



Australian Government

Australian Government response to the
Joint Standing Committee on Treaties:

Report 169

*Future Submarine Program – France,
Classified Information Exchange – France*

November 2017

Australian Government response to the Joint Standing Committee's report

Future Submarine Program – France Classified Information Exchange – France

The Government thanks the Committee for its consideration of the *Framework Agreement between the Government of Australia and the Government of the French Republic concerning Cooperation on the Future Submarine Program* and 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 provides the following responses to the Committee's recommendations.

The Government would also like to clarify the comments made during the hearing on 14 March 2017 in response to the Committee Chair's question as to whether it was the Department of Defence's view that DCNS was required to comply with the terms of 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). While DCNS is majority owned by the French Government, it is also partially owned by Thales and other entities. The Framework Agreement is between the Government of Australia and the Government of the French Republic, for the management of matters within the ability of the French Government to control. There are a range of commercial arrangements in place which govern the relationship between the Government of Australia and DCNS.

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.

Government response

The Government agrees with this recommendation.

The Government acknowledges that a lack of adequate intellectual property rights impaired the Commonwealth's ability to operate and sustain the Collins Class submarines as they entered service in accordance with Australia's requirements, resulting in delays, increased costs and restricted improvement and support of the Collins submarine capability.

The Future Submarine Program's approach to intellectual property has been predominantly driven by the lessons learnt from the Collins Submarine Program. From the outset of the Competitive Evaluation Process, a prime objective of the Future Submarine Program has been to establish a sovereign capability to operate and sustain the Future Submarine.

In the Framework Agreement with France and under the Design and Mobilisation Contract between the Commonwealth and DCNS, appropriate intellectual property rights to achieve this objective have been established.

The Department of Defence will provide a report to the Joint Standing Committee on Treaties during the 2018 Winter Sittings of the Parliament on the progress of obtaining the necessary intellectual property and its ongoing management.

Any report to Parliament will need to take into account commercial sensitivities with the transfer of technology to Australia with due regard given to the relevant commercial and public interest immunity considerations.

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.

Government response

The Government agrees in-principle with this recommendation

One of the Government's objectives is to ensure that Australian industry involvement is maximised to achieve the sovereign capacity to build, operate and sustain a regionally superior fleet of Future Submarines in Australia consistent with relevant capability, cost, and schedule considerations.

The Commonwealth retains the final decision on the selection of companies involved in the Future Submarine Program, having taken account of sovereignty objectives and capability, cost and schedule.

Recommendation 3

2.154 The Committee supports the Framework Agreement between the Government of Australia and the Government of the French Republic concerning Cooperation on the Future Submarine Program and recommends that binding treaty action be taken.

Government response

The Government agrees with this recommendation.

The Government accepts this recommendation and brought the Agreement into force on 5 May 2017 through an exchange of diplomatic notes with France providing notification that the domestic processes required for the treaty to enter into force had been completed.

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.

Government response

The Government notes this recommendation.

Developing better access to existing data holdings and developing effective information sharing mechanisms are key components of the Government's work to manage emerging threats to Australian Government information, assets and people.

Work is underway to improve the use and access to relevant information to improve vetting decision making. This work involves strengthening existing connectivity and developing additional avenues to receive information on a vetting subject's suitability to hold or maintain a security clearance. This will be developed in consultation with a broad range of Commonwealth, State and Territory agencies.

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.

Government response

The Government agrees with this recommendation.

The Government accepts this recommendation and brought the Agreement into force on 4 May 2017 through an exchange of diplomatic notes with France providing notification that the domestic processes required for the treaty to enter into force had been completed.

Government response to Additional Comments by Labor Members

The Government notes the additional comments by Labor Members and refers to its response to Recommendation 2 above.