22.

\textsuperscript{60} Mr Deeks, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 23.
2.83 Defence SA was of the view that the Department is developing the sustainment arrangements for the Future Submarine at this early stage, commenting that this ‘is a dramatic turnaround and a great improvement’.\(^\text{61}\)

**Tripartite collaboration and integration**

2.84 Australia’s Future Submarine will be designed and constructed by DCNS and its integrated combat weapons systems will be provided by Lockheed Martin. A weapons system is central to the submarine’s offensive capability and to delivering Australia a ‘regionally superior’ submarine.

2.85 Reflecting the critical importance of the weapons system to the Future Submarine’s capability, Dr Davies cautioned the integration of American systems with those supplied by France will ‘be make or break’ for the Future Submarine.

2.86 In practice, Dr Davies argued, this is a three-way collaboration to be managed.\(^\text{62}\) The level of integration of the weapons system will determine the extent of the trilateral cooperation:

> It depends on the tightness of the integration. If we are only talking about the combat management system, we can probably manage that under the existing treaty agreement we have between Australia and the United States for defence technology transfer. If we are talking about a deeper integration, where the whole combat system, including the sensors, is sourced from the United States, and that has to be mechanically and systems integrated into the detailed French submarine design, I think that would require an arrangement of some kind between France and the United States as well.\(^\text{63}\)

2.87 Dr Davies further noted that the level of integration will present challenges for managing intellectual property of all three parties. He stated that managing these property rights will be ‘necessary to deliver the capability we want’, and though the proposed Framework Agreement is a necessary step, ‘it needs to be part of a three-way arrangement that protects the interests of Australia, France and the United States’.\(^\text{64}\)

---

\(^{61}\) Mr Keough, Defence SA, *Proof Committee Hansard*, Adelaide, 8 March 2017, p. 16.


\(^{64}\) Dr Davies, *Proof Committee Hansard*, Canberra, 14 March 2017, pp. 10-11.
Mr Deeks also cautioned that ‘we do not want to find ourselves in the future where we have the [intellectual property] in-country, but we are limited by the former owner of the [intellectual property] as to how we can use it’.65

2.89 Dr Davies also noted that the Collins Class program provides additional lessons in how to manage an international collaboration of this kind:

The Collins program provides some excellent lessons in how not to deal with an international partner in a submarine build. There was a substantial falling out between Australia and Sweden over intellectual property issues, which went as far as to land the two parties in the Federal Court in 2001. The issue was ultimately resolved… but it was a good illustration of the pitfalls of collaboration on sensitive defence technologies.66

2.90 Dr Davies was of the view that the proposed Framework Agreement ‘should go a long way to avoiding’ the intellectual property disputes in the FSP.67 It was also suggested that a ‘framework of agreements’ or ‘bilateral agreements that support the trilateral enterprise’ will be required to deliver the capability.68

2.91 The Department responded to Dr Davies’ recommendations, commenting that the proposed Framework Agreement allows Australia to agree with France to share particular information with the governments of the United States and the United Kingdom.69

2.92 Similarly, DCNS Australia stated that DCNS has a ‘very simple’ relationship with Lockheed Martin:

That relationship with Lockheed is a free-flowing, free information exchange. Both companies understand the constraints on the protection of the countries’ information. As an example, DCNS will be responsible for the construction of the infrastructure for the future submarines. So Lockheed and DCNS are working closely. We will build the building that Lockheed will integrate the combat system in. To their specifications, we will provide the bricks and mortar, power supply and that sort of thing. Equally, they will provide us

---

with all the requirements they need for the power, cooling, weight space and all that sort of stuff that we require for the submarines. I have not seen any evidence at all that there is an issue between the two companies. In fact, the relationship has been very simple.70

Maximising local industry

2.93 At a public hearing, DCNS Australia confirmed its commitment that over 90 per cent of the Future Submarine build will occur in Australia.71 DCNS Australia further confirmed that the terminology used in the Framework Agreement – ‘maximising local industry’ – appears in the contract between DCNS and the Government of Australia, commenting that they are ‘executable and enforceable contract clauses’.72

2.94 Defence SA commended Australia’s shipbuilding capability commenting that ‘having inspected shipyards in Germany, Japan, France, the US, the UK, Spain and Italy, I am yet to see any task or activity that we could not achieve in Australia at equal or better levels of performance’.73

2.95 Despite Australia’s existing capability, a number of participants questioned the meaning of ‘maximising local industry’ and how this might be achieved.74 Dr Davies cautioned that Australia and France have different approaches to defence industry, and Australia should seek to protect its interests:

Australia and France share many values and we have broad shared strategic interests in maintaining what the defence white paper called the ‘rules based global order’. To that extent, we should be able to enter into long-term industrial and technological arrangements with confidence. But we have quite different approaches to defence industry. France has a much more nationalised approach to its defence industry sector and therefore has a strong and direct commercial interest in selling its products. The Government of France owns DCNS. We should not convince ourselves that sharing submarine technology with Australia is entirely an act of altruism towards a strategic

70 Mr Clark, DCNS Australia, Proof Committee Hansard, Canberra, 14 March 2017, p. 50.
71 Mr Clark, DCNS Australia, Proof Committee Hansard, Canberra, 14 March 2017, p. 41.
72 Mr Clark, DCNS Australia, Proof Committee Hansard, Canberra, 14 March 2017, p. 45.
73 Mr Keough, Defence SA, Proof Committee Hansard, Adelaide, 8 March 2017, p. 13.
74 Mr Keough, Defence SA, Proof Committee Hansard, Adelaide, 8 March 2017, p. 13; Mrs Sharon Wilson, Head of Industrial Strategy, BAE Systems Australia, Proof Committee Hansard, Adelaide, 8 March 2017, p. 3.
partner. We should keep our eyes open, be aware of the economic imperative at work and protect our interests when necessary.\textsuperscript{75}

2.96 Dr Davies also questioned how, in practice, Australian industry will compete equally with French suppliers when the latter has established relationships with DCNS.\textsuperscript{76}

2.97 The Department clarified the extent and nature of Australian local engagement in the FSP, stating that the Department ‘will decide on the manner in which Australian industry is engaged and involved in the program’.\textsuperscript{77} It further stated:

In our contracts with DCNS, we will make sure that the Australian industry goals and plans are flowed down to suppliers. DCNS will recommend to us their preferred way forward, noting that in our contracts with DCNS we do capture the need to establish a sovereign capacity... So there is no unilateral decision by DCNS to use any supplier of their choice. We are involved in the procurement process right from the beginning through to the end.\textsuperscript{78}

2.98 DCNS Australia confirmed that this was also their understanding of the FSP’s procurement process:

They are involved, they have oversight and they have an ability to question us, challenge us and, indeed, instruct us to go back and revisit decisions to ensure that we are making the most logical decisions in terms of sovereignty for Australia. The department will not get in the way of a commercial process; however, we have to justify to the department every decision that we take.\textsuperscript{79}

2.99 However, the Department advised that a key objective of the FSP is to maximise Australian industry involvement ‘without compromising cost, capability, schedule or risk’.\textsuperscript{80}

\textit{Sovereign capability}

\textsuperscript{75} Dr Davies, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 11.

