



# APPENDIX 1

**Senator Alex Gallacher**  
Labor Senator for South Australia

## Submission 1

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Ms Jackie Morris  
Secretary  
Senate Committee of Privileges  
Parliament House  
CANBERRA, ACT, 2600

24 June 2021

**Re: Possible improper interference – Economics References Committee naval shipbuilding inquiry**

Dear Secretary,

Thank you for providing me an opportunity to supplement the evidence already provided to the committee which was also highlighted in Chapter 3 of the Senate Economics References Committee interim report into Australia's sovereign naval shipbuilding capability.

A key tenant of the functioning of our democracy is the ability of the Parliament to scrutinise the executive and, in this case, a directive by the Senate to inquire into Australia's sovereign naval shipbuilding capability through the Senate Economics References Committee.

There were two major instances that impacted the ability of the committee to do their job as passed by the Senate. First, was the refusal to provide documents, as directed by the Senate through the Order of Production of Documents, on two occasions. Senator Patrick has already observed that an OPD from the Senate is akin to a subpoena. It is not a request, rather it compels information to be provided.

Second, was the fact that the committee received heavily redacted documents. In one case, a previously supplied document accessed through FOI was re-supplied to the committee with even heavier redactions than the first version.

It is my understanding that the Senate/Committee set the conditions and not the Minister/Department as to when a question or request is answered and/or the level of information provided – the Parliament has primacy in these questions.



Throughout my time in the Senate, it has been my observation there has been a decline in the standards of public accountability, whether in this experience or through continued lack of timely, accurate and fully disclosed documents or responses to Senators. The fact that Senators have more success receiving information through FOI requests than through the processes of the Parliament is unacceptable and must now be addressed.

It is my recommendation the Privileges Committee suggest to the ANAO to conduct a Performance Audit to report to the Finance and Public Administration Committee on the ten largest Departments to assess whether they are complying with their obligations to respond to the Senate and its Committees in a timely and accurate matter with full disclosure.

Yours sincerely,

**Alex Gallacher**  
*Senator for South Australia*

## Submission 2



**SENATOR THE HON LINDA REYNOLDS CSC  
MINISTER FOR THE NATIONAL DISABILITY INSURANCE SCHEME  
MINISTER FOR GOVERNMENT SERVICES  
SENATOR FOR WESTERN AUSTRALIA**

Senator the Hon. Deborah O'Neill  
Chair, Committee of Privileges  
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Dear Senator O'Neill

I refer to your letter of 21 June 2021, inviting a submission to the Committee of Privileges (the Committee) in relation to the matters raised by Senator Patrick in correspondence tabled by the President on 12 May 2021 regarding:

- (a) Whether any conduct of the former Minister for Defence, Senator Reynolds, or any other person amounted to an improper interference with the Economics Reference Committee inquiry into Australia's sovereign naval shipbuilding capability; and*
- (b) If so, whether any contempt was committed in respect of those matters.*

I provide the following submissions in response to the matters raised:

1. I have previously made claims for Public Interest Immunity in my former capacity of Minister for Defence, including before the Senate on 11 November 2020, based on the advice of the Department of Defence (the Department) in relation to the information requested by the Senate Economics Reference Committee (SERC).
2. As articulated by the Secretary of Defence to the SERC during the Public Hearing on 5 February 2021, it was the view of senior Defence Officials and myself in my role as Minister, that the requested documents contain commercially sensitive information and it is not in the public or national interest to produce these plans.
3. As conveyed to the SERC during the hearing on 5 February 2021, this view is also supported by senior department officials in the Department of Finance (who have the portfolio responsibility for PGPA and CPR compliance), the Attorney-General's Department and the Department of Prime Minister and Cabinet.
4. In coming to the view that the requested information could not be released as requested, I consulted extensively with the Department and acted in good faith to support the release of as much information as could reasonably occur, without revealing sensitive commercial information or compromising national interest.

5. To assist the SERC in it's inquiry I also extended an invitation to voting members to receive a private briefing from the Department on the requested documents, including the opportunity to view the un-redacted documents subject to some minor conditions.
6. The Chair of the SERC did not accept this invitation.
7. I reiterate that it remains the view of the Government that the disclosure of the commercially sensitive information requested would be detrimental to the national interest and would cause significant damage to the commercial interests of the Commonwealth in connection with these critical naval shipbuilding programs.
8. On this basis, with reference to the matters raised by Senator Patrick as outline above, I submit that my conduct was at all times, reasonable and in good faith, and does not amount to improper interference with the SERC inquiry into Australia's sovereign naval shipbuilding capability.

I thank you for the opportunity to provide this submission and trust that this information clarifies the matters raised.

Yours sincerely

**Linda Reynolds**



**REX PATRICK**  
Senator for South Australia

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Chair  
Senate Standing Committee of Privileges  
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BY EMAIL: [priv.sen@aph.gov.au](mailto:priv.sen@aph.gov.au)

*Deb*  
Dear ~~Senator~~,

## **Privilege Referral – Senator Reynolds and Others**

### **Overview**

#### A need to be Informed

1. The Senate needs to be properly informed to perform its Constitutional duty, in this case oversight of the most expensive set of programs in Australia's procurement history.

#### Orders of Production

2. The Senate has the power to order the production of documents. The source of this power is Section 49 of the Constitution. The ability for a House of Parliament to do so was judicially tested in the High Court in *Egan v Willis* [1998] HCA 71; 195 CLR 424; 158 ALR 527; 73 ALJR 75 (19 November 1998).
3. A Senate Order for Production is similar to a Court subpoena/order to produce in terms of process, which in simple terms is dealt with as follows:
  - a. A subpoena/order is issued/made.
  - b. The recipient can comply with the order or contest it.
  - c. If the recipient contests the order they can be heard on the issue.
  - d. It is ultimately the Court that has the final say in respect of the contest.

#### In the Senate:

- a. An order is made.
- b. The recipient can comply with the order or advance a public interest immunity.

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- c. If the recipient contests the order they must spell out the harm that will occur if the order is complied with and the Senate considers this.
  - d. It is ultimately the Senate that has the final say.
4. Once step d is complete the order must be complied with. In the event of non-compliance, the Senate may impose on a person a penalty of imprisonment for a period not exceeding 6 months
  5. There is no discretion for a Minister or public official to not comply with the order, any more than they could for any other mandatory duty imposed upon them.
  6. Mention is made in *Odgers* that the Senate has formed a view that it would be unfair to impose a penalty on a public official who acts on the direction of a Minister. Respectfully, this is not correct. Whilst it is true that the Senate should always be respectful and fair at first instance, it cannot place fairness ahead of our constitutional duty that applies in each case. A Senate Order for Production directed at an official cannot be countermanded by a Minister. Any direction to not comply with an order of the Senate is not a lawful order. Public servants are not required to obey any orders, only lawful ones – see *Pirrie v McFarlane [1925] HCA 30; (1925) 36 CLR 170 (24 August 1925)*.

#### The Circumstances Related to This Referral

7. The Senate Economics Reference Committee (the Committee) has sought from the Department of Defence (the Department) information it requires to carry out its examination of Australia's Sovereign Naval Shipbuilding Capability (the Committee's work).
8. In the face of initial resistance to the Committee's request the Senate exercised its power to order production of documents (6 October 2020). This order was directed to the Secretary of the Department of Defence.
9. A public interest immunity was advanced by Senator Reynolds, the Minister for Defence at the time (19 October 2020). This was considered by the Senate.
10. The Senate subsequently rejected the public interest immunity claim (11 November 2020) and ordered the then Minister for Defence to comply with the order.
11. Both the former Minister and Secretary have refused to provide unredacted documents that the committee has requested.
12. There can be no doubt that the Committee's work has been obstructed by the refusal to provide the information subject to the order. In its interim report the Committee stated.

*At the same time, the committee has also become increasingly frustrated by the Department of Defence's lack of responsiveness to its requests for information. The committee now feels that Defence has impeded its work in examining Australia's sovereign naval shipbuilding program—an inquiry authorised by the Australian Senate. This is not only an affront to the committee but a contempt of the Parliament and, by extension, the Australian people. The committee has now raised a Matter of Privilege through the President of Senate regarding the Department's continued obstructionism [my emphasis].*

13. There is much at stake, noting the conduct of former Ministers and the Department is not simply isolated to the instance mentioned in the referral. The Privileges Committee should look to the Committee's views in Chapter Three of its interim report into Australia's Sovereign Naval Shipbuilding Capability.
14. The Privileges Committee should find that a contempt has occurred and should impose an appropriate sanction in relation to the obstruction of the Committee's work. The Privileges Committee should also recognise the systematic 'push back' occurring between the Executive and the Senate more broadly and respond to it accordingly.
15. A 'wet lettuce leaf' response from the Privileges Committee to this referral would damage the Senate. It would send a signal to the Executive and Departments that Senate orders can be ignored and rejected with impunity. It will also ensure the work of the Committee will not be completed.
16. The remainder of my submission will examine the contempt from a forensic legal and policy perspective and provide the Privileges Committee with additional information that goes to the lack of sensitivity of the documents.

## **Government Policy**

### **General**

17. The power of the Parliament to order the production of documents is recognised in Government policy and directions.
18. Relating directly to the referral, the Department of Finance's guidance regarding 'Confidentiality throughout the Procurement Cycle'<sup>1</sup>, is laid out in the Department's 'Principles' which states:

*8. Confidential information should be managed in accordance with any relevant legislation and confidentiality provisions in the contract. Irrespective of the terms of the contract, disclosure of a supplier's confidential information may be necessary in some cases, for example to a parliamentary committee.*

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<sup>1</sup> See Attachment 1 – also available at <https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>

19. The Finance Department's guidance on 'Approaching the market' (i.e. tenders) further states:

*6. Entities should inform potential suppliers that disclosure of information may be required, regardless of any contractual requirements to maintain confidentiality, to parliamentary committees, the Auditor-General, the public under the provisions of the FOI Act (unless exempted) and, if required, the courts. Request documentation and any draft contract should have clauses specifying that entities are required to disclose information in these circumstances.*

20. At the February 2021 hearing of the Economics Reference Committee, stated, Mr Dalton, asserted:

*The disclosure of these plans would also likely discourage future [inaudible] from fully participating in our Australian industry program. It would undermine ongoing procurement processes and the Commonwealth's ability to achieve value-for-money outcomes. It would limit our ability to secure effective contracts.*

21. In this Mr Dalton was quite mistaken. Those that participate in Commonwealth Government tenders and contracts understand that they do so with the possibility that information could be disclosed to a Senate Committee

22. I have attached to this submission a copy of standard contract provisions used by Defence which states:

*11.4.1 Each party shall ensure that Confidential Information provided by the other party under or in connection with the Contract or identified in Attachment N is not disclosed, except to the extent that:*

*a. the disclosure is permitted under clause 11.4.3;*

*b. the Confidential Information is in TD or Software and the disclosure is in connection with the exercise of the rights provided for in clause 5;*

*c. the Confidential Information is in the Contract Material and the disclosure is to a Commonwealth Service Provider in connection with the exercise of the rights provided for in clause 5.7.1b(i); or*

*d. the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).*

...

*11.4.3 The restriction in clause 11.4.1 does not apply to a disclosure of Confidential Information to the extent that the disclosure is: made by the Commonwealth, a Minister or Parliament in accordance with statutory or*

*portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister<sup>2</sup>; [emphasis added].*

#### DCNS Australian Industry Capability Plans

23. In relation to the DCNS Australian Industry Capability plan that is subject to the Senate's order, I also enclose a relevant provision of the tender contract that states that the confidentiality provisions of the contract do not prevent disclosure of the documents *as required by law*<sup>3</sup> and that specifically draw the attention of DCNS to the Australian Government's requirements to disclose information to the Parliament and its Committees<sup>4</sup>.

24. I ask that attachment 3 be held confidential. This information is subject to a confidentiality order of the Administrative Appeals Tribunal - submitted to the Committee under parliamentary privilege.

#### **Issues of Sensitivity**

##### General

25. Issues of sensitivity should not arise in relation to information that is provided in-camera to a committee. The provisions of the Parliamentary Privileges Act protect in-camera information with criminal sanction in cases of breach.

#### DCNS Australian Industry Capability Plan

26. None the less, I address the claims made over one particular document subject to the Order for Production, that being the DCNS Australian Industry Capability plan. I set out an FOI request chronology:

- 9 May 2017 – then Senator Xenophon sought access to the document in May 2017.
- 23 May 2017 - the Department refused the request on the basis that documents relevant to the request cannot be found or do not exist.
- 27 May 2017 – then Senator Xenophon sought an internal review of the Department's decision.
- 26 June 2017 - the Department found one document relevant to the request and refused access to the document in full.
- 16 July 2017 - then Senator Xenophon sought an Information Commissioner review of the Department's decision.

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<sup>2</sup> See Attachment 2 – full version available at [https://www1.defence.gov.au/sites/default/files/2020-12/sm\\_part\\_2\\_coc.pdf](https://www1.defence.gov.au/sites/default/files/2020-12/sm_part_2_coc.pdf)

<sup>3</sup> See attachment 3 – Clause 9.3 (Access and Release of Contract Information) of the Contract for Services to Support Selection of International s Partner for SEA 1000.

<sup>4</sup> See attachment 4 – Clause 18.2 (Australian Government Requirements) of the Contract for Services to Support Selection of International s Partner for SEA 1000.

- 11 May 2018 – the Department revised its decision and gave the applicant access to the document in part.

27. On 4 July 2019 the Information Commissioner made a decision in relation to the document finding that “*the relevant material is not exempt*” [from access] and ordered that “*The Department must now provide the applicant with an unedited copy of the document within 28 days of this decision*”. The decision is attached<sup>5</sup>.

28. For completeness, this matter was appealed by the Department to the Administrative Appeals Tribunal (AAT). After the Department agreed to release significantly more than was released on 11 May 2018, the parties agreed by consent to discontinue with the proceedings. The consent orders are attached<sup>6</sup>.

29. I attach the partially redacted plan<sup>7</sup> that was released to me as a result of the AAT proceedings. This is the same document that has been provided to the Economics Committee by the Department.

30. I further attached a completely unredacted version of the plan<sup>8</sup> to allow the Committee to see what the Department purports to be so sensitive it should not be released in-camera to the Committee.

31. I ask that attachment 8 be held confidential. This information is subject to an undertaking made by me to the Department during AAT proceedings that I would not publicly disclose the full document.

### Incompetent Claims

32. Notwithstanding para 25 above, the Department has been shown to be incompetent in making claims of sensitivity, through the FOI example directly above and from other FOI examples laid out in Chapter Three of the Economic Committee’s interim report.

33. Little weight should be given to the Department’s cries of ‘wolf’ in relation to the sensitivity of the full documentation set sought by the Committee.

### **Importance of the Documents to the Committees Work**

34. The documents sought are the Australian industry capability plans that were submitted as an integral part of the overall solution being proposed by the successful tenderers for the various projects within the Naval Shipbuilding Program.

<sup>5</sup> See Attachment 5 – also available at <http://classic.austlii.edu.au/au/cases/cth/AICmr/2019/53.html>

<sup>6</sup> See Attachment 6

<sup>7</sup> See attachment 7

<sup>8</sup> See attachment 8

35. The involvement/utilisation of Australian Industry during the design and build of the various naval vessels contracted for delivery is germane to achieving a sovereign capability.
36. Close examination of the DCNS Australian Industry Capability plan shows DCNS offered a technology transfer and industry participation plan as part of its bid. Yet the package offered was not contracted. This situation was examined in part in the 05 February 2020 public hearing of the committee (see Hansard Page 3 and 4). It appears that Defence selected DCNS and then abandoned all the offerings made by DCNS at the very commencement of the future submarine project.
37. As part of the inquiry the Committee needs to reconcile what was put forward by the successful tenderers in relation to Australian industry as part of their tender response, with what was subsequently contracted by Defence as a means of determining if Defence has maximised Australian industry involvement/utilisation.

