

SUBMISSION NO. 1
Treaties presented on 20 January 2014



Australian Government
Department of Industry

Russell Chafer
Committee Secretary
Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600

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Dear Mr Chafer

Agreement on Scientific and Technological Cooperation between the Government of Australia and the Government of the Socialist Republic of Viet Nam (Canberra, 26 June 2013)

At the 3 March 2014 public hearing of the Joint Standing Committee on Treaties with regard to the above proposed treaty action, I took on notice a question from Senator Fawcett on behalf of the Department of Industry. The question, which followed on from my comment that “this treaty does not override the controls, obligations and rules under the Defence Trade Controls Act”, was:

“Is it explicit somewhere that there is a hierarchy of requirements? ... from a due diligence perspective I would be interested to see if that is actually articulated somewhere.”

Article VI of the proposed treaty states that “The Parties shall implement this Agreement in accordance with the prevailing laws and regulations of the Parties and the availability of appropriated funds in each country.” Articles II and VIII of the proposed treaty both state that activities conducted under the auspices of the treaty would be required to be “In conformity with the laws and regulations of their respective countries” and “consistent with its applicable laws and regulations”.

Further, the general rule of law regarding treaty making in Australia states that treaties entered into by the Australian Government do not form part of Australia's domestic law unless and until they are incorporated by legislation, and cannot give rise to rights and obligations unless they are so enacted into law. (High Court of Australia: *Minister for Immigration v Teoh* (1995) 183 CLR 273).

Yours sincerely

Lisa Schofield
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