\textsuperscript{76} Dr Davies, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 12.

\textsuperscript{77} Rear Admiral Sammut, Department of Defence, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 30.

\textsuperscript{78} Rear Admiral Sammut, Department of Defence, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 30.

\textsuperscript{79} Mr Clark, DCNS Australia, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 42.

\textsuperscript{80} Ms Skinner, Department of Defence, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 28.
The Department also stated that the FSP includes developing a ‘sovereign operational and sustainment capability’. The commitment to develop a sovereign operational and sustainment capability in Australia was strongly supported by a number of participants.

Developing a sovereign capability in Australia for the FSP would allow Australia to control access to information and have local capability necessary to maintain the operation of the Future Submarine. Mr Deeks remarked that this capability should enable the Australian industry to maintain and support the submarines independent of external overseas support.

BAE Systems Australia advocated that maximising local industry content should be a consideration not just at the point of acquisition of defence capability, but also in its sustainment:

Maximising AIC [Australian industry content] is not just about what gets made in Australia. More importantly, it is about why and how it gets made in Australia. Australian content is good for industry, as competitiveness is often driven by volume. This is great if the cost is right, and the work should be performed here in those cases. But what we need to drive is an increase in capability that sometimes may not necessarily be cost-effective in acquisition, but gains a critical, enduring capability for sustainment.

The ASC also explained how Australian industry involvement in the construction phase of the FSP is critical to being able to sustain the fleet in to the future:

There is certainly a focus on acquisition cost but the sustainment cost is quite high for any platform, so investing early in build provides you the capability to undertake the sustainment and save sustainment costs in future. Even our experience in the capability we have is we are able to meet international benchmarks on submarine maintenance and support because we have access

---

81 Ms Skinner, Department of Defence, Proof Committee Hansard, Canberra, 14 March 2017, p. 29.
82 Mrs Wilson, BAE, Proof Committee Hansard, Adelaide, 8 March 2017, p. 1; Mr Deeks, Proof Committee Hansard, Canberra, 14 March 2017, p. 24; Mr Edwards, ASC, Proof Committee Hansard, Adelaide, 8 March 2017, p. 9; Mr Keough, Defence SA, Proof Committee Hansard, Adelaide, 8 March 2017, p. 13; Mr Tegg, AMWU, Proof Committee Hansard, Canberra, 14 March 2017, p. 6.
83 Mr Deeks, Proof Committee Hansard, Canberra, 14 March 2017, p. 24.
84 Mr Deeks, Proof Committee Hansard, Canberra, 14 March 2017, p. 24.
85 Mrs Wilson, BAE, Proof Committee Hansard, Adelaide, 8 March 2017, p. 1.
to that technology. If we were not involved in the build, it would be most likely that we could not maintain that support at that level.\textsuperscript{86}

2.104 Dr Davies noted the need for balance between sovereign capability and premium costs:

I think we sometimes wrap ourselves around the axle a little bit about sovereign capability... We need to have the support, yes. Sovereign is better, but it is a question of how you get there from here and what premium you are prepared to pay to do that... No argument from me that we need onshore support—absolutely. How sovereign it needs to be is the question.\textsuperscript{87}

2.105 The Department confirmed that its commitment to a sovereign capability in Australia is not just at the acquisition stage, but a consideration in the through-life sustainment of the submarine:

Again going back to what the goals of the Future Submarine Program are—and that is to develop a regionally superior submarine with the sovereign capacity to operate it and sustain it through life—taking the view that the cost of the program is not simply the acquisition cost but the through-life support costs.\textsuperscript{88}

2.106 DCNS Australia also confirmed that the requirement to build a sovereign capability in Australia is central in its contract with the Australian Government:

The Committee should not ever misunderstand the intent of the French government here nor should it misunderstand the intent of the company. All the way through the competitive evaluation process and since we have been commencing our work on the design and finalisation contract, the intent of the company has to be to work with the Department of Defence to ensure that Australia ends up with what it has asked for, what we agreed to do during that competitive evaluation process—that is, to create that sovereign capability within Australia.\textsuperscript{89}

2.107 DCNS Australia advised the Committee that in seeking to deliver on this commitment, the company has contacted ‘hundreds of potential suppliers’

\textsuperscript{86} Mr Edwards, ASC, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 9.
\textsuperscript{87} Dr Davies, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 13.
\textsuperscript{88} Rear Admiral Sammut, Department of Defence, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 30.
\textsuperscript{89} Mr Clark, DCNS Australia, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 43.
and has issued more than 700 requests for information to more than 200 companies. In addition, the company will conduct a series of industry briefings, with the first briefing in Adelaide held in November 2016, attracting more than 450 Australian companies.\textsuperscript{90}

2.108 To manage the local industry engagement, DCNS Australia has developed a Supplier Pre-Qualification Questionnaire. As of 20 March 2017, 44 Australian companies have qualified.\textsuperscript{91}

2.109 Developing sovereign capability will require additional planning. For example, BAE Systems Australia advocated that the time is now to ensure the most effective capability-development is achieved and local industry maximised: ‘With the planned procurements Australia is today embarking upon, now is the time to get this right, and we in industry must work together with Defence to ensure that we do’.\textsuperscript{92}

2.110 This will, in BAE Systems’ view, require a commitment from government and industry and draw upon international expertise to deliver a stronger Australian capability. In addition, it will require a greater focus on increasing exports of Australia’s unique capabilities.\textsuperscript{93}

2.111 The Centre for Defence Industry Capability (CDIC) was launched in 2016 following the Defence Industry Policy Statement. Its purpose is to ‘help transform the Defence and industry relationship, and to fund defence industry development, critical skilling and export initiatives’.\textsuperscript{94} The Centre will also provide a framework to assess Australia’s sovereign defence industrial capability for the purposes of the FSP and other defence capability acquisitions.\textsuperscript{95}

2.112 The Government’s recent announcement of a continuous shipbuilding program was strongly supported by participants in the inquiry. For

\textsuperscript{90} DCNS Australia, \textit{Submission 4}, p. 3.

\textsuperscript{91} DCNS Australia, \textit{Submission 4.1}, p. 1.

\textsuperscript{92} Mrs Wilson, BAE, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 1.

\textsuperscript{93} Mrs Wilson, BAE, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 1.


\textsuperscript{95} Mr Keough, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 15.
example, Defence SA commented that this will overcome the ‘boom and bust scenarios’ of previous defence acquisition projects.\textsuperscript{96} Defence SA described the impact of previous approaches:

In those days, and in those environments, the companies did not need to invest in their future workforce. They went out to the open market, they got the workforce in, they trained them up, they delivered the program and then they got rid of the workforce unless they could win further work. Right across industry you had this boom and bust playing out with these programs. That is why the importance of this program and the commitment to continuous build is so critical. It is very pleasing to see that, because we can now offer children who are just coming into primary school opportunities in the future to develop into these careers. It will not just be a job for a project; they will be embarking on a career that will lead them through 30 to 40 years of very valuable, very important work. That is why it is important.\textsuperscript{97}

2.113 BAE Systems Australia advocated that the investment in Australia’s local industry must be leveraged to deliver new capabilities and drive the industry forward. However, the company also acknowledged the challenges the local industry face:

Many Australian SMEs [small to medium enterprises] are simply not large enough to move up the capability ladder on their own. Many of these SMEs provide niche technologies that give the Defence force a capability edge, but to deliver their potential they typically need to be integrated as an element of a larger system. There are many SMEs, few medium enterprises and even fewer primes, and we need to recognise that in the Australian Defence ecosystem every player, large or small, has a place in delivering industry effectively.\textsuperscript{98}

2.114 The AMWU also noted impediments to Australian companies getting into the domestic supply chain, commenting that government-led discussion forums have provided little clarity for those new to the industry.\textsuperscript{99}

2.115 Another barrier to local industry identified during the inquiry was the difficulty in obtaining requisite security clearances. This is discussed in detail in Chapter 3 of this Report where the Committee reviews the

\textsuperscript{96} Mr Keough, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 15.