### **Remedy**

38. As I have already stated, there can be no doubt that the Committee's work has been obstructed by the Department, to the point where the Committee's report back to the Senate has been substantially delayed. There is much at stake, noting the conduct of the Department is not simply isolated to the instance mentioned in the referral.
39. The Privileges Committee should find that both the former Minister and the Secretary of Defence have committed a contempt.
40. The obstruction in this matter is so serious as to have delayed the Committee making a final report to the Committee.
41. The former Minister, Senator Reynolds, should be fined the prescribed maximum fine permissible under Section 7 of the Parliamentary Privileges Act.
42. The Secretary of Defence, Mr Moriarty, to whom the original order is directed, should appear before the Committee and 1) provide it with the documents and 2) apologise to the Committee, the Senate and Australian public for obstructing the Committee's work. If he fails to do so he should be fined the prescribed maximum fine permissible under Section 7 of the Parliamentary Privileges Act.

43. It is important that the Committee get the documents in full. Noting the difficulties encountered to date the Privileges Committee should keep this inquiry open until the documents are in the possession of the Committee.

Yours faithfully,

Rex Patrick  
**Senator for South Australia**  
16 July 2021

**Attachments:**

1. Finance Department - Confidentiality throughout the Procurement Cycle
2. General Confidentiality Terms for the Department in Procurement Contracts.
3. Specific Confidentiality Terms (8) for the Department for DCNS' (now Naval Group) Australian Industry Capability Plan - **currently subject to an AAT confidentiality order.**
4. Specific Confidentiality Terms (18) for the Department for DCNS' (now Naval Group) Australian Industry Capability Plan – for the avoidance of doubt, this portion of the service contract is NOT subject to a confidentiality order.
5. The Information Commissioner's FOI review decision in relation to DCNS's Australian Industry Capability Plan
6. AAT Consent Orders in relation to DCNS's Australian Industry Capability Plan
7. The publicly available (FOI) version of the AAT of DCNS's Australian Industry Capability Plan
8. A fully un-redacted version of DCNS's Australian Industry Capability Plan provided to Senator Patrick for the purposes of parliamentary proceeding - **this is subject to a personal (non-legally binding) undertaking made by Senator Patrick to the Department to hold the document confidential.**

Attachment 1

# Confidentiality throughout the Procurement Cycle

## Principles

1. Entities undertaking procurement should be familiar with Australian Government legislation and policies relevant to confidentiality in procurement, including the *Privacy Act (1988)* (<http://www.comlaw.gov.au/Details/C2011C00179>), the *Freedom of Information Act 1982 (FOI Act)* (<http://www.comlaw.gov.au/comlaw/Legislation/Act1.nsf/asmade/bytitle/7B8C4D59E576C521CA256F720014FE29?OpenDocument>) and the *Australian Government Protective Security Policy Framework* (<http://www.ag.gov.au/pspf>).
2. Throughout the procurement process, the Australian Government's confidentiality interests must be appropriately protected.
3. When planning a procurement, entities should consider the nature of the procurement and whether it is likely to raise confidentiality issues for the Australian Government. Such issues can arise in a number of ways including where:
  - potential suppliers need to have access to confidential information in order to understand the procurement and lodge a submission;
  - the successful tenderer needs access to confidential information in order to fulfil the requirements of the contract; or
  - the information generated as a result of performing the contract is confidential.
4. Request documentation, including any draft contract, should reflect the entity's requirements for confidentiality and position on commercially sensitive information as assessed by the entity during the procurement planning process.
5. Entities must ensure all submissions are treated as confidential for the duration of the procurement process. Similarly, all submissions must be kept confidential after the award of the contract. However, this does not preclude the reporting on AusTender of data that may have been included in the successful submission that is in turn transferred to the ultimate contract.
6. Following the evaluation process, entities need to assess any supplier claims to confidentiality to determine whether the information should be treated as confidential. Entities should not agree to confidentiality clauses in contracts unless an assessment has determined, in accordance with this guidance, that the information to be covered by the clauses is confidential.
7. There are two broad types of confidentiality clauses used in contracts:
  - general confidentiality clauses, which either restate legislative obligations for confidentiality (such as under the *Privacy Act (1988)* (<http://www.comlaw.gov.au/Details/C2011C00179>)) or a secrecy provision) or set out a general understanding between the parties in relation to how they will deal with information when performing the contract; and
  - specific confidentiality clauses, which protect the confidentiality of:
    - all or part of the contract itself - such clauses would only be necessary where the contract needs to specify the information that the entity has determined is confidential; or
    - information obtained or generated in performing the contract – such clauses can be used to protect commercial information that an entity has determined is confidential or for the protection of Australian Government material. Examples of such clauses include:
      - the entity has access to the supplier's confidential intellectual property during the performance of the contract;
      - a supplier needs to have access to sensitive security information in order to perform the requirements of the contract;
      - new software is created under the contract giving rise to new confidential intellectual property; and;
      - the contract is for a consultant to prepare a confidential report which is expected to deal with sensitive public interest issues.
8. Confidential information should be managed in accordance with any relevant legislation and confidentiality provisions in the contract. Irrespective of the terms of the contract, disclosure of a supplier's confidential information may be necessary in some cases, for example to a parliamentary committee.

## Practice

### Procurement Planning

1. Entities should consider whether the nature of the procurement may raise confidentiality issues for potential suppliers. Such issues can arise in a number of ways including where:
  - potential suppliers include commercially sensitive information as part of a submission;
  - the preferred supplier seeks to protect commercially sensitive information contained in the contract; or
  - the preferred supplier seeks to protect commercially sensitive information during and after the performance of the contract.
2. Where a procurement may give rise to specific claims for confidentiality by potential suppliers, the planning of the procurement should take account of this by:

- o managing the extent to which potential suppliers are required to submit commercially sensitive information in their submissions;
- o assessing whether any potential claims to confidentiality would be consistent with the requirements of the particular procurement. For example, if an entity is engaging a consultant to write a report that the entity intends to publish or use in other ways, a potential claim for confidentiality by a supplier to protect intellectual property in relation to the report would be inconsistent with the entity's requirements for a published work;
- o assessing the longer-term implications of protecting information as confidential. For example, determining whether the information would need to be provided to a third party during a transition to a new supplier; and
- o clearly informing potential suppliers, for example in request documentation, of the entity's position in relation to supplier claims for confidentiality.

## Approaching the market

3. Where the confidentiality interests of the Australian Government need to be protected during an approach to market, entities may:
  - o require potential suppliers to sign confidentiality undertakings before being given access to confidential information. For more complex procurements it may also be appropriate to consider the use of secure facilities (for example a data room);
  - o use evaluation criteria to assess the ability of potential suppliers to comply with confidentiality requirements;
  - o make potential suppliers aware of any legislative requirements that may apply to them if they are awarded the contract; and
  - o use appropriate contractual provisions and include these in the draft contract issued with the Request for Tender.
4. Where supplier confidentiality issues may arise, entities can:
  - o invite potential suppliers with a claim for contractual confidentiality to specify in writing what information they seek to have kept confidential;
  - o include an evaluation criterion that allows claims for contractual confidentiality to be considered within the assessment of value for money. For example, potential suppliers may have different positions on the protection of intellectual property; and
  - o include an appropriate confidentiality clause in the draft contract.
5. Where confidentiality issues should not arise, or where the entity is not prepared to provide protection for commercially sensitive information after the award of the contract, the entity should:
  - o clearly state this position in the request documentation and the draft contract; and
  - o ask potential suppliers to agree in writing that they do not require any information to be kept confidential after the award of the contract.
6. Entities should inform potential suppliers that disclosure of information may be required, regardless of any contractual requirements to maintain confidentiality, to parliamentary committees, the Auditor-General, the public under the provisions of the FOI Act (unless exempted) and, if required, the courts. Request documentation and any draft contract should have clauses specifying that entities are required to disclose information in these circumstances.

## Handling and evaluating submissions

7. When evaluating submissions, it is open to the entity to assess the potential supplier's ability to meet the confidentiality obligations of the Australian Government, in accordance with stated evaluation criteria.
8. It is also open to the entity to evaluate submissions having regard to potential suppliers' claims for confidentiality where this is consistent with the stated evaluation criteria. The extent to which potential suppliers seek protection of particular information, such as intellectual property, may impact on the overall cost and risk of the proposal, for example transition and maintenance costs.

## Awarding a contract

9. The four below criteria comprise the 'Confidentiality Test' which must all be met for a supplier's commercial information to be considered confidential. These are:
  - o Criterion 1: The information to be protected is specifically identified. A request for inclusion of a provision in a contract that states that all information is confidential does not pass this test. Individual items of information, for example pricing, must be separately considered. However, where an entity contract may be used for future [cooperative procurements \(/node/3130\)](#) entities generally should not include provisions that would prevent other Commonwealth agencies from accessing the terms and conditions, including pricing of the contract.
  - o Criterion 2: The information is commercially 'sensitive'. The information should not generally be known or ascertainable. The specific information must be commercially 'sensitive' and it must not already be in the public domain. A request by a potential supplier to maintain the confidentiality of commercial information would need to show that there is an objective basis for the request and demonstrate that the information is sensitive.
  - o Criterion 3: Disclosure would cause unreasonable detriment to the owner of the information or another party. A potential supplier seeking to maintain confidentiality would normally need to identify a real risk of damage to commercial interests flowing from disclosure which would cause unreasonable detriment. For example, disclosure of internet price

lists would not harm the owner, but disclosure of pricing information that reveals a potential supplier's profit margins may be detrimental.

- Criterion 4: The information was provided under an understanding that it would remain confidential. This requires consideration of the circumstances in which the information was provided and a determination of whether there was a mutual, express or implied understanding that confidentiality would be maintained. The terms included in request documentation and in draft contracts will impact on this. For example, a request for tender and draft contract which included specific confidentiality provisions would support an assertion by a potential supplier that the entity has agreed to accept information on the understanding that it would remain confidential.
10. Categories of information that may meet the requirements of the Confidentiality Test include:
- internal costing information or information about profit margins;
  - proprietary information, for example information about how a particular technical or business solution is to be provided that may compromise the supplier's commercial interests elsewhere, including competing in future tender processes;
  - pricing structures (where this information would reveal whether a potential supplier was making a profit or loss on the supply of a particular good or service);
  - artistic, literary or cultural secrets. These may include photo shoots, historic manuscripts, or secret indigenous culture; and
  - intellectual property including trade secrets and other intellectual property matters where they relate to a potential supplier's competitive position.
11. Commercial information that would not generally be considered to be confidential include:
- performance and financial guarantees;
  - indemnities;
  - the price of an individual item or group of items;
  - rebates, liquidated damages and service credits;
  - performance measures;
  - clauses which describe how intellectual property rights are to be dealt with; and
  - payment arrangements.
12. When awarding a contract, if the entity decides that information should be kept confidential, appropriate confidentiality clauses should be included in the contract. The contract should also contain appropriate clauses to ensure information can be disclosed to Parliament, its committees or the Auditor-General to comply with accountability obligations.
13. The reasons for agreeing to any confidentiality provisions should be documented by the entity.
14. If an entity decides that the claimed material does not meet the requirements for confidentiality, the potential supplier must be advised of this and offered the opportunity to withdraw or provide further information in support of the claim for confidentiality. If agreement cannot be reached and a contract cannot be awarded, the entity may need to approach the next preferred potential supplier.
15. Where appropriate, entity should ensure that contract confidentiality provisions do not preclude the provision of contract information to other entities for comparative value for money analysis purposes.

## Quality Assurance

16. Entities should consider implementing quality assurance mechanisms when assessing suppliers' claims for confidentiality of contractual information to help ensure that confidentiality clauses are used appropriately.
17. For example, an entity operating a devolved procurement environment may specify that if a potential supplier requests that information remain confidential, then the line area conducting the procurement should refer the request to a central procurement and/or legal team for review before the contract is executed.
18. Entities could also provide guidance and offer training to assist procurers to understand their obligations.

## Reporting Confidentiality on AusTender

19. Appropriate quality assurance processes should also be implemented prior to uploading contract data on AusTender to ensure the accuracy of reported contract information.
20. Further guidance on reporting confidentiality can be found in [Resource Management Guide No. 423 Procurement Publishing and Reporting Obligations](#) ([/publications/resource-management-guides/procurement-publishing-and-reporting-obligations-rmg-423](#)).

## Management of contractual information

21. Where a supplier's confidential information is required to be disclosed and this is inconsistent with the terms of the contract, written notice should be given to the supplier concerned prior to disclosing the information.
22. Depending on the terms of the contract, confidential information may remain confidential for the period of the contract, a period specified in the contract, or as governed by legislation. Confidentiality of information should only be maintained for the length of time that the information remains sensitive. Generally this should not be for an unlimited period.
23. Where the sensitivity of confidential information has diminished, entities are open to negotiate with suppliers the removal of confidentiality provisions. If this situation arises, entities should reassess the information based on this guidance.

## TIPS

1. Even if a procurement process does not involve seeking submissions from potential suppliers, entities should ensure that before potential suppliers provide information, they are made aware of the Australian Government's reporting and disclosure obligations and the entity's position in relation to dealing with commercially sensitive information. This could be done using a draft contract or through other forms of communication with potential suppliers.
2. Entities should take care to ensure that when dealing with potential suppliers they do not make representations about maintaining the confidentiality of suppliers' commercial information that are inconsistent with the request documentation or the draft contract.

## Tips - Case Studies on the Confidentiality Test

### Business/delivery methodology

3. A potential supplier has identified as confidential in its submission the specification of how it delivers its services. The potential supplier claims (and the entity agrees) that the methodology has been developed using its 'smart' (original or innovative) solution and disclosure is likely to result in competitors adopting the methodology, diminishing its commercial value and adversely affecting the potential supplier's competitive position in the market. Only the potential supplier and a small number of its employees know the methodology. In the approach to the market, potential suppliers were invited to specify what, if any, information they sought to protect as confidential.
4. Assessment of the information against the confidentiality criteria would see:
  - o Criterion One – Met
    - The information is specifically identified, comprising information on the service delivery methodology for the services.
  - o Criterion Two – Met
    - The information has the quality of confidentiality as the information is known only to a small number employees and continuing non-disclosure of the 'smart' methodology provides the potential supplier with a competitive advantage.
  - o Criterion Three – Met
    - Disclosure of the information is likely to adversely impact the potential supplier's commercial interests as its competitors would be able to compete for work either using or adapting the methodology, which would remove the potential supplier's competitive advantage in this area.
  - o Criterion Four – Met
    - Since the entity has invited potential suppliers to specify what information is to be kept confidential and the service delivery methodology has been specified, it appears that the information was provided on the understanding that the information would be kept confidential.
    - Accordingly, it would be open to an entity to decide that the service delivery methodology meets the criteria of the Confidentiality Test. If an entity decided that the information should be protected as confidential the entity could agree to include an appropriate confidentiality clause in the contract.

### Service level measures

5. Service based contracts may contain measures to reward good service delivery and to reduce payment for poor service delivery. The measures set the levels for a reward/reduction regime.
6. A potential supplier requests that service level measures be treated as confidential on the basis that disclosure would enable competitors to estimate its cost structure and therefore damage its commercial interests. The service level measures have been specifically developed for the proposed contract and are not known to anyone except the supplier and the entity. The entity has not made any representations, either in the tender documentation, or verbally, to the effect that the service level measures would be treated as confidential.
7. Analysis of the service level measures against the criteria for confidentiality indicates that they do not meet the test:
  - o Criterion One – Met
    - The information identified as confidential is specific in so far as it includes the service level measures in the contract.
  - o Criterion Two – Not met
    - Although the information is not widely known, the supplier's pricing structure could not be estimated by reference to these measures alone. The relevant clause merely sets targets for the supplier.
  - o Criterion Three – Not met
    - Disclosure of the service level measures is unlikely to cause unreasonable detriment to the supplier, taking into account the conclusions in the previous point.
  - o Criterion Four – Not met
    - A mutual understanding of confidentiality of the service level measures does not exist at this point.
    - Whilst the service level measures in this simplified example would not be confidential based on the above analysis, agencies should be conscious that the quantum of financial imposts or rewards raises similar issues to those applicable to pricing information. For example, contracts that provide for profit to be at risk or shared depending on performance may disclose the supplier's underlying cost structure.