\textsuperscript{97} Mr Keough, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 15.

\textsuperscript{98} Mrs Wilson, BAE, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 1.

\textsuperscript{99} Mr Steve McCartney, State Secretary (Western Australia), Australian Manufacturing Workers Union, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 8.
International opportunities

2.116 It is anticipated that developing sovereign capability will provide opportunities for Australian industry to contribute to the global supply chain. Indeed, due to the size of Australia’s navy, sustaining a sovereign capability beyond the acquisition phase of the FSP will be difficult without opportunities for export.\footnote{Mr Deeks, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 26.}

2.117 Mr Deeks explained to the Committee that private industry is already beginning to plan for the continuous shipbuilding industry and seeking export opportunities to sustain their investment:

> The federal government has stated very clearly that their objective is to create a continuous naval shipbuilding industry in Australia. Just relying on the domestic market to achieve that will be very difficult due to the size of our Navy and the forces required. So certainly we are very focused in Forgacs, and I know other companies are, in creating a continuous shipbuilding industry which includes export. So, there is no reason that should not apply to submarines, if that is the case.\footnote{Mr Keough, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 16.}

2.118 Despite recent efforts, particularly those led by the CDIC, Defence SA acknowledged that Australia is lagging behind in the international promotion of its local industry:

> We are, however, compared to many other countries around the world, just starting to get into the game, whereas the globals—through the UK, the US, France and Germany—have had a long history, many decades, of working on the international forum. They have got a long head start on us, but I am confident that we can catch up quickly.\footnote{Mr Deeks, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 26.}

2.119 The Committee also received evidence that the anticipated growth in Australia’s local industry will also unlock new international opportunities. For example, Defence SA was of the view that there is potential for
Australian industry to service foreign submarines operating in the Asia-Pacific.103

2.120 Similarly, Mr Deeks also commented that Australia has a strong defence industry and is internationally competitive:

We tend to underrate ourselves in terms of our industrial capability… Companies like my own parent company, Civmec, brought manufacturing back to Australia at a time when everyone would argue that manufacturing in Australia was dead. They compete against the world market in major projects against countries that have very low labour rates. They do that successfully because they can achieve levels of efficiency and productivity unheard of in these other countries. As a general statement, I think we need to back ourselves a little more.104

2.121 BAE Systems similarly commented that Australian industry has ‘great innovation’ which has, and continues, to feed into the global defence supply chain.105

Research and innovation collaborations

2.122 The proposed Framework Agreement provides for research and development activities with the aim of generating innovating technological solutions needed for the FSP. The Defence Science and Technology Group (DSTG) will support the program in the following areas:

- the achievement and sustainment of regional security;
- the qualification and acceptance of the future submarine; and,
- the assessment of future submarine technologies.106

2.123 In addition to specific government-to-government research projects provided for under the Framework Agreement, the FSP presents opportunities for public-private partnerships and collaborations.

2.124 Following the announcement of the FSP in April 2016, a number of Australian universities have formed new collaborative efforts with

---

103 Mr Keough, Defence SA, Proof Committee Hansard, Adelaide, 8 March 2017, p. 17.
105 Mrs Wilson, BAE, Proof Committee Hansard, Adelaide, 8 March 2017, p. 2.
106 Dr Alex Zelinsky, Chief Defence Scientist, Department of Defence, Proof Committee Hansard, Canberra, 14 March 2017, p. 38.
counterparts across Australia and in France. For example, in January 2017 Flinders University entered into agreements with a French consortium comprised of ENSTA Paris Tech, École Centrale de Nantes, Centrale Supélec and École Polytechnique.107

2.125 Similarly, in 2016, the University of New South Wales (UNSW) and DCNS entered into an agreement for research and technology, focussing on the University’s leading innovative component technologies.108 At a public hearing, UNSW stated:

The nature of the work in the MOU [memorandum of understanding] is quite fundamental long-range research. It is not focused specifically on submarines. It is an umbrella agreement that contemplates and anticipates a number of different new areas coming up. For example, they cover areas like electrical control systems, materials for minimising impact on the environment and machine learning and artificial intelligence algorithms that could be applicable to multiple things.109

2.126 The agreement with DCNS provides for the ownership of intellectual property of research output, to be negotiated on a case-by-case basis, with all background intellectual property remaining with DCNS.110 Noting the importance of Australian universities retaining the necessary rights over their research output, UNSW commented:

The approach is to use the university’s standard policy on intellectual property—that is, essentially it is negotiated on a case-by-case basis. The university’s starting position is that, for IP that is generated out of contract research, the university owns the intellectual property, and the commercial

109 Professor Ian Gibson, Associate Dean (Industry and Innovation), Faculty of Engineering, University of New South Wales, Proof Committee Hansard, Canberra, 14 March 2016, p. 19.
110 Professor Gibson, UNSW, Proof Committee Hansard, Canberra, 14 March 2016, p. 18.
partner is offered a licence to commercialise. That is our starting negotiating position.¹¹¹

2.127 The agreement with DCNS builds upon other relationships the University has developed with the private sector. UNSW stated at a public hearing that its Faculty of Engineering has developed partnerships with industry operating in the global supply chain, opening up different pathways for the commercialisation of the University’s research. In 2016, the University attracted $25 million in revenue from these relationships with the private sector.¹¹²

2.128 Defence SA noted that DSTG and the university sector will be ‘critical’ in achieving a successful translation of research priorities into actual products for improved capability. The organisation also commented:

   Australia is very good at R&D [research and development]. However, we certainly suffer in the area of the commercialisation piece, and I think that is where we are already seeing commitments to organisations like CIDC, which is developing and managing the innovation pipeline to take R&D right the way through from the initial studies through to products.¹¹³

2.129 Local industry is also seeking to leverage improved relationships with Australia’s university sector, in large part due to the international opportunities that such cooperation could deliver. Mr Deeks, the current Managing Director of Forgacs Marine and Defence commented in a public hearing:

   I think we need to generate much closer relationships between Defence industry and academic organisations. I know that DCNS is a good example of how they do that in France... This is a long-term endeavour so we should be looking to train people for the long term. We should be shaping people to have a complete career within the Defence industry. That would allow us then to look for opportunities to support regional navies, and other overseas opportunities.¹¹⁴

2.130 The AMWU was of the view that these commitments to research will help Australian businesses and workers to be involved in the development and

¹¹¹ Professor Gibson, UNSW, Proof Committee Hansard, Canberra, 14 March 2016, p. 19.
¹¹² Professor Gibson, UNSW, Proof Committee Hansard, Canberra, 14 March 2016, p. 17.
¹¹³ Mr Keough, Defence SA, Proof Committee Hansard, Adelaide, 8 March 2017, p. 17.
implementation of cutting-edge technologies. The AMWU commented that ‘this should result in the companies engaging in the global supply chain... beyond the Future Submarine Program [and consequently] the Australian naval shipbuilding industry will have a bright future ahead of it’.  