## Pricing information

8. Each request for confidentiality of pricing information should be considered on its merits.
9. Generally, the fact that disclosing pricing information would make life more difficult for the supplier is not sufficient reason. For example, a potential supplier may claim confidentiality on the basis that it does not want its competitors to know its prices. However, transparency of such information could, potentially, lead to increased competition and better value for money outcomes for the Government.
10. The examples below focus on assessing whether individual elements of a pricing methodology would be confidential. Although a specific element may be assessed as not meeting the confidentiality criteria, the complete methodology may nevertheless warrant protection if it meets the test for confidentiality, for example because it provides sufficient information to make a reasonable estimate of a supplier's profit margin.

## Total price

11. In contract negotiations, a potential supplier of human resource services asks an agency to maintain the total price of a proposed contract as confidential on the basis that release of the information would enable its competitors to estimate future bids by the organisation. In previous discussions with the potential supplier, the agency indicated that the Australian Government is required to report the contract price on AusTender. The request for tender also highlighted this requirement.
12. Analysis of the request indicates that the claim does not meet the test for confidentiality:
  - o Criterion One – Met
    - The information identified as confidential is specific, being the total price of the contract.
  - o Criterion Two – Not met
    - The total price does not have the quality of confidentiality after a contract is signed. Despite the potential supplier's claim, the information is not commercially sensitive in a contract because it does not provide sufficient detail to enable competitors in the market to determine the potential supplier's cost structures and profit margins.
  - o Criterion Three – Not met
    - Disclosure of the total price would not damage the service supplier's commercial interests given the issues raised in the previous point. In relation to the potential supplier's claims, future bids by the organisation would need to address the statement of requirements, which may involve the provision of different services, service levels, and possibly, use of different service delivery methods. Accordingly, disclosure of the total price in this case is unlikely to provide sufficient information for the potential supplier's competitors to determine the likely price of future bids by the supplier.
  - o Criterion Four – Not met
    - An understanding of confidentiality does not exist between the agency and potential service supplier at this point.
    - Based on this analysis, it would generally not be appropriate for an entity to agree to a request to maintain confidentiality as not all of the criteria have been met.

## Price of individual items or groups of items

13. While prices for individual items or groups of items of property or services would not generally be confidential, there may be some exceptions. Confidentiality would not be appropriate if the pricing information is generally known. However, if individual prices for items forming part of the contractual requirements would disclose underlying costs and profit on that item or other commercially sensitive information such as special discounts, (see below), a potential supplier may legitimately claim that the information is confidential.
14. A simple example of a case where a unit price would not be confidential is where a potential supplier has advertised the price that will be charged in a catalogue:
  - o Criterion One – Met
    - The information identified as confidential is specific information.
  - o Criterion Two – Not met
    - The information on the price of the item is publicly advertised and, as such, non-disclosure would not provide the potential supplier with any ongoing benefit.
  - o Criterion Three – Not met
    - Disclosure of the information is unlikely to adversely affect the commercial interests of the potential supplier, as the price is already publicly available.
  - o Criterion Four – Not met
    - In the absence of any explicit agreement that the unit price would be maintained as confidential, there would not be a mutual understanding of confidentiality.
    - Based on this analysis, it would not be appropriate for an agency to agree to a request to maintain confidentiality as the criteria have not been met.

## Discounts

15. A potential supplier may claim confidentiality of pricing information for reasons other than those discussed above. For example, it may be providing the entity with a considerable discount. The potential supplier may properly seek confidentiality of the discount information if it can establish that it would suffer unreasonable detriment if the level of discount offered were

disclosed. For example, the potential supplier may be able to demonstrate that its financial interests would be prejudiced if its other customers were to know of and seek similar levels of discount as those available to the entity, or that disclosure of discount information would enable competitors to determine the actual cost of the property or services.

16. As discounts may or may not be confidential, depending on the circumstances, entities should consider requests to maintain confidentiality of such information on a case-by-case basis.

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✉ [Procurement Agency Advice \(mailto:ProcurementAgencyAdvice@finance.gov.au\)](mailto:ProcurementAgencyAdvice@finance.gov.au)

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Audience

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Topic

Procurement

**Updated:** 15 June 2020

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Attachment 2

11.2.5 If the Contractor fails to notify the Commonwealth in accordance with clauses 11.2.2, 11.2.3 or 11.2.4 or fails to resolve the issue in the required manner, the Commonwealth may give the Contractor a notice of termination for default under clause 13.2.1e.

11.2.6 The Contractor shall include rights of the Commonwealth equivalent to those contained in this clause 11.2 in all Approved Subcontracts.

### **11.3 Waiver (Core)**

11.3.1 Failure by either party to enforce a condition of the Contract shall not be construed as in any way affecting the enforceability of that condition or the Contract as a whole.

11.3.2 The exercise of the Commonwealth's rights under the Contract does not affect any other rights of the Commonwealth under the Contract or otherwise, and does not constitute:

- a. an election to exercise those rights instead of other rights; or
- b. a representation that the Commonwealth will not exercise other rights.

### **11.4 Confidential Information (Core)**

11.4.1 Each party shall ensure that Confidential Information provided by the other party under or in connection with the Contract or identified in Attachment N is not disclosed, except to the extent that:

- a. the disclosure is permitted under clause 11.4.3;
- b. the Confidential Information is in TD or Software and the disclosure is in connection with the exercise of the rights provided for in clause 5;
- c. the Confidential Information is in the Contract Material and the disclosure is to a Commonwealth Service Provider in connection with the exercise of the rights provided for in clause 5.7.1b(i); or
- d. the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).

11.4.2 Each party shall ensure that, before disclosing Confidential Information under clause 11.4.1b or 11.4.1c, the recipient:

- a. executes a confidentiality deed poll substantially in the form of Annex B of Attachment I; or
- b. is otherwise subject to an obligation not to disclose the Confidential Information to any other person on terms substantially equivalent to those in Annex B of Attachment I.

11.4.3 The restriction in clause 11.4.1 does not apply to a disclosure of Confidential Information to the extent that the disclosure is:

- a. required or authorised by law;
- b. necessary for the conduct of any legal proceedings arising in connection with the Contract;
- c. made by the Commonwealth, a Minister or Parliament in accordance with statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister; or
- d. to any of the following persons:
  - (i) a legal adviser, insurer, financier, auditor or accountant of a party to the extent required to enable them to perform those roles;
  - (ii) a Related Body Corporate for internal management purposes;
  - (iii) any Commonwealth Personnel who needs to know the information in order to undertake their duties or functions; and
  - (iv) an employee, officer or agent of the Contractor who needs to know the information to enable the Contractor to perform its obligations under the Contract.

11.4.4 The Contractor shall not, in marking information supplied to the Commonwealth, misuse the term "Confidential Information" or equivalent terms.

- 11.4.5 Subject to clause 11.4.6, the Contractor shall deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth on the earlier of:
- the date specified in a notice given by the Commonwealth (acting reasonably); and
  - the time the documents and other material are no longer required for the purposes of the Contract.
- 11.4.6 The Contractor may retain, and will not be required to return or destroy, any documents containing or relating to Confidential Information of the Commonwealth, where such documents are:
- retained in order to comply with any legal, professional or insurance obligations; or
  - stored in electronic backups or records that are produced in the normal course where it is not reasonably practicable to destroy such backups or records.
- 11.4.7 If the Commonwealth gives a notice under clause 11.4.5a and the Contractor has placed or is aware that documents containing the Confidential Information of the Commonwealth are beyond its possession or control, the Contractor shall provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- 11.4.8 The Contractor, when directed by the Commonwealth in writing, agrees to destroy any document in its possession, power or control which contain or relate to any Confidential Information of the Commonwealth.
- 11.4.9 Return or destruction of the documents referred to in this clause 11.4 does not release the Contractor from its obligations under the Contract.

#### **11.5 Assignment and Novation (Core)**

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- 11.5.1 Neither party may, without the written consent of the other, assign its rights under the Contract or novate its rights or obligations under the Contract.
- 11.5.2 If the Contractor proposes to enter into any arrangement which will require the novation of the Contract, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation.
- 11.5.3 The Commonwealth may refuse to consent to an arrangement proposed by the Contractor under clause 11.5.2.

#### **11.6 Negation of Employment and Agency (Core)**

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- 11.6.1 The Contractor shall not represent itself, and shall ensure that Contractor Personnel do not represent themselves, as being employees, partners or agents of the Commonwealth.
- 11.6.2 None of the Contractor or Contractor Personnel shall, by virtue of the Contract, be, or for any purpose be taken to be, an employee, partner or agent of the Commonwealth.

#### **11.7 Commonwealth Access (Core)**

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- 11.7.1 During the performance of the Contract, the Contractor shall, subject to the Commonwealth giving five Working Days' prior notice to the Contractor, provide the Commonwealth Representative, and any person authorised by the Commonwealth Representative, with access to its premises, records and accounts for any purpose related to the Contract. However, in the event of an emergency, an accident or incident investigation, a threat to WHS or the Environment, the Commonwealth may require, and the Contractor shall provide, immediate access to the premises, records or accounts for any purpose related to such emergency, investigation or threat. The Commonwealth may copy any records or accounts for such purposes.
- 11.7.2 The Contractor shall ensure that Approved Subcontracts require Approved Subcontractors to give the Commonwealth Representative and any person authorised by the Commonwealth Representative, access to Approved Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy. However, in the event of an emergency, an accident or incident investigation, a threat to WHS or the Environment, the Commonwealth may require, and the Contractor shall ensure that the Approved Subcontractor provides, immediate access to the premises, records or accounts for

Attachment 4

**18. AUSTRALIAN GOVERNMENT REQUIREMENTS**

18.1 The Contractor should be familiar with the following Commonwealth policies:

- (a) Contract Publication policy as detailed in the DPPM;
- (b) Freedom of Information policy as detailed in the DPPM;
- (c) Hazardous Substances policy as detailed in the DPPM;
- (d) Work Health and Safety policy as detailed in the DPPM; and
- (e) Ozone Depleting Substances and Synthetic Greenhouse Gases policy as detailed in the DPPM.

18.2 The Contractor acknowledges that as a Commonwealth agency, the Commonwealth is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including disclosures to Ministers and other Government representatives, Parliament and its Committees. Any contract resulting from a subsequent procurement process will also be subject to these requirements, including the contractual provisions and any related matters, and thus may be disclosed to Ministers, other Government representatives, Parliament and its Committees.

**19. CONTRACTUAL CONDITIONS OF COMPETITIVE EVALUATION PROCESS**

19.1 The Contractor acknowledges and agrees that:

- (a) it will not, as part of preparing its Deliverables, providing Services or otherwise, enter into, or seek to enter into, exclusive teaming arrangements or other exclusive arrangements with any entity (including a foreign entity) involved in the construction or sustainment of, or the supply chain for, submarines in Australia for any purpose connected with the Future Submarine Program;
- (b) it is participating in the Competitive Evaluation Process on the terms of the Engagement Terms;
- (c) the Commonwealth's only obligations under this Contract, and in relation to the Competitive Evaluation Process, are to pay the Contractor the Contract Price for the provision of the Services, including the Deliverables, in accordance with clauses 12, 13 and 15, to comply with the conditions of use of licensed IP under clause 9.2 and to comply with its confidentiality obligations under clause 9.3; and
- (d) subject to the Commonwealth's obligations set out in clause 19.1(c), the Commonwealth is not liable to the Contractor for any costs, losses or damages relating to the Contractor's performance of this Contract and participation in the Competitive Evaluation Process.

19.2 The Contractor undertakes that it will, and will ensure that its officers, employees, agents and advisers, and any Approved Participating Third Party or Other Third Party, will at all times during the term of the Contract:

- (a) comply with any applicable laws (including foreign anti-corruption legislation or laws against anti-competitive conduct), and any Commonwealth policies regarding the offering of unlawful inducements in connection with the performance of the Contract and their participation in the Competitive Evaluation Process;
- (b) not perform the Services with any improper assistance of current or former Defence Personnel or a Defence Service Provider, or use information unlawfully obtained

Attachment 5



## *Nick Xenophon and Department of Defence (Freedom of information) [2019] AICmr 53 (4 July 2019)*

### **Decision and reasons for decision of Acting Australian Information Commissioner, Elizabeth Hampton**

<b>Applicant</b>	Nick Xenophon
<b>Respondent</b>	Department of Defence
<b>Third party</b>	Naval Group (formerly Direction des Constructions Navales Services)
<b>Decision date</b>	4 July 2019
<b>Application number</b>	MR17/00386
<b>Catchwords</b>	Freedom of Information — Whether disclosure would cause damage to the international relations of the Commonwealth — Whether documents contain deliberative matter prepared for a deliberative purpose — Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs — (CTH) <i>Freedom of Information Act 1982</i> ss 33(a)(iii), 47C, 47G(1)(a) and 55D(1)

## Decision

1. Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I set aside the decision of the Department of Defence (the Department) of 23 May 2017, as varied on 26 June 2017 and 11 May 2018. I substitute my decision that the relevant material is not exempt.
2. The Department must now provide the applicant with an unedited copy of the document within 28 days of this decision.

## Background

3. In 2015, the Australian Government commenced a Competitive Evaluation Process (CEP) to select an international partner to design and build the next generation of Australian submarines (the Future Submarines Program).
4. On 9 May 2017, Mr Nick Xenophon (the applicant) applied to the Department for access to:
  - ... the final future submarine Australian Industry Plan submitted to Defence by DCNS.
5. On 23 May 2017, the Department refused the applicant's request under s 24A of the FOI Act on the basis that documents relevant to the request cannot be found or do not exist.
6. On 27 May 2017, the applicant sought internal review of the Department's decision.
7. On 26 June 2017, the Department advised the applicant of its internal review decision. The Department found one document relevant to the request and refused access to the document in full. The document comprises the Australian Industry Plan (AIP) submitted by Naval Group (formerly known as Direction des Constructions Navales Services (DCNS)) as part of their response to the CEP. In making its decision, the Department relied on the deliberative processes exemption (s 47C) and the business information exemption (s 47G) of the FOI Act.
8. On 16 July 2017, the applicant sought IC review of the Department's decision under s 54L of the FOI Act.
9. On 9 March 2018, the Department undertook third party consultation with Naval Group under s 27 of the FOI Act. Naval Group responded to the consultation notice and objected to disclosure of parts of the document.
10. On 11 May 2018, the Department revised its decision under s 55G of the FOI Act,<sup>1</sup> and gave the applicant access to the document in part. In making its decision, the Department relied on ss 47C and 47G(1)(a), as well as the damage to international relations exemption (s 33(a)(iii)) of the FOI Act.
11. Accordingly, the issues to be decided in this IC review are:
  - whether the material the Department contends is exempt under s 33(a)(iii) is exempt, and
  - whether the material the Department contends is conditionally exempt under ss 47C and 47G is conditionally exempt, and if so, whether giving the applicant access to this material at this time, would, on balance, be contrary to the public interest.
12. In making my decision, I have had regard to the following:

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<sup>1</sup> Under s 55G(1) of the FOI Act, after an application is made for IC review, an agency or minister may decide to vary or substitute its own access refusal decision in relation to a request under s 15(1) of the FOI Act, if the variation or substitution would have an effect of 'giving access to a document.' It is my view that a valid decision can be made under s 55G which results in the release of additional material within the scope of the request — see Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* [10.71].

- the Department's internal review decision and reasons for decision of 26 June 2017
- the Department's revised decision and reasons for decision of 11 May 2018
- the material at issue
- the FOI Act, in particular ss 33(a)(iii), 47C, 47G(1)(a) and 55D(1)
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which agencies must have regard in performing a function or exercising a power under the FOI Act, in particular paragraphs [5.24] – [5.54], [6.52] – [6.88], [6.180] – [6.213] and [10.13]
- relevant case law, in particular *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945, and
- the parties' submissions.

## Damage to international relations exemption (s 33(a)(iii))

13. As discussed in the FOI Guidelines and IC review cases,<sup>2</sup> for a document to be exempt under s 33(a)(iii), it would need to be shown that disclosure would or could reasonably be expected to cause damage to the international relations of the Commonwealth. The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them.<sup>3</sup>
14. The FOI Guidelines relevantly explain:
 

The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible or speculative damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.<sup>4</sup>
15. As I discussed above at [7], the document comprises the AIP submitted by Naval Group in response to the CEP. The relevant material that the Department contends is exempt under s 33(a)(iii) comprises various parts of the AIP.