Security issues

2.131 Another issue raised in evidence was the security arrangements of the FSP to protect Australia’s sovereign operation of its submarine capability. Two concerns were raised: the security of Australia’s classified information following leaks of Indian-classified information by a DCNS sub-contractor; and the security through the supply chain. Both are examined below.

DCNS leaks

2.132 In August 2016, it was revealed that thousands of documents had been leaked from DCNS containing classified information relating to the design and capability of submarines commissioned by India. According to news reports, the leaked documents details the entire combat capability of the six submarines designed by DCNS for the Indian navy. The leaked documents were compromised by a sub-contractor, described as a ‘trusted insider’.

2.133 DCNS Australia commented that the company had ‘learnt a very valuable and quite a bad lesson’ and sought to reassure the Committee, commenting that ‘the security measures within the company were already very robust’. To address the vulnerability that allowed the leak to occur, DCNS has ‘implemented some tightening up’ of measures.

2.134 Following the leak, the French Government commenced an investigation into the matter. DCNS Australia advised the Committee that DCNS has filed a criminal complaint:

---

This serious matter is thoroughly investigated by the French national authorities. We are bringing all our support to conduct these investigations which are covered in France by the secrecy of the investigation.\footnote{DCNS Australia, Submission 4.1, p. 1.}

2.135 DCNS Australia did not want to comment on the investigation occurring in France, stating:

Whilst I understand the interest, the reality is that what happened there is not an Australian story. It is a story between France, the government of India and others...You should be under no illusion regarding the seriousness that the [Australian] Department of Defence took that leak, and the response has been very strong and very determined. How we are now dealing with that so that it cannot occur in the Australian environment is quite significant.\footnote{Mr Clark, DCNS Australia, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 44.}

2.136 DCNS Australia confirmed however that the information leaked was of a lower classification than the level set by the Australian Department of Defence. As a result there are ‘a whole series of other safeguards that are put in place to secure and control that information’. DCNS Australia was of the view that that higher classification would make it unlikely that Australia’s classified information could be leaked by a trusted insider:

The breach that occurred in France there was by a trusted insider stealing information. Again, within the Australian environment, it is highly unlikely—it is never impossible, but it is highly unlikely—that people could remove information from a system that is classified at an even higher level.\footnote{Mr Clark, DCNS Australia, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 44.}

2.137 Responding to concerns, the Department advised that the leak of information was regarding a different class of submarines commissioned by India – the Scorpion submarine. The Department advised that ‘there is no indication that any information pertaining to the Barracuda class of submarines on which the Future Submarine will be based has been compromised’.\footnote{Rear Admiral Sammut, Department of Defence, \textit{Proof Committee Hansard}, Canberra, 14 March 2017, p. 34.}

2.138 The Department advised that the incident did not shape negotiations for the Framework Agreement:
There was no reason to give rise to a specific conversation around a security matter separate from what we were discussing in terms of the framework agreement and how we would assure and implement security... So they are not related to the conversation that we had in negotiating the agreement between Australia and France in that way.  

2.139 Despite this statement, the Department commented that information security and the protection of Australia’s classified information ‘is of utmost importance to both the Government of France and the Government of Australia’. The Department advised that the Steering Committee established by Article 4 of the proposed Framework Agreement has provided a mechanism to address such concerns:

One of the priorities of steering committee as it begins to form and work, and we have already had one meeting since [the Framework Agreement] was signed on 20 December, was to establish a subcommittee for security—not a subcommittee for security that is simply composed of program personnel but one that draws on the national resources of both countries to ensure the most thorough and comprehensive approach to security is taken from the outset of the program—and that remains one of our priorities at the moment.

2.140 The Department also confirmed that there is a ‘very strong framework’ for the protection of classified information, and noted that the proposed Agreement between the Government of Australia and the Government of the French Republic regarding the Exchange and Reciprocal Protection of Classified Information will provide an ongoing basis for its protection. The Committee presents its consideration of this agreement in Chapter 3.

Security through supply chain

2.141 The security of Australia’s information is not just a concern of the prime contractor, but also through the supply chain. Defence SA identified the security of supplies will be ‘one of the major challenges of the project’:

---

122 Ms Skinner, Department of Defence, *Proof Committee Hansard*, Canberra, 14 March 2017, p. 34.


124 Rear Admiral Sammut, Department of Defence, *Proof Committee Hansard*, Canberra, 14 March 2017, p. 34.

We will spend hundreds of millions of dollars developing this design. It will be a unique design, and the last thing we want to see is this design being transferred—in minutes—off on data files to someone else who should not have it.\footnote{Mr Keough, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, pp. 13-14.}

2.142 Defence SA referred to the experience of the international project for the Joint Strike Fighter. Despite the security capability of the prime contractor, Lockheed Martin, the supply chain for the Joint Strike Fighter did not have that same capability, therefore leaving these companies ‘open to exploitation’.\footnote{Mr Keough, Defence SA, \textit{Proof Committee Hansard}, Adelaide, 8 March 2017, p. 14.}

\section*{Committee comment}

2.143 The Committee strongly supports the proposed Framework Agreement, however, it is merely the first step in ensuring Australia’s national interests in the FSP are protected and maximised. The proposed Framework Agreement provides a solid starting point to overcome some of the critical and costly issues that have been experienced in other defence acquisition projects.

2.144 The Committee strongly recommends that the Department ensure the full lessons from Collins are learnt; including, but not limited to, ensuring the intellectual property of the Future Submarine is stored, managed, maintained and upgraded in a discrete entity to guarantee Australia is always able to operate, maintain and sustain the next generation submarine.

2.145 The Committee recognises that the objective of maximising Australian industry participation is critical both to Australia’s national economic interest, and to achieving sovereign capacity to sustain and operate the Future Submarines.

2.146 The Committee realises that the potential benefits of some of the proposed Framework Agreement’s terms, principally ‘maximising local industry engagement’, will rely on effective implementation of contractual and other arrangements. Although the Department and DCNS Australia confirmed that the development of a sovereign industry capability in Australia is a requirement of the contract between these parties, the obligation to
‘maximise local industry’ is not expressed in those terms in the proposed Framework Agreement.

2.147 In order for Australia’s local industry to be ‘maximised’, the local industry must be supported to expand its capability. The Committee is encouraged by early signs of private investment in developing this capability as a result of the Government’s commitment to a continuous shipbuilding program.

2.148 On the basis of the comments in relation to intellectual property and Australian industry participation above, the Committee requests a progress report back from the Department of Defence in the 2018 Winter Sittings of the Parliament on the acquisition of the necessary intellectual property and its ongoing maintenance, and in relation to the contractual and other arrangements that will secure maximal opportunities for Australian industry involvement.