<sup>2</sup> See, *FOI Guidelines* [5.36] – [5.38]; *Nick Xenophon and Department of Health (Freedom of information)* [2018] AICmr 20; *William Summers and Department of the Prime Minister and Cabinet (Freedom of information)* [2018] AICmr 9; *Sea Shepherd Australia and Department of Immigration and Border Protection (Freedom of information)* [2017] AICmr 48; *Penny Wong and Department of the Prime Minister and Cabinet* [2016] AICmr 6; *James O'Neill and the Australian Federal Police* [2015] AICmr 50 and *'FM' and Department of Foreign Affairs and Trade* [2015] AICmr 31.

<sup>3</sup> *FOI Guidelines* [5.36].

<sup>4</sup> *FOI Guidelines* [5.37] (footnotes omitted).

16. The Department contends that disclosure of the material at issue could reasonably be expected to cause damage to Australia's relationships with foreign governments. In particular, the Department submits:

DCNS was consulted prior to the release of information in this document and objected to the disclosure of some material ...

... although DCNS is a private company, the French government is a significant shareholder. Damage to the business interests of DCNS necessarily damages the interests of the French Government.

Furthermore, there is a treaty between the Australian and the French governments, in respect of the cooperation on the Future Submarine Program.

*Attachment A: Framework Agreement between the Government of Australia and the Government of the French Republic concerning cooperation on the Future Submarine Program (the Agreement).*

The Agreement sets out various obligations, including in regards to the use and ownership of information. Article 6(2) specifically says that 'All title and ownership of Background Information shall remain the property of the owner of such Background Information', while article 6(5) says that Australia may only transfer French Background Information to any other Third Party with the prior written approval of France.

The AIP contains a substantial amount of French Background Information. Disclosing the exempt information without the agreement of the French Government would be inconsistent with the Agreement. Presently, the French Government does not consent to disclosure. (footnotes omitted)

17. In response to the Department's contentions, the applicant submits:

The treaty tendered is only useful in that it establishes the existence of a framework of confidentiality for information owned by the parties to the agreement – one of which is the French State.

DCNS is not a party to the treaty. As can be seen (for convenience) at 2(e) of the treaty, DCNS is a separate legal entity (a 'French Societe Anonyme', which has Australian equivalence to a public limited company). In recognition of this fact the Commonwealth of Australia has separate contracts between itself and DCNS (the 'Design and Mobilisation Contract' signed 30 September 2016 is partially in the publicly [sic] domain due to a Senate order for production but also due to Defence FOI 104/16/17) which includes legal arrangements in respect of confidentiality – for example, see clause 10.4 of that contract.

It is accepted that information owned by the French State but in the possession of DCNS would be covered by the treaty.

18. The Department further submits:

... the Treaty reflects the understanding which already existed between the Government of Australia and the Government of the French Republic, regarding the sharing of sensitive information (among other matters).

The Treaty highlights the mutually understood position that, in the course of the Future Submarines Program, Direction des Constructions Navales Services (DCNS) (now known as Naval Group) would bring to bear sensitive information about French submarine capabilities known to them through their particular

connection with the Government of the French Republic. The Treaty evidences the Government of the French Republic's expectation and the Government of Australia's acceptance that Australia will protect that confidential information from unauthorised disclosure.

... Given the available evidence of the Government of the French Republic's expectations of confidentiality, it is reasonable to expect that disclosure would damage Australia's relationship with France. Acting inconsistently with promises of confidentiality is likely to impair the quality of a relationship between nations.

... Defence acknowledges that Naval Group is not a signatory to the Treaty; however, that fact is not relevant to the applicability of the Treaty to this matter. Nations can agree to keep confidential information about any number of things. The relationship to which the s 33 exemption is directed is the relationship between the Government of the French Republic and the Government of Australia, which is Defence's point; it is the Government of the French Republic and the Government of Australia that are the signatories to the Treaty.

In any case, as previously stated, the Government of the French Republic is a significant shareholder in Naval Group. Article 1 of the Treaty, which is titled 'Purpose', specifically refers to Naval Group when it was known as DCNS, and states:

The purpose of this Agreement is to define the principles, the framework, and the initial means of support and cooperation settled between Parties for Australia's Future Submarine Program, considering Australia's enduring commitment to establish a long-term partnership with DCNS for the design and construction of the Future Submarine to be built in Australia, and the importance of maximising Australian industry involvement in these activities" [sic].

Defence submits the fact that the Government of the French Republic saw fit to sign this Treaty in these terms, and with a specific Article regarding the 'Ownership and Use of Information', reflects the sensitive nature of some of the information held by the relevant parties in the Future Submarine Program, and highlights how the unilateral release of that information by the Government of Australia could adversely impact on the relationship between the Government of the French Republic and the Government of Australia.

To the extent that the document contains or reveals sensitive French capabilities information, it would directly contravene the Treaty to disclose it. To the extent that it contains other information, Defence accepts it would not be a direct contravention of the Treaty to disclose it. However, that is not the whole picture.

The treaty formalises the understanding with respect to the most sensitive category of information expected to be exchanged in the Future Submarine Program. It does not, and does not purport to, reflect the entirety of the Government of the French Republic's expectations concerning information handling. It sets a tone, and reflects and embodies (by reference to a particular category of information) a broader pre-existing expectation about the confidential handling of information relevant to this sensitive capability.

It is accepted that the Government of the French Republic expects Australia to maintain the confidentiality of Naval Group proprietary information. Such an expectation is consistent with the nature of the project, relating as it does to key strategic military capabilities for both nations. Disclosing the document in issue would directly contradict that expectation of confidence, given the document is

expressed to be the property of Naval Group. It is reasonable to expect the Government of the French Republic to be concerned by such a disclosure of information owned by French interests, in light of the tenor of the Treaty and the expressed wishes of Naval Group that the documents not be released. The document in issue was, and remains, the property of Naval Group. This is evident from the footer to each page of the document.

... Whilst the Treaty is not determinative of the whole of the issue, the Treaty is one piece of relevant evidence supporting a finding that the Government of the French Republic expects the Government of Australia to respect the confidentiality of proprietary information generated by French parties and interests and that was only made available to Australia as part of the Future Submarines Program collaboration (including the current document in question).

19. I have considered the parties' submissions and I am not persuaded by the Department's line of reasoning that the 'Framework Agreement between the Government of Australia and the Government of the French Republic concerning cooperation on the Future Submarine Program' (the Treaty) is evidence that the French Government expects Australia to maintain confidentiality with respect to Naval Group's proprietary information. In its submissions, the Department had referred to Article 6(5) of the Treaty, which provides:

Australia may only transfer French Background Information to Third Parties with the prior written approval of France. The Parties shall mutually determine in writing the categories of French Background Information and the categories of Third Parties to which Australia may transfer the Information.

20. Article 6 of the Treaty pertains to 'Background Information' owned by France, which is defined as:

Information owned by a Party that is in existence prior to the entry into force of this Agreement or is subsequently brought into existence other than as a result of the performance of the FSP.<sup>5</sup>

21. As the applicant correctly pointed out, Naval Group is a separate legal entity to the French Government and is not a party to the Treaty. Rather, the Parties to the Treaty are 'the Government of Australia' and 'the Government of the French Republic'. Accordingly, Article 6 of the Treaty only applies if it can be demonstrated that the information contained in relevant parts of the AIP is owned by the French Government.
22. As I discussed above at [10], during this IC review, the Department revised its decision under s 55G of the FOI Act and provided the applicant with parts of the AIP. In light of the Department's submission that the AIP contains a substantial amount of French Background Information and that disclosure of this information without approval from the French Government would be inconsistent with Article 6 of the Treaty, my office made further inquiries with the Department as to whether it had sought 'prior written approval from France' in accordance with Article 6 of the Treaty when it decided to revise its decision and provide parts of the AIP to the applicant.

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<sup>5</sup> *Framework Agreement between the Government of Australia and the Government of the French Republic concerning cooperation on the Future Submarine Program*, signed 20 December 2016, 2017 ATS 7 (entered into force 5 May 2017) art 2(b).

23. The Department advised my office that it did not undertake consultations with the French Government with respect to the parts of the AIP that were released to the applicant. In particular, the Department said:

When Defence was advised by the OAIC on 23 February 2018 that its preliminary analysis was that the Plan be released in full, the document was reviewed and Naval Group was consulted about the newly proposed redactions. The French Government was not consulted, as the AIP is a Naval Group document that does not contain French Government Intellectual Property (IP). Article 6 of the Inter-Governmental Agreement (IGA) with France relates to Government owned IP and does not relate to the sharing/release of non-Government IP; therefore there was no requirement for Defence to seek the permission of the French Government to release the AIP under the IGA.

Nevertheless s33 of the FOI Act remains a defence for the redaction of the document. "The exemption is not confined to relations at the formal diplomatic or ministerial level" (FOI Guidelines December 2016). As Naval Group is a strategic asset of the French Government there would be a broader flow on effect from any breach of commercial confidence that arose from dealings of the Commonwealth with the company, "that would, or could be reasonably be expected to, cause damage to the international relations of the Commonwealth" (s33 of the FOI Act).

24. The Department's submissions with respect to the application of the Treaty to the AIP are inconsistent. In its earlier submissions, the Department contended that the AIP contains a substantial amount of French Background Information, the disclosure of which is subject to Article 6 of the Treaty. However, in its later submission, the Department clarified that Article 6 of the Treaty relates to the sharing or release of French Government intellectual property as opposed to the sharing or release of non-Government intellectual property, and that the AIP, as a Naval Group document, does not in fact contain French Government intellectual property. The Department further acknowledged that the requirement under Article 6 of the Treaty that approval be obtained from the French Government prior to disclosure of the AIP did not apply in this case.
25. I have examined an unedited copy of the document and I accept the Department's submission in [23] that the relevant material comprises non-Government intellectual property, the disclosure of which does not require prior written approval from the French Government under Article 6 of the Treaty. I agree with the Department that the Treaty evidences the French Government's expectation and Australia's agreement that Australia will protect sensitive French capabilities information from unauthorised disclosure. However, having regard to the clauses in the Treaty, I am of the view that such an expectation is limited to information that is owned by the French Government with respect to the Future Submarine Program. In this case, the Department conceded that Article 6 of the Treaty does not apply to the AIP, as the information contained in the AIP does not contain French Government intellectual property. Accordingly, I am not persuaded that the Treaty is relevant in determining whether disclosure of the relevant material in this case would harm the international relations of the Commonwealth.
26. The Department also contends that the French Government is a significant shareholder in Naval Group, and therefore damage to the business interests of Naval Group, such as through disclosure of information contained in the AIP against the wishes of Naval Group, would also damage the interests of the French Government, and consequently the international relations between the Commonwealth and the French Government.

27. However, as I discussed above at [21], Naval Group is a separate entity from the French Government. The mere fact that the French Government holds shares in Naval Group does not necessarily provide a rational basis for the contention that disclosure of the AIP, which was provided by Naval Group as part of a competitive process and does not comprise intellectual property of the French Government, would result in a reasonable expectation of damage to the international relations between the Commonwealth and the French Government. Other than a mere assertion that disclosure would cause damage to the business interests of Naval Group, and that the French Government is a significant shareholder of Naval Group, the Department has not provided any further evidence to support its contention that disclosure of the relevant material would damage the international relations of the Commonwealth with the French Government.
28. Under s 55ZB of the FOI Act, before determining that a document is not an exempt document under s 33, I must request that the Inspector-General of Intelligence and Security (IGIS) give evidence on the damage that would, or could reasonably be expected to, occur following disclosure of the document.
29. On 9 July 2018, I wrote to the IGIS with respect to the document in this case.
30. On 23 July 2018, the Acting IGIS declined my request to provide evidence on the basis that they were not appropriately qualified to give evidence in relation to the document (s 55ZC). In particular, the Acting IGIS said:

Taking into account the content of the documents, the basis of the department's claim and my qualification, as acting Inspector-General of Intelligence and Security, to give evidence I have come to the view that I am not appropriately qualified to give evidence in this matter. Accordingly, I decline – in accordance with section 55ZC of the FOI Act – the request to give evidence on the matters identified in your letter of 9 July 2018.
31. In this IC review, the Department bears the onus of establishing that its decision refusing the request is justified, or that I should give a decision adverse to the applicant (s 55D(1)).
32. Having regard to the information before me, I am not satisfied that the Department has discharged its onus in this case. The Department has not established any real and substantial grounds on which to base a claim that disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.
33. The relevant material is not exempt under s 33(a)(iii).

## Deliberative processes exemption (s 47C)

34. The Department also found the document conditionally exempt in part under s 47C.

35. As discussed in the FOI Guidelines and previous IC review decisions,<sup>6</sup> the main requirements of this public interest conditional exemption are that a document:

- contains or relates to ‘deliberative matter’ (s 47C(1))
- was prepared for a ‘deliberative purpose’ (s 47C(1))
- the material is not ‘purely factual’ or non-deliberative (s 47C(2)), and
- it would be ‘contrary to the public interest’ to give access at this time (s 11A(5)).

36. The term ‘deliberative matter’ is a shorthand term for opinion, advice, recommendation, consultation and deliberation that is recorded or reflected in a document.<sup>7</sup>

37. In the AAT decision of *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945, Deputy President Forgie explains that the meanings of the words ‘opinion’, ‘advice’ and ‘recommendation’ all involve consideration, followed by the formation of a view either about a certain subject or about a course of action and the subsequent transmission of that view.<sup>8</sup>

38. The FOI Guidelines explain that a deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one’s course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.<sup>9</sup>

39. In its submissions, the Department said:

I also note that paragraph 6.67 of the Guidelines state: “Where material was gathered as a basis for intended deliberations, it may be deliberative matter.”

In Defence’s decision of 26 June 2017, the decision maker stated that the Australian Industry Plan presented by DCNS (now Naval Group) (as a component of its proposal for the Future Submarine Competitive Evaluation Process (CEP)) formed part of the material considered by the Commonwealth in a deliberative process for determining the most suitable partner for the delivery of the Future Submarine.

... the information considered exempt is where Naval Group either proposed or intended to provide a recommendation to the Commonwealth whereby the

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<sup>6</sup> Generally, see *FOI Guidelines* [6.52]–[6.88]; *William Summers and Department of the Prime Minister and Cabinet (Freedom of information)* [2018] AICmr 9; *Dan Conifer and Department of the Prime Minister and Cabinet (No. 2) (Freedom of information)* [2017] AICmr 117; *Allister McCaffrey and Australian National University (Freedom of information)* [2017] AICmr 77; *‘KV’ and Indigenous Land Corporation (Freedom of Information)* [2017] AICmr 17 and *John Quinn and Australian Taxation Office* [2016] AICmr 94.

<sup>7</sup> *Parnell and Attorney-General’s Department* [2014] AICmr 71 [38].

<sup>8</sup> *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945 [39].

<sup>9</sup> *FOI Guidelines* [6.58] (footnotes omitted).

Commonwealth then determined the most suitable partner. In other words, this very information was used by the Commonwealth in a deliberative process where a partner was selected.

40. In response to the Department's submissions, the applicant said:

After considering the cases cited and after reading the FOI Guidelines it is difficult to comprehend a final plan produced by DCNS as a last submission to Government being considered in any way deliberative. From the Commonwealth's perspective, the document can only be viewed as a report in response to a tender and an input to a deliberative tender evaluation (that evaluation is outside the scope of my request).

Defence casts a net so broadly as to capture any ongoing process of the Department within the 47C exemption; any report produced that might assist in a procurement decision. Noting the objectives of the Act, to increase public participation in government processes, a blanket exemption of documents related to procurement of goods and services for public purpose using public money would be an anomaly.

Finally in relation to s 47C, it is not clear that the Department is entitle [sic] to make a deliberative exemption claim in the context of an external document (it contains no 'thinking' on behalf of the Department).

41. I accept the Department's submission that the AIP was provided to the Department as part of the CEP, which consists of a deliberative process, as it involves the selection of an international partner to design and build the next generation of Australian submarines. However, as I discussed above at [35], for the exemption under s 47C to apply to a document, it must also be shown that disclosure of the document would disclose 'deliberative matter'.
42. I have examined an unedited copy of the document, and I am not satisfied that the material the Department contends is exempt under s 47C contains any opinion, advice or recommendations, nor is there a weighing up or evaluation of competing arguments or considerations.
43. Accordingly, although the AIP was provided to the Department as part of the deliberative process to determine the most suitable partner for the delivery of the Future Submarine Program, the relevant parts of the document that the Department contends is exempt under s 47C does not contain deliberative matter for the purposes of s 47C.
44. The parts of the document that the Department contends are exempt under s 47C are not conditionally exempt under this provision.
45. Having found that the relevant material is not conditionally exempt, I am not required to consider whether giving the applicant access to this material would be contrary to the public interest under s 11A(5).

## Business information exemption (s 47G)

46. The Department also found the document conditionally exempt in part under s 47G(1)(a).

47. As discussed in the FOI Guidelines and in IC review cases,<sup>10</sup> a document is conditionally exempt under s 47G where disclosure would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking (business information) or where the disclosure of the information would, or could reasonably be expected to, unreasonably affect the person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs (s 47G(1)(a)).

## Business information

48. The FOI Guidelines explain that the business information exemption is intended to protect the interests of third parties dealing with the Government.<sup>11</sup> The operation of s 47G depends on the effect of disclosure rather than the precise nature of the information itself.<sup>12</sup> Notwithstanding this, the information must have some relevance to a person in respect of their business or professional affairs or to the business, commercial and financial affairs of the organisation.<sup>13</sup>
49. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.<sup>14</sup> Accordingly, in this IC review, for the s 47G conditional exemption to apply, the documents must concern the third party's money-making affairs.
50. In its reasons for its internal review decision, the Department said:
- Upon examination of the documents, I identified information unique to the (subsequently successful) bidder such as DCNS' proprietary methods of submarine design, the transfer of technology to customers and supply chain proposals for particular supplies which, if released, would reasonably be expected to have a substantial adverse effect on the commercial position of DCNS and the Commonwealth.
51. I have examined an unedited copy of the document and I am satisfied that the relevant material comprises Naval Group's business information for the purposes of s 47G, as it relates to Naval Group's proprietary methods and proposals with respect to its business affairs.

## Unreasonable adverse effect

52. In deciding whether disclosure of a document containing business information would be unreasonable for the purpose of s 47G(1)(a), a decision maker must balance the public interest and the private interests of the business.
53. The FOI Guidelines explain:
- The presence of 'unreasonably' in s 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the

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<sup>10</sup> Generally, see *FOI Guidelines* [6.180] - [6.213]; *Paul Farrell and Department of Home Affairs (Freedom of information)* [2019] AICmr 5; *'PG' and Department of Infrastructure, Regional Development and Cities (Freedom of information)* [2018] AICmr 60; *Chris Vedelago and Airservices Australia (Freedom of information)* [2018] AICmr 45; *Paul Farrell and Department of Home Affairs (No 3) (Freedom of information)* [2018] AICmr 39 and *'OG' and Australian Securities and Investments Commission (Freedom of information)* [2018] AICmr 31.

<sup>11</sup> *FOI Guidelines* [6.185].

<sup>12</sup> *FOI Guidelines* [6.184].

<sup>13</sup> *FOI Guidelines* [6.184].

<sup>14</sup> *FOI Guidelines* [6.192].

factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. A decision maker must balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of s 47G(1)(a); but this does not amount to the public interest test of s 11A(5) which follows later in the decision process.<sup>15</sup>

54. The FOI Guidelines further explain:

The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. For example, the disclosure of information that a business' activities pose a threat to public safety, damage the natural environment; or that a service provider has made false claims for government money may have a substantial adverse effect on that business but may be reasonable in the circumstances to disclose. Similarly, it would not be unreasonable to disclose information about a business that revealed serious criminality. These considerations require a weighing of a public interest against a private interest, preserving the profitability of a business, but at this stage it bears only on the threshold question of whether the disclosure would be unreasonable.<sup>16</sup>

55. In its further submissions, the Department said:

Information has been identified specific to Naval Group's business information and where Naval Group may have reached out to other companies. Defence considers release of any information regarding potential suppliers for the Future Submarine Program may undermine those companies' ability to negotiate in future.

...

Further, as stated at paragraph 21 of Defence's decision of 26 June 2017, the *Australian Industry Plan* presented by DCNS under the CEP formed part of the material considered by the Commonwealth in a deliberative process for determining the most suitable partner for the delivery of the Future Submarine. Being part of its CEP proposal, a wide range of sensitive proprietary information flows throughout the document, and its disclosure would disadvantage DCNS commercially in its future international business activities.

The disadvantage posed would be that other companies would have an advantage in identifying how Naval Group specifically conduct its business which would adversely affect Naval Group's business affairs. Further, should the information be released there would be a loss of trust between the companies that Naval Group deals with. The companies would be less willing to provide and share information should the information be disclosed. As such, disclosure would reasonably be expected to adversely affect the business affairs of Naval Group.

56. The Department further submits:

While the final version of the Australian Industry Capability Plan (which follows on from the AIP) has been submitted to the Commonwealth, the Commonwealth has not yet accepted this document as the final version.

Therefore parts of this document remain sensitive, with relevant arrangements between DCNS and relevant businesses and organisations still to be negotiated

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<sup>15</sup> FOI Guidelines [6.187] (footnotes omitted).

<sup>16</sup> FOI Guidelines [6.188] (footnotes omitted).

or finalised. Release of this information at this time would weaken DCNS's commercial position in undertaking relevant negotiations.

57. As I discussed above at [9], the Department undertook third party consultations with Naval Group in accordance with s 27 of the FOI Act. In response to the Department's consultation notice, Naval Group objected to disclosure of various parts of the document. In particular, Naval Group contended that disclosure of the relevant material would have an adverse effect on its commercial relationships and future negotiations with the companies named in the relevant material.
58. In his further submissions, the applicant relevantly said:

Defence cannot simply state that the release of the redacted information in the document would or could reasonably be expected to have an adverse effect on DCNS' business, commercial or financial affairs. They need to provide supporting evidence as to the assertion.
59. I have considered the submissions provided by the Department and Naval Group. Although the Department and Naval Group submit that the information contained in the document is sensitive in nature, and that disclosure would adversely affect Naval Group's commercial relationship with the companies named in the relevant material, the Department and Naval Group have not provided any further evidence to support their contentions, nor have they adequately explained how or why disclosure of the relevant material would, or could reasonably be expected to, result in the outcome that the Department and Naval Group claims.
60. Further, Naval Group submitted the AIP as part of a competitive process in relation to the Future Submarine Program. The AIP comprises information relating to Naval Group's proposals as to how it intends to deliver various aspects of the Future Submarine Program if Naval Group was selected as the successful bidder. Given that the information in Naval Group's CEP proposal, which includes the AIP, was used to inform the Commonwealth's decision to select Naval Group as the most suitable partner for the delivery of the Future Submarine Program, I consider that disclosure would further transparency and accountability with respect to the information provided by Naval Group to persuade the Commonwealth that it is best placed to deliver the Future Submarines Program.
61. Accordingly, I am not persuaded that the Department has adequately discharged its onus in establishing that disclosure of the relevant material in this case could reasonably be expected to have an unreasonable adverse effect on Naval Group's lawful business, commercial or financial affairs.
62. The relevant material is not exempt under s 47G(1)(a).
63. As I have found that the relevant material is not exempt under s 47G(1)(a), it is unnecessary for me to consider whether giving access to conditionally exempt material would be contrary to the public interest for the purposes of s 11A(5).

**Elizabeth Hampton**

Acting Australian Information Commissioner

4 July 2019

## **Review rights**

### **Review by the Administrative Appeals Tribunal**

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website ([www.aat.gov.au](http://www.aat.gov.au)) or by telephoning 1300 366 700.

### **Making a complaint to the Commonwealth Ombudsman**

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

### **Accessing your information**

If you would like access to the information that we hold about you, please contact [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). More information is available on the **Access our information** page on our website.

Attachment 6



# Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL )  
 )  
FREEDOM OF INFORMATION DIVISION )                      No: 2019/4649

**Re: Secretary, Department of Defence**  
Applicant

**And: Nick Xenophon**  
Respondent

**And: Naval Group SA and Naval Group Australia Pty Limited ("Naval Group")**  
Other Party

**TRIBUNAL:** Deputy President Britten-Jones

**DATE:** 16 December 2019

**PLACE:** Adelaide

In accordance with subsection 42C(1) of the *Administrative Appeals Tribunal Act 1975*:

1. the parties have reached an agreement as to the terms of a decision of the Tribunal that is acceptable to the parties; and
2. the terms of the agreement have been reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
3. the Tribunal is satisfied that a decision in those terms is within the powers of the Tribunal and is appropriate to make.

Pursuant to subsection 42C(2) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal varies the decision under review to provide:

1. the respondent is to be granted access under the *Freedom of Information Act 1982* (Cth) to those parts of the document in issue as are referred to in the schedule attached to this order, entitled:

Secretary, Department of Defence, Nick Xenophon and Naval Group SA and Naval Group Australia Pty Ltd (2019/4649) – Schedule of material for release November 2019.

2. the document is otherwise exempt from disclosure under the *Freedom of Information Act 1982* (Cth).



.....[sgnd].....  
P BRITTEN-JONES  
(Deputy President)

**ATTACHMENT TO DECISION BY CONSENT IN 2019/4649**

**Secretary, Department of Defence, Nick Xenophon and Naval Group SA and  
NavalGroup Australia Pty Limited (No 2019/4649)**

Schedule of material for release November 2019

<b>PAGE #</b>	<b>Material for release</b>
12/62	Figure in centre of page , 1 <sup>st</sup> of 3 columns within figure
15/62	Line 12 (1 <sup>st</sup> line of 2 <sup>nd</sup> paragraph under heading 2.3.3, 1), 7 <sup>th</sup> word to last word Lines 13 - 14 in full Line 15, 1 <sup>st</sup> word to 10 <sup>th</sup> word
16/62	Line 21, entire line Lines 25 - 26 in full Lines 30 – 33 in full Lines 36 – 39 in full Line 42, entire line
17/62	Lines 3 – 4 in full Lines 8 – 10 in full Lines 16 – 18 in full Lines 22 – 26 in full Lines 28 – 29 in full Lines 31 – 35 in full
19/62	Line 26, 3 <sup>rd</sup> word to 12 <sup>th</sup> word
21/62	Table 2, rows 1 – 4, column 1, in full Table 2, row 1, column 2, in full Table 2, row 1, column 4, lines 2 – 4, in full Table 2, row 2, column 4, line 3, 1 <sup>st</sup> word to 7 <sup>th</sup> word; and last 2 words Table 2, row 2, column 4, lines 4 – 5 in full Table 2, row 2, column 4, line 6, first two words Table 2, row 3, column 4, line 1, entire line Table 2, row 4, column 4, lines 2 – 3, in full
22/62	Line 5, 7 <sup>th</sup> word to 12 <sup>th</sup> word Line 6, first two words Line 10, 4 <sup>th</sup> and 5 <sup>th</sup> words

PAGE #	Material for release
23/62	Table 3, row 1, column 3, lines 3 – 7, in full
24/62	Table 3, row 5 (final row), column 3, lines 1 – 9, in full
28/62	<p>Diagram in top left corner, heading of blue centre square, entire line</p> <p>Diagram in top left corner, headings of 3 text boxes contained within blue centre square</p> <p>Diagram in top left corner, 1<sup>st</sup> text box contained within blue centre square, all text <u>other than</u> the last 6 lines</p> <p>Diagram in top left corner, 2<sup>nd</sup> text box contained within blue centre square, all text <u>other than</u> lines 5-6, and 14-15</p> <p>Diagram in top left corner, 3<sup>rd</sup> text box contained within blue centre square, all text <u>other than</u> lines 5-6, and 13-14</p> <p>Diagram in top right corner, heading of blue centre square, entire line</p> <p>Diagram in top right corner, headings of 1<sup>st</sup> and 2<sup>nd</sup> text boxes contained within blue centre square</p> <p>Diagram in top right corner, 1<sup>st</sup> text box contained within blue centre square, all text <u>other than the</u> last 2 lines</p> <p>Diagram in top right corner, 2<sup>nd</sup> text box contained within blue centre square, all text <u>other than</u> lines 2-8</p> <p>Diagram in bottom left corner, heading of blue centre square, entire line</p> <p>Diagram in bottom left corner, headings of 3 text boxes contained within blue centre square</p> <p>Diagram in bottom left corner, 1<sup>st</sup> text box contained within blue centre square, all text <u>other than</u> last 7 lines</p> <p>Diagram in bottom left corner, 2<sup>nd</sup> text box contained within blue centre square, in full</p> <p>Diagram in bottom left corner, 3<sup>rd</sup> text box contained within blue centre square, in full</p> <p>Diagram in bottom right corner, heading of blue centre square, entire line</p> <p>Diagram in bottom right corner, headings of 3 text boxes contained within blue centre square</p> <p>Diagram in bottom right corner, 1<sup>st</sup> text box contained within blue centre square, all text <u>other than</u> lines 4, and 18-23</p> <p>Diagram in bottom right corner, 2<sup>nd</sup> text box contained within blue centre square, all text <u>other than</u> lines 2-4, and 2<sup>nd</sup> word of line 5</p> <p>Diagram in bottom right corner, 3<sup>rd</sup> text box contained within blue centre square, all text <u>other than</u> lines 2-4, and 2<sup>nd</sup> word of line 5</p>