2.149 The Committee is also encouraged by the prospect of Australia’s local industry working in collaboration with the university sector to develop and commercialise innovations that emerge from the research and development work involved in the FSP.

2.150 The Committee believes the Government should ensure that the further detailed agreements and arrangements have the effect of allowing Australian companies to bid for work in all phases of the FSP on a preferred basis, all other things being equal.

2.151 The Committee is alarmed by significant breaches within the DCNS’ build of the Indian submarine. Noting that the Committee reviews the Agreement between the Government of Australia and the Government of the French Republic regarding the Exchange and Reciprocal Protection of Classified Information in the next Chapter, the Committee reserves further comment and recommendation on the management of classified information for that Chapter.

**Recommendation 1**

2.152 The Committee recommends that the Department of Defence ensures that the full lessons from the design, acquisition and sustainment of the Collins Class Submarine are learned, in particular, to ensure that the intellectual property is appropriately managed to maintain Australia’s sovereign operation of the Future Submarine. The Committee requests that the Department of Defence provides a report back to the Committee
during the 2018 Winter Sittings of the Parliament on the progress of obtaining the necessary intellectual property and its ongoing management, and in relation to the contractual and other arrangements that will secure maximal opportunities for Australian industry involvement.

Recommendation 2

2.153 In reference to Article 13(2)(b), the Committee recommends the Government seeks to ensure that the further detailed agreements and arrangements have the effect of allowing Australian companies to bid for work in all phases of the Future Submarine Program on a preferred basis, all other things being equal.

Recommendation 3

3. Classified Information Exchange - France

Agreement between the Government of Australia and the Government of the French Republic regarding the Exchange and Reciprocal Protection of Classified Information

Background

3.1 The treaty action under consideration is the proposed Agreement between the Government of Australia and the Government of the French Republic relating to the Exchange and Reciprocal Protection of Classified Information 2017 (the Agreement).

3.2 The purpose of the Agreement is to strengthen arrangements for sharing classified information between France and Australia. The Agreement will supersede two previous agreements:

- the Agreement between the Government of Australia and the Government of the French Republic relating to the Exchange and Communication of Classified Information signed in Paris on 15 July 1985; and

---

¹ Ms Anna Harmer, First Assistant Secretary, Attorney-General’s Department (AGD), Proof Committee Hansard, Canberra, 20 March 2017, p 2.
the Arrangement between the Secretary of the Department of Defence of Australia and the Secretary General of National Defence of the French Republic relating to the Exchange and Communication of Classified Information signed in Paris on 15 July 1985.2

3.3 Although the Agreement is a stand-alone treaty action, it was tabled at the same time as the Framework Agreement between the Government of Australia and the Government of the French Republic concerning Cooperation on the Future Submarine Program (‘the Framework Agreement’). The Agreement will support collaboration and information sharing in relation to the Future Submarine Program (FSP):

A key example of this cooperation is sharing classified information to support the Future Submarine Program, a critical component of Australia’s naval capability over the coming decades. Classified information protections under the intergovernmental agreement for that program will rely on the measures in this new treaty.3

Protective Security Policy Framework

3.4 The security of government information is maintained under the overarching policy guidance of the Protective Security Policy Framework (PSPF). The PSPF contains mandatory requirements for Australian Government entities. AGD has policy responsibility for the PSPF; with individual government agencies responsible for implementation.

3.5 The PSPF undergoes revision and review in response to changing circumstances and specific incidents. AGD advised that:

There has been a process of constant and heightened examination of our protective security policy framework and our personnel security practices in light of international and domestic experience.4

The Agreement

---


3.6 The Agreement is more comprehensive and prescriptive than its predecessors, but, according to the National Interest Analysis (NIA), is similar to recent exchange of classified information agreements with America, Japan, the European Union and the North Atlantic Treaty Organization.\(^5\)

3.7 The NIA states:

The proposed Agreement provides a framework for protecting Classified Information exchanged between the Parties. It does not require the exchange of Classified Information. Under the proposed Agreement, Classified Information will be afforded a degree of protection equivalent to that afforded domestically.\(^6\)

3.8 The Agreement defines classified information as ‘any information or material, regardless of the form, determined to require protection against unauthorised disclosure or compromise which has been designated with a security classification.’\(^7\)

3.9 The Committee heard that there are four key features of the agreement:

- it requires the parties to protect classified information to a standard at least equivalent to the protection afforded domestically;
- it sets out how classified information can be transferred between the parties, and is limited to certain channels;
- it enables security clearances of officials and contractors to be mutually recognised; and
- it regulates how each party enters into or authorises classified contracts in the territory of the other party.\(^8\)

**Issues raised in evidence**

**Personnel security clearances**

\(^5\) NIA, para 8.
\(^6\) NIA, para 7.
\(^7\) NIA, para 9.
3.10 Many contractors working on defence related contracts, including the FSP, will need a security clearance to access the information they need to do their jobs. A number of concerns were raised about this process during the committee’s inquiries into this Agreement and the Framework Agreement.

3.11 Personnel security clearances are done by the Australian Government Security Vetting Agency (AGSVA). The AGSVA is a centralised government agency providing vetting services on behalf of the majority of Australian Government agencies and state and territory agencies, based within and run by the Department of Defence.\(^9\)

**Timeliness**

3.12 In its inquiry into the FSP, the Committee heard evidence that delays in obtaining security clearances have hindered businesses in obtaining work.\(^10\) For individuals, the process of obtaining a security clearance may delay their employment, or result in the selection of another person who already possesses a security clearance.

3.13 The AGSVA has set benchmarks for processing security clearances within certain timeframes:

- thirty days for Baseline
- four months for Negative Vetting level 1 (‘NV1’);
- six months for Negative Vetting level 2 (‘NV2’); and
- six months for Positive Vetting (‘PV’).\(^11\)

3.14 The AGSVA informed the Committee that for baselines, NV1 and NV2, it is undertaking all clearances within the benchmark processing time.\(^12\) However there is a significant backlog for PV clearances, which are taking longer than the six month benchmark. In relation to industry PV clearances,

---


\(^12\) Ms Perkins, First Assistant Secretary Security and Vetting Services, Australian Government Security Vetting Agency (AGSVA), Department of Defence, *Proof Committee Hansard*, 20 March 2017, p 4.
Ms Perkins, First Assistant Secretary Security and Vetting Services, Department of Defence, advised:

I would say that industry are not very big users of the top secret positive vet clearance. They are very small numbers; this year it will be around 45 people and last year it was about 15.\(^{13}\)

3.15 According to the AGSVA, there are several changes underway to address the backlog. This means that within 15 months PV clearances should be conducted within the six month benchmark.\(^{14}\)

3.16 The volume of security clearances required is likely to fluctuate as projects—including the FSP—come on-line, causing workflow management challenges for the AGSVA. The AGSVA told the Committee that it has worked on understanding and planning for future demand; linking with detailed future workforce plans for Defence and industry.