PAGE #	Material for release
29/62	<p>Diagram in top centre of page, heading of blue centre square, entire line</p> <p>Diagram in top centre of page, headings of 3 text boxes contained within blue centre square</p> <p>Diagram in top centre of page, 1<sup>st</sup> text box contained within blue centre square, all text <u>other than</u> lines 8-10 and lines 26-28</p> <p>Diagram in top centre of page, 2<sup>nd</sup> text box contained within blue centre square, all text <u>other than</u> lines 5-7</p> <p>Diagram in top centre of page, 3<sup>rd</sup> text box contained within blue centre square, all text <u>other than</u> lines 5-7</p>
33/62	<p>Line 18, last 4 words</p> <p>Line 19, 1<sup>st</sup> word to 6<sup>th</sup> word</p> <p>Lines 27 – 28, in full</p>
43/62	<p>Line 12, last 2 words</p> <p>Line 13, 1<sup>st</sup> word to 10<sup>th</sup> word</p>
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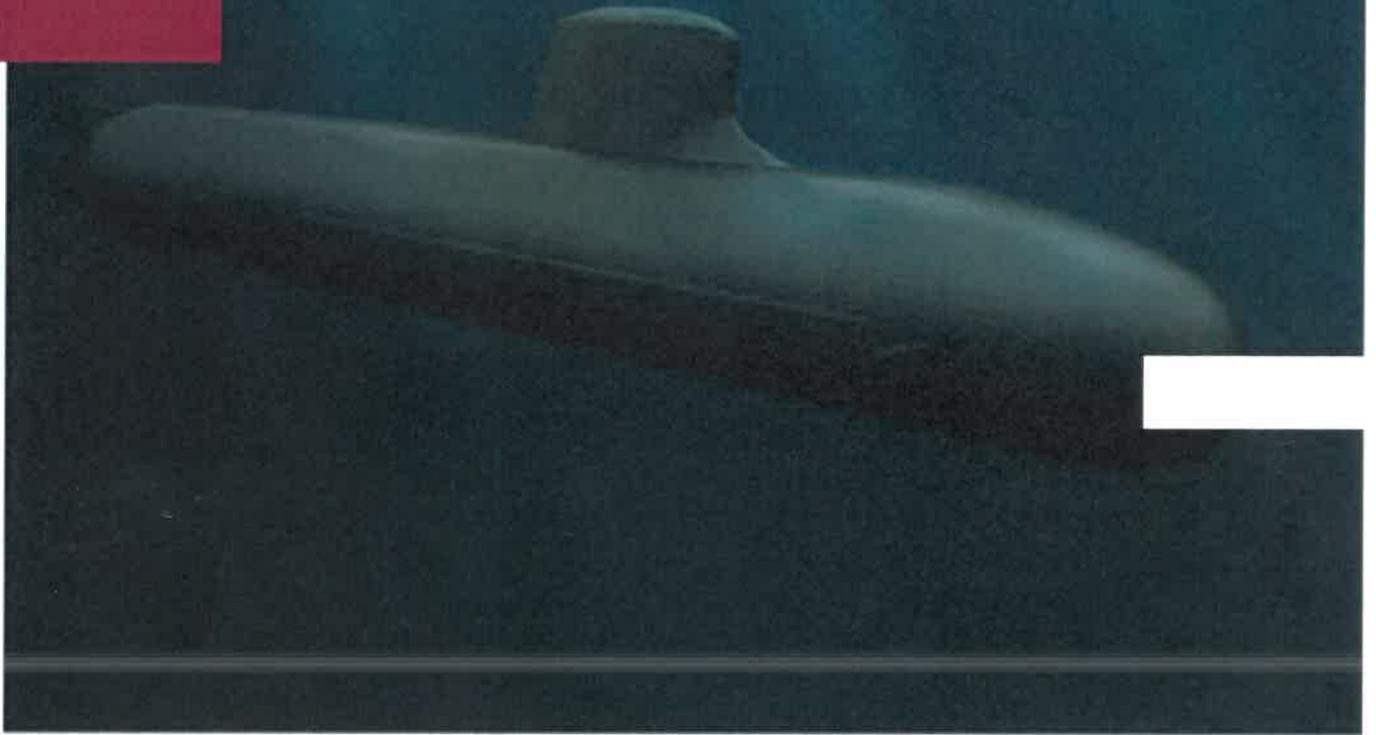
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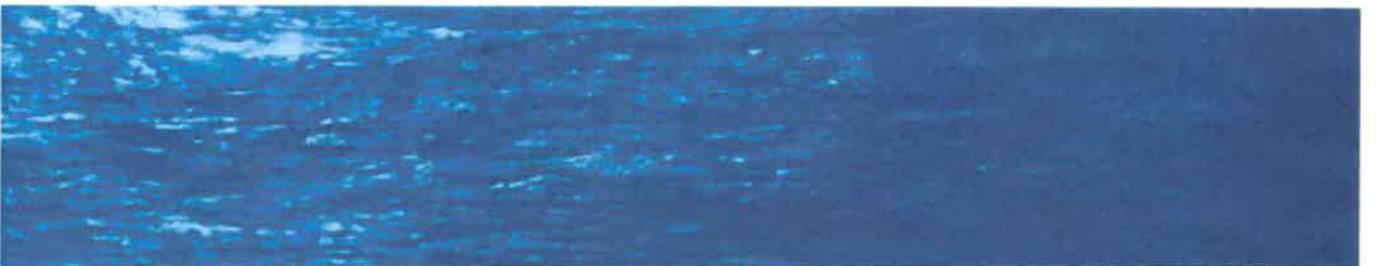
Attachment 7

**Final  
Version**

~~SENSITIVE PROPRIETARY INFORMATION~~  
~~Contract DMO/PSP/00419/2015 - Clause 9.3~~



# 17: Australian Industry Plan



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**DCNS**

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# SEA 1000 PROJECT

## CDRL 17. Australian Industry Plan

	Name	Date
Drafted by	<del>s47G, s33(a)(iii)</del>	November 27, 2015

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## Summary

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DCNS's vision is to create a sovereign and sustainable industrial base within the Australian Future Submarine Enterprise to deliver innovative solutions over the life cycle of the submarine.

In this Australian Industry Plan (AIP), DCNS describes how we will:

- Maximise the involvement of Australian Industry in its procurement process in all three phases of the FSP; and
- Ensure Australian sovereignty in the sustainment phase of the Future Submarine Program (FSP).

DCNS will use a strategy of knowledge transfer, purposeful application of this knowledge and cultivation of the innovation environment to ensure the Platform System Integrator (PSI) and the Combat System Integrator (CSI) can access an Australian industrial base to deliver whole warship performance to the CoA and enable the sovereign operation and sustainment the Future Submarine.

With leadership from Defence, the PSI and the CSI, this industrial base can perform high value roles in the Design, Build and Sustainment phases of the program delivering superior benefits for our stakeholders and achieve value for money.

In execution, DCNS will transfer knowledge from the French sovereign submarine industry to Australia through the Commonwealth. In consultation with the CoA, we will create the industrial capabilities within the Enterprise necessary for sovereign operation and sustainment of the Future Submarine Capability.

DCNS's principal role is the PSI whereby we will manage the platform system elements of an AIP and cooperate with a CSI to deliver whole ship performances. The PSI works with the CoA to identify what knowledge is required to be transferred for what purposeful application within the Enterprise and then executes various initiatives to establish the scientific, technical or industrial capability. This role commences in the design phase of the program and becomes enduring. Ultimately we will transfer the PSI capability to the CoA preferred Australian Sustainment Organisation (ASO).

The plan demonstrates our understanding of the existing industry capabilities in Europe and Australia, the critical needs and imperatives of the Royal Australian Navy, the mechanisms to

transfer technology, and the methods through we will monitor and maintain the health of the Enterprise stakeholders on whose contribution the PSI and the CoA depends.

The plan sets strategic objectives to realise our vision and demonstrates how DCNS will deliver them:

- Provide industrial capability within Australia, on an enduring and sustainable basis, necessary to meet defined targets of availability and capability. DCNS will achieve this through a strong and flexible process to transfer technology and knowledge, and a design approach that considers sustainment from the outset;
- Successfully transfer a sovereign Australian Future Submarine PSI capability to the Commonwealth's nominated ASO before the arrival of the first FSM in Australia by applying technology transfer mechanisms to suppliers;
- Reduce the total cost of ownership of the Future Submarine capability to the lowest realisable level through the development of long-term strategic partnerships with suppliers and through the creation of an innovation environment for industry;
- Create an innovative culture within the Australian Future Submarine Enterprise by developing R&D cooperation, nurturing the industrial base and creating Centres of Excellence. These will draw together Industry, Research Institutions and Government and seek to grow companies into adjacent industries, reducing dependence on the FSP through diversification; and
- Create high value opportunities for Australian Industry in all phases of the FSP by focusing on a tailored procurement process taking into account Australian industry capability and on transferring knowledge to Australia.

s47G, s33(a)(iii)

s47G, s33(a)(iii)

this information is displayed in the Candidate Project List (Appendix C) prepared in the CEP phase of the FSP.

DCNS proposes to establish technology-specific Centres of Excellence (CoE) to provide an enduring presence in Australia for industry capabilities and skills required for all phases of the FSP. CoE provide real and meaningful methods for the creation of an innovation culture and collaboration amongst Enterprise stakeholders. In the role of PSI, DCNS proposes to consult closely with the CoA, using the AIP Candidate Project List, to determine the application and research directions of CoE.

To illustrate the concept of Centres of Excellence, DCNS suggests five test cases of Centres that could be developed in the NSP:

- The Hull Material and Welding Centre of Excellence;
- The Hydrodynamics Centre of Excellence;
- The Composite Materials Centre of Excellence;
- The Energy Optimisation Centre of Excellence; and
- The Marine Growth Corrosion Centre of Excellence.

Similarly, other centres dedicated to the technology areas identified in § 4.1 will be considered for establishment.

## 1 Purpose and Scope of the Document s47G, s33(a)(iii) FOUO)

### 1.1 Purpose of the Document

The AIP describes DCNS's approach to establish a strong supply chain for the Future Submarine (FSM) that meets Australia requirement for sovereign sustainment. The plan also describes how DCNS will maximise Australian industry involvement in an innovation environment developed for the purpose of the FSP. It identifies labour, materials and associated categories of service available within Australian industry to support the FSM across the three build options defined in [R1] – BS:

- Overseas Build;
- Australian Build; and
- Hybrid Build.

### 1.2 Background and Assumptions

The AIP uses DCNS experience in providing a sovereign industrial capability to the French Navy and the 'Direction Générale de l'Armement' as well as previous Technology Transfer programs to countries such as India, Malaysia, Chile and Brazil to meet the unique requirements for Australia.

DCNS assumes the function of the Future Submarine PSI, as the proposed manager of the AIP, will lodge in the CoA's selected ASO and that DCNS will perform a Transfer of Technology (ToT) to this organisation.

s47G and s33(a)(iii)



### 1.4 Applicable Documents

- [A1] The Study Into the Business of Sustaining Australia's Strategic Collins Class Submarine Capability – Mr John Coles

## 1.5 Definitions

The following key terms are used throughout this document:

Table 1. Key Terms

Key Term	Meaning
Acquisition	Refers to all the FSP activities until commissioning of the FSM.
Australian Build	The Future Submarines will be constructed predominantly in Australia.
CEP (Competitive Evaluation Process)	Refers to the phase of the SEA1000 Program preceding the FSP, consisting of the pre-design of a submarine (FSM) and the definition of associated services.
Design Authority	An entity (corporation) formally designated as responsible and guarantor for the final product in the specified field of employment, safety, compliance with applicable regulations and technical performance overall as specified by the customer. The Design Authority alone may validate the design, declare conformity of the end product compared to the validated design and to allow a change with respect to the original design, for areas that could impact the security, safety and product performance.
FSM (Future Submarine)	Means the submarines to be acquired by the Australian Government for service in the Royal Australian Navy under the Future Submarine Program.
FSP (Future Submarine Program)	Means the Commonwealth's SEA 1000 Future Submarine Program.
Hybrid Build	The Future Submarines will be constructed to the extent defined in CDRL 01 in both France and Australia.
Overseas Build	Build strategy in which all the submarines of the FSM fleet are built in France.
SEA1000	Project conducted by the Commonwealth of Australia and aiming at designing, building and sustaining a fleet of submarines to succeed the Collins Class Submarines.
Sustainment	Refers to upkeep (maintaining a seaworthy submarine through planned and corrective maintenance), update (addressing emerging obsolescence and supportability issues), and upgrade (modifying the submarine as needed to address emerging threats through improvements to the capability of the submarine).

## 2 Overview – FOUO

### 2.1 DCNS's Vision for Australian Industry

DCNS's vision is to create a sovereign and sustainable industrial base within the Australian Future Submarine Enterprise to deliver innovative solutions over the life cycle of the submarine.

### 2.2 DCNS's Strategy to realise this Vision

DCNS will use a strategy of knowledge transfer, purposeful application of this knowledge and cultivation of the innovation environment to ensure the PSI and the CSI can access an Australian industrial base to deliver whole warship performance to the CoA and the sovereign operation and sustainment the Future Submarine.

With leadership from Defence, the PSI and the CSI, this industrial base can perform high value roles in the Design, Build and Sustainment phases of the Program delivering superior benefits for our stakeholders and achieve value for money.

In execution, DCNS will transfer knowledge from the French sovereign submarine industry to Australia through the Commonwealth of Australia (CoA). In consultation with the CoA, we will create the industrial capabilities within the Enterprise necessary for sovereign operation and sustainment of the Future Submarine Capability.

DCNS' principal role is the PSI and we propose to manage the platform system elements of an AIP and cooperate with a CSI to deliver whole ship performances over the submarine life cycle. The PSI will work with the CoA to identify what knowledge is required to be transferred for what purposeful application within the Enterprise and then execute various initiatives to establish the scientific, technical or industrial capability in Australia. This role commences in the design phase of the program and becomes enduring. Ultimately we will transfer the PSI capability to the CoA's preferred ASO.

DCNS proposes to work in close partnership with the CoA and the CSI to deliver the strategic objectives of this plan working at a whole of Enterprise level. DCNS will transfer knowledge, meaning not only the 'know what' but also the 'know how' and as required the 'know why', from the French submarine industry to Australia through the Commonwealth.

The strategic objectives in this plan are to:

1. Provide the industrial capability within Australia, on an enduring and sustainable basis, necessary to meet the CoA's defined targets of FSM availability and capability;
2. Create high value opportunities for Australian Industry in all phases of the FSP;
3. Reduce the total cost of ownership of the FSM capability to the lowest realisable level;
4. Successfully transfer a sovereign Australian Future Submarine PSI capability to the CoA nominated ASO before the arrival of the first FSM in Australia; and
5. Create an innovative culture within the Australian Future Submarine Enterprise.

This AIP recognises the inescapable challenges Australia faces in terms of geography, cost and the size of the Australian industrial base. DCNS proposes specific measures and initiatives to address these challenges including the creation of Centres of Excellence

combining the capabilities of all stakeholders in the key technology domains of the Enterprise.

This strategy is enforced through a specific procurement approach including sustainment imperatives at the very start of its development. The procurement process is described in Appendix A and the outcome of the analysis performed during the CEP at Appendix C: s47G, s33(a)(iii) s47G

### 2.2.1 Why Innovation?

Drawing from our experience as a principal participant in the French naval enterprise, DCNS is of the view that the successful performance of the Australian PSI is dependent on access to supporting competencies, capabilities and sources of supply from within Australia and overseas.

DCNS has now completed a thorough survey of the Australian industrial base and discovered instances where an industrial capability necessary to support the Future Submarine is either presently in existence, will need to be further developed from this existing base, or established afresh. In every case industrial capabilities must be continuously improved over the long term for the strategic objectives of the AIP to be met.

To perform the role of PSI, DCNS will need to draw on these industrial capabilities at various levels of frequency and depth. Commonly, DCNS's own calls on supply from certain technology sources as the FSM PSI will be too infrequent or insufficient to create sufficient demand to maintain and develop the industrial capability. And even where DCNS' own demand is sufficient to maintain a capability, the Australian Future Submarine Enterprise must still reach out and benefit from the lessons and knowledge developed from tangential applications of technology and marketplaces.

Only through the application of knowledge into new endeavours in the adjacent markets and domains related to submarine technology can the capabilities of Future Submarine Enterprise participants remain relevant and strong enough to support the PSI. Through innovation, the industrial participants in Australia's sovereign Enterprise will present new solutions to the problems and opportunities confronting the PSI over the FSM life cycle. In this industry the PSI is supported by the participants in return for the PSI fostering the innovative industry and the AIP manager. This is why the Future Submarine Enterprise must be innovative.

### 2.2.2 Creating Innovation in the Future Submarine Enterprise

The foundations of innovation are knowledge, purpose and environment.

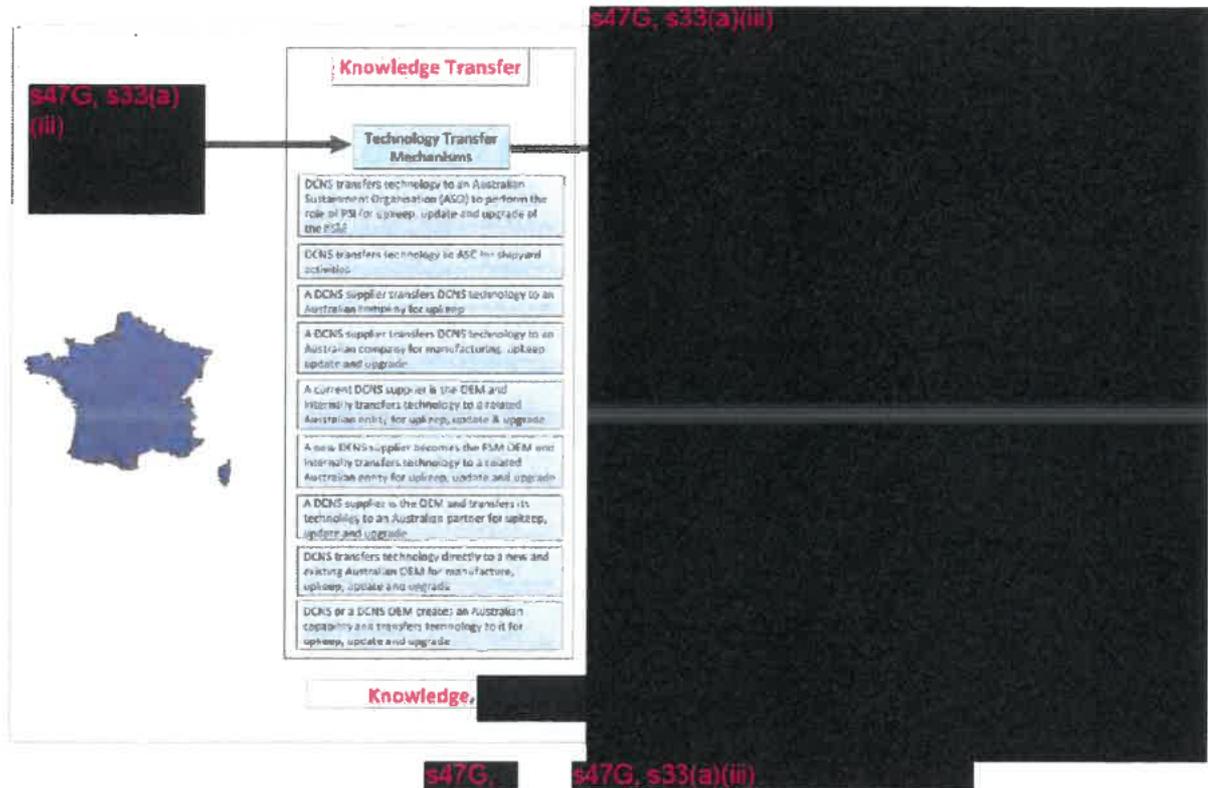
Innovation requires knowledge at the fundamental level. Knowledge at the fundamental level is the combination of 'know-how' and 'know-why'. Without knowing how something occurs and knowing why it is so, these foundations are replaced with simple 'know-what' and innovation is lost in place of imitation, improvisation or process adherence. Ultimately, where innovation is attempted without 'know-how' and 'know-why', risks to safety arise.