3.17 Ms Perkins also pointed out that the AGSVA has some flexibility to increase its workforce at short notice:

I would note that AGSVA was set up by government in 2010 on a cost recovery basis, and that gives us the capacity to use our internal resources and what we call our industry vetting partners—contract staff who are suitably trained and accredited to undertake security clearance action—so that we can look into those forward years as these major projects come online and we can grow the need to meet the demand into the future.\(^{15}\)

**Sponsorship**

3.18 Sponsorship is a core plank of personnel security under the PSPF. A contractor cannot commence a security clearance alone. A clearance must be ‘sponsored’ by a government agency.\(^{16}\) This has been reported in the media as a ‘catch-22’: in order to get a contract in government, a clearance is required, but to get a clearance, a government agency must sponsor the

---

\(^{13}\) Ms Perkins, AGSVA, *Proof Committee Hansard*, 20 March 2017, p 4


To address the issue, contractors have called for the option to pay for their own clearances.\(^{17}\)

3.19 The AGSVA is aware of the concerns about sponsorship and has made several changes to the sponsorship requirements. In September 2016 the AGSVA implemented a more flexible approach to sponsorship; removing the requirement for an external entity to have an active contract with a government agency. The AGSVA now allows sponsorship for staff of businesses that are part of a Defence standing offer panel; or that have been identified as a potential supplier under a limited tender process; or that have a recognised business relationship with Defence.\(^{19}\)

**Adequacy of clearance process**

3.20 In order to be an effective element in maintaining confidentiality of information, the personnel clearance process must be sufficiently thorough. During the clearance process, the AGSVA collects a range of information about a person from a variety of sources to make a determination on their suitability to hold a clearance. The degree of examination is proportional to the level of the clearance.

3.21 As a general principle, the AGSVA and AGD consider that the current personnel clearance processes in Australia are adequate to maintaining the security of classified information, stating:

> There are certainly improvements that we would like to make but, as Ms Perkins said, we have not identified any glaring holes or gaps that mean that there is any concern about the high functioning of our personnel security arrangements at the moment.\(^{20}\)

---


3.22 One aspect of information collection examined by the Committee was the degree to which information on criminal activities or charges is obtained from State and Territory police forces. The AGSVA advised that they maintain close relationships with the Australian Security Intelligence Organisation, the Australian Federal Police and state police forces.\(^{21}\) State police forces advise the AGSVA of some—but not all—criminal charges. For state–based offences it would depend on the severity of the offence. Notification may also occur when a criminal investigation is underway, and it becomes apparent that a person under investigation has links to defence or security related matters.\(^{22}\)

3.23 The Committee received evidence that the government has projects in play to improve the overall ‘provide a whole-of–security approach rather than relying simply on a point-in-time vetting check’.\(^{23}\) Part of this is developing a mechanism to formalise information exchange between jurisdictions.\(^{24}\) The Committee considers this should be brought forward as a matter of urgency.

**French personnel clearance process**

3.24 Article 7 of the Agreement obliges each party to accept the security classification applied to personnel of the other party for the purposes of access to classified information.\(^{25}\) If necessary, Australia will commence personnel security clearance processes for French nationals where they are resident in Australia (and vice versa).\(^{26}\)

3.25 According to AGD, the security arrangements of both countries are at ‘a level of parity that provides appropriate comfort for the recognised security arrangements’.\(^{27}\) This conclusion is based on government-to-government engagement and:


\(^{25}\) NIA, para 14.

\(^{26}\) NIA, para 14.

...an exploration of the security practices both of Australia to the satisfaction of the French government and of the French processes to the satisfaction of the Australian government.\textsuperscript{28}

3.26 Security clearance waivers—where a person is given access to classified information without going through the security clearance process—are used by both Australia and France. In Australia, security clearance waivers are strongly discouraged and rarely used. In order for a foreign national to be granted a waiver under Australia’s system it would require ‘extremely exceptional circumstances’.\textsuperscript{29}

3.27 AGD provided the Committee with information from the French National Security Authority – Secrétariat général de la défense et de la sécurité nationale—that under normal eligibility requirements an individual must be a French citizen or a citizen of a country with which France has a security agreement. However ‘in exceptional circumstances’ a clearance may be approved that would not otherwise be eligible.\textsuperscript{30}

\textbf{Revalidation and renewal of security clearances}

3.28 For clearances at the PV level, revalidation and renewal occurs every five to seven years.\textsuperscript{31} Revalidation is a full re-check of a person’s suitability to continue to hold a security clearance. This is in addition to an annual appraisal, where the clearance holder advises the AGSVA of information that may be relevant, and his or her supervisor also provides comments.\textsuperscript{32} The revalidation for clearances at the NV1 level is ten years.

3.29 The onus is on the clearance holder—and his or her supervisor—to advise the AGSVA of any changes in their life or other circumstances that may have an impact on their suitability to hold a clearance. The AGSVA advised that:

\begin{quote}
While there is no active checking by AGSVA [at NV1 level], both the holders of any level of security and their supervisors have a range of responsibilities and we are involved where they are invoked. So all holders of security clearances are responsible to advise to AGSVA changes in their personal
\end{quote}

\begin{itemize}
\item \textsuperscript{28} Ms Harmer, AGD, \textit{Proof Committee Hansard}, 20 March 2017, p 2.
\item \textsuperscript{29} Ms Perkins, AGSVA, \textit{Proof Committee Hansard}, 20 March 2017, p 6.
\item \textsuperscript{30} Attorney-General’s Department, \textit{Submission 1}, p 1.
\item \textsuperscript{31} Ms Perkins, AGSVA, \textit{Proof Committee Hansard}, 20 March 2017, p 9.
\item \textsuperscript{32} Ms Perkins, AGSVA, \textit{Proof Committee Hansard}, 20 March 2017, p 9.
\end{itemize}
circumstances or issues of concern, and their supervisors have a similar obligation.\textsuperscript{33}

3.30 The intention is for clearances to move to a continuous assessment process. The AGSVA stated that there is a current project to design a next-generation vetting process, and ‘a core element of that will be a mechanism for more continuous vetting of people’.\textsuperscript{34} These changes will need amendments to the information technology systems that support the security clearance process.

3.31 Representatives from AGD and the AGSVA were not able to give a timetable for the introduction of a continuous assessment process, other than to say there are a ‘range of policy and design issues’ that will need to be developed.\textsuperscript{35} The Committee notes the desirability of continuous assessment, and the inherent risks in relying on self-identification of potential concerns.

**Equivalence of security classifications**

3.32 The French and Australian systems of classifying information are not identical. The Agreement contains an equivalency table, which sets out the respective classification structures in both countries.\textsuperscript{36}

3.33 However, Article 5(3) also provides that Australian classified information at the ‘Secret’ level may be handled by France as either ‘Secret’ (its equivalent) or ‘Confidential Défense’ (a lower level classification in France). Australian ‘Secret’ information may only be handled as ‘Confidential Défense’ by France where it is practicable to do so.\textsuperscript{37}

3.34 Although this appears to be a downgrading of the classification for certain material, the Committee heard evidence that the protection given to this information by France will be appropriate to the information being transmitted. According to AGD, Article 5(3) gives Australia an option to choose to transmit material that would be handled domestically as ‘Secret’ with a marking allowing France to treat it as ‘Confidential Défense’.