Innovation must have a purpose. It is performed for the creation of benefits for stakeholders. In the case of sovereign operation and sustainment of the Future Submarine, the purpose of innovation is to maintain an autonomous and enduring industrial base to create benefits including reduced the cost of ownership, availability, reliability and a regionally superior submarine capability for the Royal Australian Navy (RAN).

With knowledge and purpose, innovation can be realised from an environment comprising human and other resources, capital, open communication and, above all, leadership. Leadership can occur on multiple levels within the Enterprise. From time to time leadership may be found in prime contractors, tier-2 suppliers, government organisations and other stakeholders within the Enterprise. Within this ecosystem there will by necessity principal roles for the CoA, the PSI and the CSI.

### 2.2.3 Establishing the Environment

To enable the ToT (knowledge) in the Design, Build and Sustainment phases, Australian suppliers and other potential participants will start building the Innovation Environment as soon as DCNS is selected as the International Design Partner. Specific initiatives are described in § 3.3.2 and Appendix D, and include training Australians at the 'DCNS Universeaty', partnerships between French and Australian companies, development of or contribution to Centres of Excellence with submarine-specific themes and other activities to nurture small-medium enterprises so as to assist them to transition into adjacent industries.



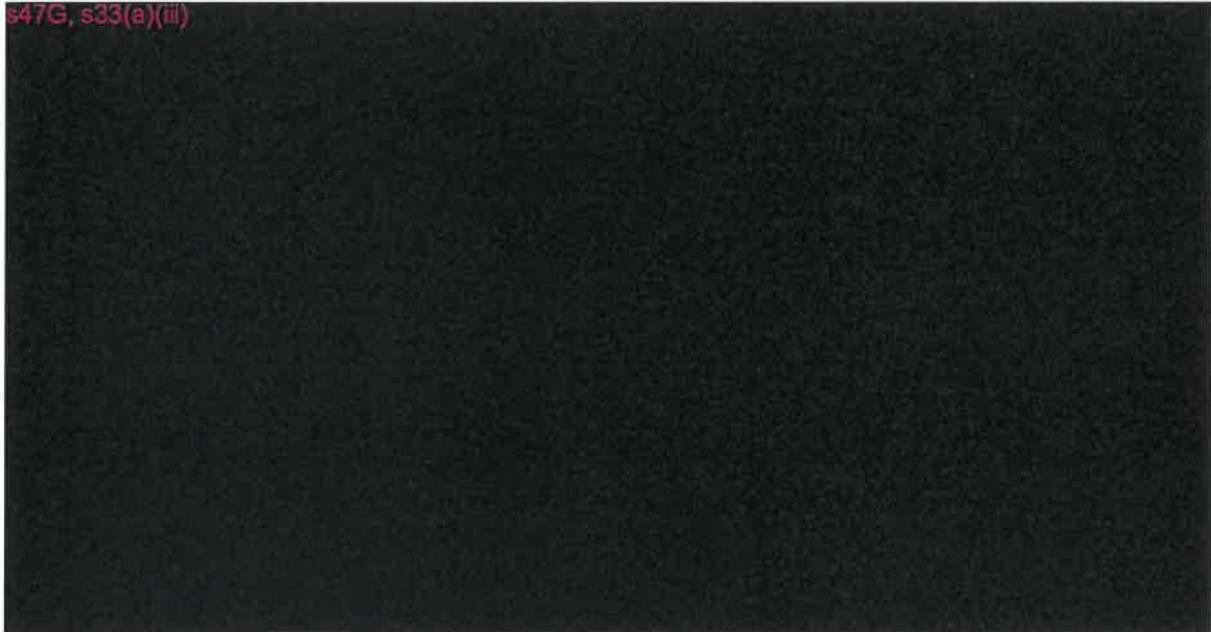
### 2.3 The Role of the Platform Systems Integrator

In service to the French Direction Générale de l'Armement and Navy, DCNS has developed a business operating model and a culture that provides complete support system solutions for an operational end user of large ocean going submarines. DCNS reference for understanding the CoA's needs of a PSI are derived from our experience as the provider of capable, available, reliable and affordable submarines to the French Navy from a readily accessible industrial base as well as our analysis of the Australian experience in the Collins Class.

Learning from this experience, we have carefully considered the needs of the CoA in the FSP and how Australian industry can best support the Future Submarine Enterprise.

DCNS proposes the role of the PSI in all phases of the FSP include responsibilities that are undertaken at the industrial level to deliver whole warship performances of the ship's life cycle and achieve the strategic objectives of the AIP. The CoA may also consider the merits of introducing a similar role with associated responsibilities for the CSI and the PSI and CSI may cooperate in a way that is consistent with the higher level commercial delivery model of the Enterprise.

s47G, s33(a)(iii)



### 2.3.1 Managing the Australian Industry Plan

Looking ahead to the operational and sustainment phase of the Australian FSP, DCNS has identified a risk that the scientific and industrial base in Australia may not be able to supply the requisite knowledge, goods and services to the Australian Future Submarine Enterprise in order to maintain the sovereign operation and sustainment of the Future Submarine. DCNS proposes the CoA allocate this risk to the PSI and the PSI manages it through the AIP. The PSI is best positioned to manage this risk because the PSI has both knowledge of the platform system and has responsibility for commercial management of the suppliers of goods and services for all phases of the FSP.

The PSI is therefore best placed to transfer knowledge, for a clearly understood purpose in support of the FSP to a selected Enterprise participant and then play a role in sustaining this industrial capability. DCNS proposes the CoA take close oversight of this risk. We propose several consultative mechanisms with the CoA in this plan as we work through critical areas of technology transfer, the development of contractual requirements, supplier selection and procurement, and continuous improvement and innovation with this ecosystem. The responsibilities of the PSI extend to the management of all of the industrial elements of a support system and also involve significant cooperation with non-industrial actors in the private sector, the technical and scientific sector, education providers and the CoA itself. DCNS also proposes the role of AIP manager be transferred to the CoA nominated ASO in accordance with the ToT program and the establishment of an enduring Design Authority for the Future Submarine.

### 2.3.2 PSI and Commonwealth Roles, Responsibilities and Collaboration

The PSI works with the CoA to identify what knowledge is required to be transferred for purposeful application within the Enterprise and then executes various initiatives to establish the scientific, technical or industrial capability. To meet the strategic objectives of the AIP, DCNS proposes the PSI takes on the following responsibilities:

- Identify the technologies, priority systems and equipment items necessary to deliver sovereign operation and sustainment as defined by contractual requirements set by the CoA. (UUC delivery, operational performance, etc.);
- Oversee the ToT from existing DCNS suppliers and partners to Australia;
- Continuously monitor the effectiveness of the ToT mechanisms used and improve them as required;
- Continuously assess the industrial health and capability of PSI suppliers and partners, in all sectors, necessary to support the sovereign operation and sustainment of the Future Submarine;
- Develop and manage initiatives to create innovation and collaboration across the Enterprise, through the establishment of an Innovation Environment; and
- Commercial management of Enterprise participants to achieve value for money for the CoA.

In all phases of the FSP Australian Industry will acquire knowledge, technology and skills through ToT programs. The costs involved in this process are incurred in return for benefits to the program in the present and future phases. DCNS proposes to control costs through collaboration with suppliers and partners by developing ToT program business cases where TOT is performed in one of the identified mechanisms. When not implementing ToT programs itself, the PSI will support its suppliers in this task.

DCNS' intention is to go beyond the mere contractual relationship with its suppliers and build strategic relationships with them through such initiatives as Innovation Cluster and/or the Centres of Excellence. These initiatives also have the effect of creating new solutions to the Enterprise needs and fostering continuous improvement. This method supports existing Enterprise participants but also encourages new suppliers and the creation of new opportunities.

The PSI will establish collaborative behaviours throughout the Enterprise through adoption of CoA partnering principles and will create the culture of honest engagement and best for program behaviours among all of our stakeholders. Ultimately, where an Enterprise participant is not able to continuously improve and create new benefits from given resources and technology transfer, DCNS will consult with the CoA on mechanisms such as developing alternate sources of supply. Ultimately, DCNS will deal with underperformance within the Enterprise commercially.

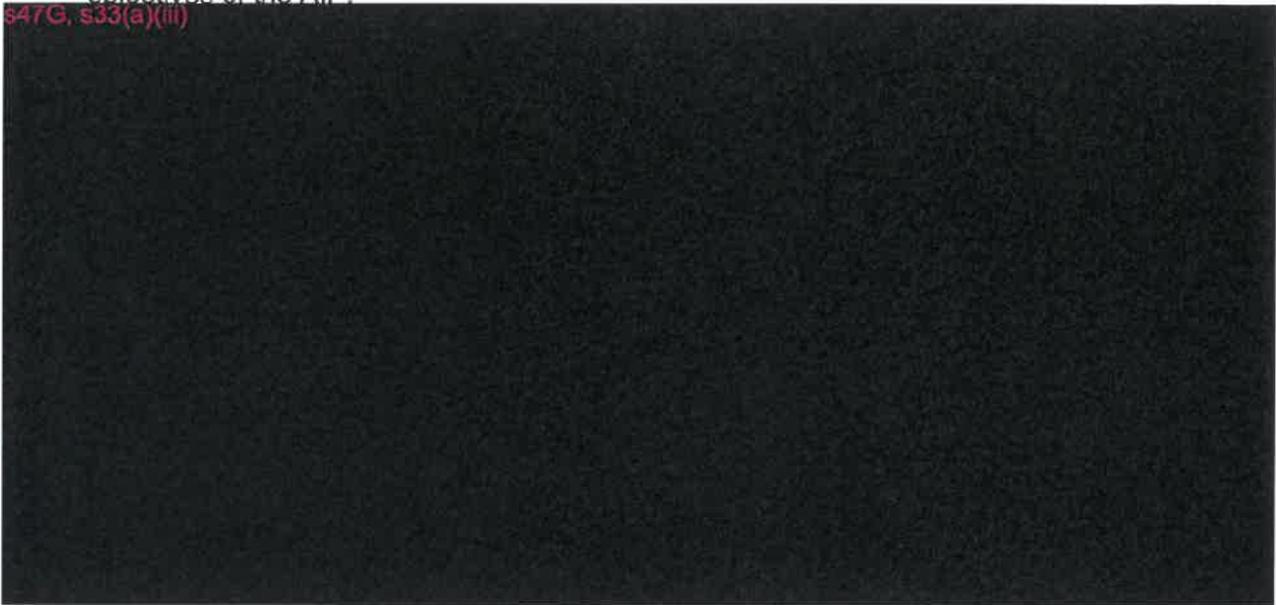
Using the Candidate Project list, the PSI and the CoA are able to consult and collaborate on what measures will be taken to maintain the health of the industrial capabilities needed in Australia to deliver sovereign operation and sustainment, as assessed by their global importance.

Where measures include procurement decisions, DCNS proposes the PSI procure equipment, systems, material and services in order to meet its responsibilities as the manager of the AIP. Once procurement activities commence, the CoA will be further consulted in accordance with the procurement Responsibility, Accountability, Consultation and Information (RACI) matrix in order to satisfy itself that value for money in procurement activities considers the strategic objectives of the AIP.

s47G and s33(a)(ii)

Procurement decisions are of course but one tool available to the CoA and the PSI in the AIP to maintain industry capability and of themselves do not create innovation or sovereignty. As illustrated below, DCNS as the PSI will use all of the capabilities with our own company to execute our responsibilities and deliver the strategic objectives of the AIP.

s47G, s33(a)(iii)



### 2.3.3 Using Strategic Communications for Enterprise Collaboration

The PSI plays a leadership role alongside the CoA in engaging with Industry, academia and other research institutions to monitor progress and set targets for future achievements.

To that end, DCNS will establish an annual conference to support the Future Submarine Enterprise Industry Plan. The conference would be held in conjunction with annual Government to Government meetings and would seek to include both platform and combat system stakeholders. The first example of such a conference was the Industry Leaders' Forum, hosted by the President Director-General of DCNS SA in Adelaide, Australia on 18 November 2015.

### 3 Transferring Knowledge and Intellectual Property s47G, s33(a) – ~~FOUO~~

DCNS proposes to work in close partnership with the Commonwealth to transfer knowledge, meaning not only the 'know what' but also the 'know how' and as required the 'know why', from the French submarine industry to Australia through the Commonwealth.

The TOT mechanisms meet the AIP strategic objective to:

- Successfully transfer a sovereign Australian Future Submarine PSI capability to the Commonwealth's nominated ASO before the arrival of the first FSM in Australia.

#### 3.1 Description of Nine TOT Mechanisms

DCNS has defined nine mechanisms to transfer technology. ToT comprises all things necessary for an industrial capability in accordance with the Vision and includes such things as Intellectual Property (IP), 'know-how', 'know-why' and the means of production. The nine mechanisms are:

- s47G and s33(a)(iii)  
[Redacted]
- DCNS transfers technology to ASC for shipyard activities:
  - s 47G and s 33(a)(iii)  
[Redacted]
  - Example: DCNS to ASC.
- A DCNS supplier transfers DCNS technology to an Australian company for upkeep:
  - s 47G and s 33(a)(iii)  
[Redacted]
  - Example: Air conditioning units. Design is resident with DCNS. The items are built by SNORI for DCNS. They will be maintained in Australia by Johnson.
- A DCNS supplier transfers DCNS technology to an Australian company for manufacturing, upkeep, update and upgrade:
  - s 47G and s 33(a)(iii)  
[Redacted]
  - Example: Hydraulic manifolds. Design is resident with DCNS. The items are built by Issartel. Issartel then transfers manufacturing capability to H.I. Fraser.
- A current DCNS supplier is the OEM and internally transfers technology to a related Australian entity for upkeep, update and upgrade:
  - s 47G and s 33(a)(iii)  
[Redacted]
  - Example: Diesel engines. MTU to Penske Power Systems.

- 6. A new DCNS supplier becomes the FSM OEM and internally transfers technology to a related Australian entity for upkeep, update and upgrade:
  - s 47G and s 33(a)(iii)
  - Example: Weapon Launching Tubes. Babcock UK to Babcock Australia.
- 7. A DCNS supplier is the OEM and transfers its technology to an Australian partner for upkeep, update and upgrade.
  - s 47G and s 33(a)(iii)
  - Example: Main pumps. FAPMO to Pump Technologies.
- 8. DCNS transfers technology directly to a new and existing Australian OEM for manufacture, upkeep, update and upgrade:
  - s 47G and s 33(a)(iii)
  - Example: Accommodation. Taylor Bros will design the accommodation modules according to DCNS requirement and will ship them to Cherbourg for the submarines built in France.
- 9. DCNS or a DCNS OEM creates an Australian capability and transfers technology to it for upkeep, update and upgrade.
  - s 47G and s 33(a)(iii);
  - Example: Propulsion motor. Jeumont has not yet established a presence in Australia (this represents an opportunity).