\textsuperscript{34} Ms Perkins, AGSVA, *Proof Committee Hansard*, 20 March 2017, p 10.


\textsuperscript{36} Agreement, Article 5(2).

\textsuperscript{37} Agreement, Article 5(3).
3.35 AGD explained that the option under Article 5(3) gives effect to existing arrangements for cooperation between Australia, where information is exchanged for operational reasons. In each case, before transmitting material with this marking Australia would be confident that the French handling of information at the ‘Confidential Défense’ level would provide ‘appropriate protections having regard to the assessed degree of harm in the event that the information was disclosed’.38

3.36 The Committee notes AGD’s assurances about the equivalency of classifications for this particular type of information. The Committee did not receive detailed evidence on the actual handling of information at the relevant security classification levels, and has therefore not formed a view on the equivalency of the classifications.

Structures and frameworks under the Agreement

3.37 The Agreement identifies AGD as Australia’s National Security Authority responsible for the general control and implementation of the Agreement. Other Australian agencies may be designated or authorised as Competent Security Authorities responsible for carrying out or implementing particular requirements under the proposed Agreement.39

3.38 The Committee heard further information on how arrangements for the protection of information are being managed under the FSP. The AGSVA advised that they are currently working with the FSP team within the Defence Capability Acquisition and Sustainment Group in negotiating the protective security instructions with France. The instructions will be the ‘core contractual underpinnings of how the projects work’.40

3.39 A whole-of-government working group has also been set up to work with the FSP to ensure that ‘at this very earliest set-up issues around physical, personal and cybersecurity are deeply embedded into the design’. This includes engaging with the physical design of the FSP sites in Australia and France.41

---

39 NIA, para 10.
Contractors

3.40 In Chapter 2 of this report the security risk associated with contractors was noted; particularly where those contractors work with multiple companies or across several countries. In these circumstances there is an increased risk of a deliberate breach of classified information. This Agreement is one of the means for managing the risk associated with the ‘trusted insider’.

3.41 As noted earlier in the report, the company contracted to build the submarines, DCNS, is a commercial enterprise offering naval vessel construction services internationally. DCNS also has a contract to build submarines for the Indian navy, and in August 2016, over 20,000 pages of information concerning the Indian submarines was leaked by a sub-contractor to DCNS.42

3.42 The Committee asked the Department of Defence whether it was possible for a person working under a DCNS contract to also be working for another country. Despite repeated attempts by the Committee, the Department of Defence was unable or unwilling to supply this information before the date of consideration of this report. The Committee relies on information from government officials to complete its inquiries, and is frustrated by the Department’s failure to respond. The Committee finds this very disappointing.

3.43 Article 12 of the agreement requires that, before entering into a contract that will involve classified information, a party must:

- obtain written confirmation of the security clearance held by the relevant contractor or its personnel;
- obtain information on whether the relevant contractor is owned or controlled by a third party to the extent that information is known; and
- ensure that the classified contract contains, at a minimum, specific provisions for the protection of classified information.43

3.44 According to the NIA, Article 12:

---


43 NIA, para 19.
…also makes the relevant authorities of the Party in whose territory a contractor is located responsible for administering the relevant security requirements performed under a classified contract and ensuring the security conduct of contractors within its territory.\textsuperscript{44}

3.45 The Committee heard evidence on the nature and scope of the security requirements that will be in place under the Agreement. This covers not just personnel security clearances but also physical security and information security.

3.46 The AGSVA advised that they are currently working on a governance framework to set the security arrangements in relation to the FSP:

Those arrangements extend to all personnel working in the program, the classified information, which is shared, and the classified systems on which design work will be conducted. They extend to the segregation of technical data, including the need to separate combat system information and design data, and they will come in to the physical design of those locations. In the locations in France and Australia the design will work in a joint space, in what we would call an AUSTEO—an Australian-only facility—and a French-only facility, and we will be designing and accrediting all of the physical, personal and information security in those facilities to Australian standards, on our behalf.\textsuperscript{45}

3.47 In contrast to the previous 1985 agreement, this Agreement creates a high-level framework with ‘robust and detailed protections’. Individual contracts and subsequent agreements will contain further detail of the security requirements, and the nature of the intellectual property and its protection in each case.\textsuperscript{46}

3.48 The Committee considers that the requirements in the Agreement create a solid framework for the exchange protection of classified information. However the Committee notes that this will rely on the implementation of the requirements of the Agreement in the content of each separate contract and sub-agreement.

3.49 The Agreement sets out a minimum standard for the information protection requirements of sub-contracts. It is therefore open to include additional,

\textsuperscript{44} NIA, para 20.


\textsuperscript{46} Ms Harmer, AGD, \textit{Proof Committee Hansard}, 20 March 2017, p 2.
more stringent, clauses in future contracts in response to changing circumstances. The Committee urges the Department of Defence to consider including more rigorous clauses in future contracts.

Investigation and enforcement of breaches

3.50 The Agreement permits each party security inspection visits to areas and facilities within the other party’s territory where classified information is exchanged or generated under the Agreement for the purposes of ensuring implementation of the proposed Agreement. The Agreement contains a procedure for requesting and approving visits (Articles 13 to 15).47

3.51 Each party is obliged to notify the other of the details and circumstances of any unauthorised disclosure, destruction, misappropriation, loss of or access to classified information.

3.52 The party in whose jurisdiction the violation occurs must investigate the violation, institute disciplinary and/or legal proceedings, and advise the other party of the measures taken to ensure such a disclosure does not occur again (Article 16).48 AGD advised the Committee that this set up ‘very clear territorial lines’ as to who would investigate any breach, and responsibilities on the investigating party to notify the other party of the outcome, and any remedial action.49

Committee comment

3.53 The Committee notes recent efforts by the AGSVA to improve issues identified by industry in relation to the timeliness and sponsorship of personnel security clearances. It is too soon to see whether these improvements will fix the problems, and the Committee will be following up these concerns as they are raised again in future Committee inquiries.

3.54 In relation to the general processes for personnel security clearances, the Committee notes the desirability of continuous assessment of cleared personnel, and the need to continue to exchange information between organisations and across jurisdictions.

47 NIA, para 22.
48 NIA, para 23.
Recommendation 4

3.55 The Committee recommends that the government bring forward, as a matter of urgency, its work program to connect State and Federal law enforcement and judicial information systems with the personnel security clearance systems in order to maximise the information available to the vetting agency to monitor changes in circumstances.

Recommendation 5

3.56 The Committee supports the Agreement between the Government of Australia and the Government of the French Republic relating to the Exchange and Reciprocal Protection of Classified Information and recommends that binding treaty action be taken.

The Hon Stuart Robert MP

Chair

7 April 2017
A. Submissions

*Framework Agreement between the Government of Australia and the French Republic concerning Cooperation on the Future Submarine Program*

1. WA Labor
2. Australian Manufacturing Workers’ Union
3. Australian Industry and Defence Network WA
4. DCNS Australia Pty Ltd
   - 4.1 Supplementary to submission 4
   - 4.2 Supplementary to submission 4
5. Australian Industry & Defence Network of WA
6. University of New South Wales
Agreement between the Government of Australia and the Government of the French Republic regarding the Exchange and Reciprocal Protection of Classified Information

1 Attorney-General’s Department
B. Witnesses


Wednesday, 8 March 2017

ADELAIDE

BAE Systems Australia

Mrs Sharon Wilson, Head of Industrial Strategy

Australian Submarine Corporation

Mr Martin Edwards, General Manager, Future Submarines

Mr Jared Siviour, Future Submarine Commercial Manager

Defence SA

Mr Andy Keough, Chief Executive

University of Adelaide

Professor Michael Roy Webb, Director, Defence and Security

Australian Industry and Defence Network (Western Australia)

Mr Peter Horobin, Senior Adviser
Tuesday, 14 March 2017

CANBERRA

Mr Brett Walker, ANU College of Law

Australian Manufacturing Workers Union

Mr Steve McCartney, State Secretary (Western Australia)

Mr Warren Tegg, National Office

Australian Strategic Policy Institute

Dr Andrew John Davies

University of New South Wales, Faculty of Engineering

Professor Ian Gibson, Associate Dean (Industry and Innovation), Faculty of Engineering

Mr Mike Deeks

Department of Defence

Mr Marc Ablong, First Assistant Secretary, Naval Shipbuilding Taskforce

Mr Mark Cunliffe, Head, Defence Legal

Rear Admiral Greg Sammut, Head, Future Submarine Program

Ms Rebecca Skinner, Deputy Secretary, Strategic Policy and Intelligence

Dr Alex Zelinsky, Chief Defence Scientist

Department of Foreign Affairs and Trade

Mr Andrew Todd, Assistant Secretary, European Union and Western Europe Branch, Europe Division

DCNS Australia

Mr Brent Clark, Chief Operating Officer
Agreement between the Government of Australia and the French Republic regarding the Exchange and Reciprocal Protection of Classified Information

Monday, 20 March 2017

CANBERRA

Attorney-General’s Department

Ms Anna Harmer, First Assistant Secretary

Ms Juanita Naughton, Senior Legal Officer

Mr Doug Rutherford, Director

Department of Defence

Ms Celia Perkins, First Assistant Secretary, Security and Vetting Services

Mr Peter West, Assistant Secretary, Security Policy and Plans, Security and Vetting Service

Department of Foreign Affairs and Trade

Mr Andrew Todd, Assistant Secretary, European Union and Western Europe Branch
1.1 The Future Submarine Program (FSP) will be the largest Defence acquisition in Australia’s history; it is the key to our regional maritime defence strategy as outlined in the 2016 Defence White Paper; and it is the centrepiece of the Royal Australian Navy’s continuous shipbuilding program.

1.2 Labor supports both the strategic value and the potential for industry capacity-building that are inherent in the FSP. But these will only be delivered by the ongoing, close, stringent, and responsive supervision of all aspects of the FSP.

1.3 We recognise that Defence strategy, procurement, and operations fall within a distinctive sphere of policy and administration in the national interest. Nevertheless, Labor asserts the importance of rigorous and discerning analysis and oversight of the FSP, free of any tendency to regard such projects as being above ordinary review or criticism.

1.4 Defence strategy, procurement, and operations cannot be matters so arcane and rarefied as to prevent the full and proper supervision of parliament and government in relation to all relevant aspects of the national interest. Defence acquisitions should always be necessary, fit-for-purpose, and
cost-effective; and the consideration of opportunity costs involved in any acquisition should not be limited to foregone opportunities in Defence alone.

1.5 In supporting the binding treaty action, we make the following additional comments:

- It is paramount that Australia learns the lessons of the Collins Class submarine project, which included disputes over intellectual property that had the potential to seriously diminish Australia’s sovereign capacity to maintain and operate its submarines. Witnesses before the Inquiry into this Agreement have noted that Australia continued to be reliant on Kockums personnel for some on-board repairs to the Collins Class submarine, which reduced operational availability and sea-time. That must be avoided in the course of the FSP.

- The French government majority ownership of DCNS may not persist through the life of the FSP, which is expected to be several decades. Article 8(3) requires that France shall continue to ensure its obligations under the Agreement are met even in the event of a change of control of DCNS, but it’s not clear how this would occur in some circumstances – for example, if DCNS was to be controlled by a third-country entity.

- It is salient to reflect on the fact that while Article 8(1) recognises that “security of supply is crucial for the delivery of the Future Submarine, and Australia’s ability to maintain its sovereign operational and sustainment capability […] including in times of peace, crisis or armed conflict”, Article 23(5) allows either Party to terminate the Agreement if its ability to implement its obligations is “fundamentally impacted by exceptional events, circumstances or matters”. It is not hard to imagine that a grave crisis or an outbreak of armed conflict could constitute an “exceptional event”.

- The FSP cannot be considered a matter principally confined between Australia and France. The Future Submarine’s integrated combat weapons system will be provided by Lockheed Martin, and witnesses before the Inquiry have made the point that appropriate trilateral arrangements will be necessary if the objectives of the Agreement under consideration are to be achieved in areas like intellectual property, security of supply, security of information, sovereign capability, and Australian industry participation.

- Achieving the objective of maximising Australian industry participation [Article 3 (1)(h)] will not be easy or straightforward. We support
Recommendation 1 which calls for the Department of Defence to report back in the 2018 Winter Sittings of the Parliament on the acquisition of the necessary intellectual property and its ongoing maintenance, and, on the suggestion of Labor members, that this report also provide more detail in relation to the contractual and other arrangements that will secure maximal opportunities for Australian industry involvement.

- On that issue, it is worth noting that whereas Article 13 (Industry Cooperation) (2)(b), states that:

  “France shall […] not hinder French industry efforts regarding Australian industry involvement in the design, build and sustainment of the Future Submarine, with Australian companies able to bid for work, including as part of the supply chain, in all phases of the FSP on an equal basis with French companies.”

- It may have been stronger and more effective for the Article to read:

  “France shall […] not hinder French industry efforts regarding Australian industry involvement in the design, build and sustainment of the Future Submarine, with Australian companies able to bid for work, including as part of the supply chain, in all phases of the FSP on a preferred basis, all other things being equal.”

1.6 For that reason, Labor members of the Committee sought to have included Recommendation 2, below, and we are grateful for the Committee’s support for that inclusion.

**Recommendation 2**

In reference to Article 13(2)(b), the Committee recommends that government seeks to ensure that the further detailed agreements and arrangements have the effect of allowing Australian companies to bid for work in all phases of the FSP on a preferred basis, all other things being equal.

1.7 As noted in the Report [at 2.10], by selecting DCNS, Australia has chosen as its platform the Barracuda class which is the ‘latest, state-of-the-art, nuclear attack submarine’. There has been discussion by experts in the media about the possibility that the choice of the Barracuda platform may have been positively influenced by the option of developing a nuclear-powered version of the Future Submarine as the program develops. Such an option, if it has been contemplated, should not be a matter of secrecy, and would on the face of it be incompatible with Australia’s clear policy and national interest on that issue.
Michael Danby MP  
Deputy Chair

Senator Sam Dastyari

Senator Kimberley Kitching

Senator Jenny McAllister

Susan Templeman MP

Josh Wilson MP