### 3.2 Intellectual Property Flow

DCNS SA, DCNS Australia and ASC will place procurement demands on the suppliers, taking into account their location and commercial or industrial circumstances. In each procurement order, an IP flow will be initiated. The rights will be transferred to whoever has signed the contract initially through DCNS SA, DCNS Australia or ASC. All the negotiated rights, however, will be transferred to the CoA at the end.

s 47G and s 33(a)(iii)



s47G,

s47G, s33(a)(iii)

### 3.3 ToT Readiness Level Definition

DCNS has identified a number of Australian suppliers at Appendix C that could become involved in the FSM supply chain. Their level of readiness to accept ToT and become DCNS suppliers varies and can be ranked in three categories: Mature, Intermediate or Undeveloped. This assessment relies only on a first overview of the various companies' capabilities.

- **Mature:** When the Australian supplier's capability is considered adequate to provide equipment or services required in the FSM supply chain;
- **Intermediate:** When the Australian supplier's capability is considered partially adequate. The level of effort required in the ToT program to bring the supplier to the right level is more significant than at the mature level; and
- **Undeveloped:** When the Australian supplier's capability is considered insufficient. The ToT mechanism and effort required to bring the supplier to the right level is important.

This ToT readiness level is part of the global assessment process described in § 5.1.

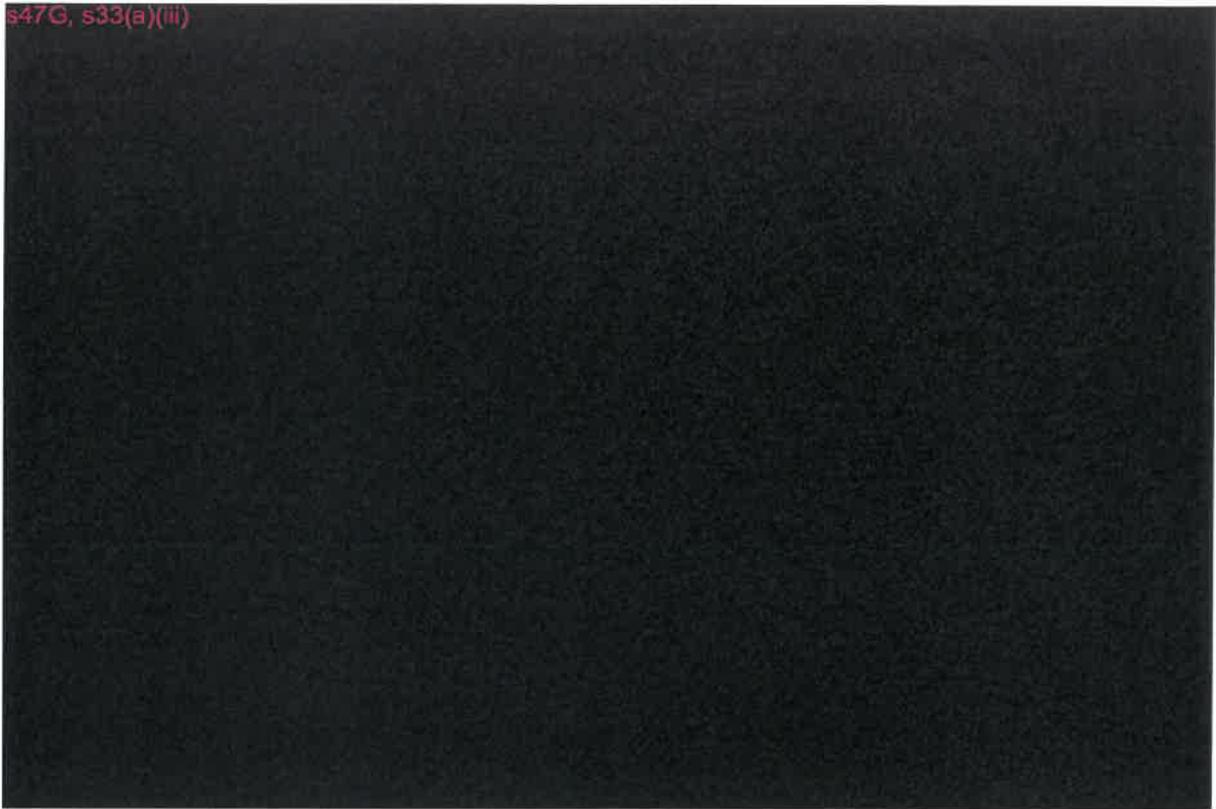
#### 3.3.1 Obtaining DCNS Suppliers' Commitment to Technology Transfer

Technology Transfer and IP management from all DCNS suppliers, as well as those stakeholders and actors who will enter the Enterprise in years to come, will contribute to meeting Australia requirements for sovereign sustainment. s47G, s33(a)(iii)

s47G, s33(a)(iii)



s47G, s33(a)(iii)



### 3.3.2 DCNS Suppliers Commitments made in the course of the CEP

In the context of the CEP, DCNS has already received expressions of commitment from its existing suppliers (such as Jeumont Electric, Schneider Electric, Sagem and many others) to support DCNS efforts to create a sovereign and sustainable industrial base for the FSM in Australia. This commitment includes of course delivering the necessary supply, but also setting in place Transfer of Technology programs and contributing under the management of DCNS to the creation of an innovation environment in Australia.

s47G, s33(a)(iii) currently working with Business France Australia, the French government agency in charge of helping French companies accessing the Australian market, to set up an enduring presence in Australia and building up a local supply chain. Similarly, s47G and s33(a) s47G, s33(a)(iii) and stated its intention to be part of the FSM supply chain in Australia, building on its recent achievements in contributing to DCNS supply chain s47G and s33(a)(iii) In a typical Tier 2 to Tier 2 type of arrangement, that would involve partnering with an Australian company s47G, s33(a)(iii)

## 4 Creating the Innovation Environment s47G, s33(a) – FOUO)

The initiatives proposed in the innovation environment meet the strategic objective to:

- Provide the industrial capability within Australia, on an enduring and sustainable basis, necessary to meet the CoA's defined targets of Future Submarine availability and capability; and
- Create an innovative culture within the Australian Future Submarine Enterprise.

DCNS will create an innovation environment in partnership with several stakeholders and through many initiatives, including sponsorship of research and development, academic exchange, Centres of Excellence, and supporting small-medium enterprises to grow into adjacent industries to become sustainable and innovative businesses.

### 4.1 Creating R&D Opportunities through the AIP

Knowledge, with purpose and environment, is the foundation for innovation. Higher Education organisations and Research Centres create, enhance and disseminate knowledge. In this regard, Australia's strong higher education industry is an asset the PSI can draw on and expand for the benefit of technology areas related to the FSM and beyond.

As part of its role in setting in place and managing an innovation environment in Australia, the PSI will create or strengthen links between:

- DCNS and research organisations in Australia; and
- Research organisations in France and in Australia.

To facilitate this, the PSI will be able to use DCNS Research, the R&D department within the DCNS Group. DCNS Research is organised along three naval research centres:

- s47G, s33(a)(iii) the research centre for performance, resistance and dynamic behaviour of materials and structures at sea;
- s47G, s33(a)(iii) providing advanced R&D and multi-domain knowledge in naval hydrodynamics, control-command systems, experimental technologies, multi-disciplinary optimisation and power processes; and
- s47G, s33(a)(iii) the research centre for information dominance, cyber defence, signatures management, stealth technologies and secured complex systems.

DCNS Research has an existing knowledge of the Australian R&D environment. In November 2014, for example, s47G, s33(a)(iii) delegation was involved in the Inter Noise Conference, the 43rd International Congress on Noise Control Engineering, held in Melbourne. DCNS made three presentations at this conference.

As a result of this event and various other engagement activities, DCNS has identified potential areas of cooperation with universities and research centres. Cooperation can take various forms, including exchanges of PhDs, post-doctorate postings, cooperative R&D, as well as participation to larger projects like the ones performed in the context of the European Commission Horizon 2020 framework program. The DCNS approach to build long-term relationships with its partners has received very positive feedback from the organisations DCNS has been engaging with so far. The following table identifies the areas where there are existing contacts between DCNS Research and R&D organisations and where tangible partnerships have been discussed.

[REDACTED]  
 Contract Division of 1000075016 - Chapter 9.9

Table 2. Potential Area of Research Cooperation

Entity	Domain	Entity	Potential cooperation topics
University of New South Wales (NSW)	Acoustics	[REDACTED] § 47G, § 33(a)(iii)	[REDACTED] § 47G and § 33(a)(iii) Potential areas of cooperation are: barriers, stealth materials and smart skins, materials testing for characterisation and calibration; vibrations and radiated noise (modelling and performance prediction); propeller noise. [REDACTED] § 47G and § 33(a)(iii)
University of NSW	[REDACTED] § 47G, § 33(a)(iii)	[REDACTED] § 47G, § 33(a)(iii)	[REDACTED] § 47G and § 33(a)(iii) Potential areas of cooperation are: electrical protection [REDACTED] compact and energy efficient solutions; higher frequency converters with higher harmonic quality; application of smart grid solutions to finite networks and energy management on board; and wireless transmission of energy for underwater systems [REDACTED] § 47G and § 33(a)(iii)
University of NSW	[REDACTED] § 47G, § 33(a)(iii)	[REDACTED] § 47G, § 33(a)(iii)	[REDACTED] § 47G and § 33(a)(iii) Potential areas of cooperation are: Particle filtering & advanced tracking, tracking of highly manoeuvring targets.
University of Technology Sydney (NSW)	[REDACTED] § 47G, § 33(a)(iii)	[REDACTED] § 47G, § 33(a)(iii)	[REDACTED] § 47G and § 33(a)(iii) Potential areas of cooperation are: Smart Grid Command & control, applicable to Energy Conversion activity and Ocean Thermal Energy Conversion, HSP Filtering for optimal control.
Australian Maritime College (TAS)	Hydrodynamics Naval Design & Maritime Engineering	AMC CRL RTCNDM	Ongoing stream of students from ENSTA Bretagne and Ecole Centrale de Nantes spending from 3 to 10 months at the AMC through internship programs. Potential areas of cooperation are: propeller design methods & optimization, including composite blades (ships, tidal systems), underwater explosions, vibro-acoustics, virtual ship, virtual test tank
Defence Materials Technology Centre (VIC)	Materials and processes	DMTC Collaborative Research Centre	Potential areas of cooperation are any material issues, like metallic materials and implementation (welding, bonding...), organic materials and composites, as well as corrosion.
University of Newcastle (NSW)	Marine Corrosion	Centre for Infrastructure Performance and Reliability	Potential area of cooperation are: Bacterial and microbiological corrosion

## 4.2 Research Centres

There is a number of existing Research Centres in Australia with which DCNS could be involved. One example of future centre, the Submarine Engineering Centre proposed by Monash University, is described below. Still at the early stage, this project could receive some input from DCNS in the NSP. In the longer term, once cooperation with Australia has reached a critical level, DCNS could also create a domestic Research Centre like it has done in other countries where it has long term ambitions such as Chile, Brazil, India, etc.

As presented by Monash University, the Centre would be industry-focused and would ensure Australia has the ongoing sovereign research, technological, innovation and skills capability to sustain the FSP over its life cycle.

The Centre would deliver:

- World-leading R&D in mechanical engineering, materials science and engineering, information technologies and industrial design for submarines in the Australian context; and
- Master of Advanced Engineering programs in reliability engineering and in systems engineering.

The [REDACTED] has already received support from the [REDACTED] for this project and agreement to participate from:

s47G

- DMTC.

[REDACTED] will draw on its experience on previous projects and on the support of the Defence Sciences Institute to associate suppliers to the Centre. [REDACTED] anticipates that the contender selected following completion of the CEP will be the principal industry partner to the project.

The main areas of focus of the Centre will be:

s47G

## 4.3 Major Areas for Cooperation

DCNS possesses significant strengths in certain areas of technology and management and these are opportunities for Australia and the FSM to benefit.

Table 3 describes these areas. They may lead to the creation of Centres of Excellence or for initiatives in the Innovation Cluster.



Subject Background and Opportunities Australian Context

DCNS has been working on lithium-ion battery technologies for many years with different partners:

[Redacted text block]

Lithium-ion batteries

Many research initiatives are also occurring in Australia both in the defence space and in adjacent industries that could lead to technology breakthrough. The AutoCRC, part of the Cooperative Research Centre (CRC) Programme, is for example leading projects developing Li-ion technologies for the automotive industry, with the involvement of Universities such as the University of Wollongong, Swinburne University or UTS. PMB Defence has also been working for several years with CSIRO on new Li-ion technologies.

[Redacted text block]

With the rise of 'digital warships', DCNS recognises the cybersecurity of naval systems is of major strategic importance. In France, the 2013 White Paper on defence and national security clearly identifies cyber-threats as a major threat to national security.

[Redacted text block]

Cyber-security

[Redacted text block]

This process is aligned with the structure, rules and methods of the PMBoK (Project Management Body of Knowledge), Project Management Institute.

DCNS is permanently improving its methods and rules, both internally and externally taking advantage of benchmarks with European major actors in the field of defence and aeronautic.

Complex Program Management

DCNS is looking to incorporate arrangements for fostering complex program management into its plan for Australian industry by way of contributing to and supporting institutions.

[Redacted text block]

For the past 40 years DCNS commitment in the field of ships and submarines acoustic performances has been continuous and

Signature

[Redacted text block]





Subject	Background and Opportunities	Australian Context
<p>Management</p> <p>considerable. It led to build a strong world class expertise which will benefit to SEA1000 project. <b>s47G, s33(a)(iii)</b></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p><b>s47G, s33(a)</b></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	

Maintenance

As sustainment is a major DCNS activity, the Group looks at continuously improving its performances in this field. **s47G, s33(a)(iii)**

[Redacted]

DCNS would like to support initiatives in this field in Australia to apply COMPAS beyond the propulsion system in order to make it a complete vessel health monitoring system. A number of subjects would be of interest:

- Sensors, Real time data collection; E-maintenance, remote control
- On-board or on shore databases;
- Artificial intelligence and data processing;
- Modern MMI (virtual reality); and

Improvements could be achieved through the involvement of ASC and companies involved in adjacent industries such as the rail or the shipping industry.

Table 3. Priority Areas for Cooperation



## 4.4 Nurturing the Industrial Base through two Initiatives: Innovation Clusters and Centres of Excellence

DCNS intends to use two mechanisms to nurture the Industrial Base:

- A bottom-up approach where DCNS creates an ecosystem where SMEs can present initiatives and receive funding from major companies according to strategic priorities through an innovation cluster; and
- A top-down approach where DCNS identifies a number of priority technology areas and sets up Centres of Excellence (CoE).

### 4.4.1 Innovation Cluster

The defence market is rich in skills, technologies and people. Ideas emerging from the different fields of education, industries and personal initiatives are often hampered by lack of funds. Even if ideas may have dual application (civil and defence) they often struggle to find a champion. To provide such a channel, DCNS intends to set in place a new organisation or join and support existing ones.

#### 4.4.1.1 Overview

DCNS intends to gather the major Australian companies as sponsors in the Innovation Cluster, all of whom may be represented in a Steering Committee that will decide its strategy and themes. It will set strategic directions regarding good coordination and the consistency of the funding actions by the sponsors in the frame of the cluster and could draw on existing Australian Government initiatives in this regard<sup>1</sup>. Although the finer details of the organisation are still to be defined, key aspects would be:

- A team will be identified within the cluster to manage the yearly process of communication, of requesting/gathering subjects, of assessing the proposal and the follow-up of the use of the funds;
- Each sponsor may be able to fund alone with others one or more projects; and
- The cluster would allow up to 20 innovation projects which would be scheduled to last between 6 and 24 months.

#### 4.4.1.2 Benefits

There would be many benefits for the sponsors:

- Access to collaborative funding and direct links with the spinoff company or SME trying to bring a solution into the field of the prototype or industrialisation;
- A process of clear and agile selection, gathering obvious stakeholders from different companies to stimulate discussion about the proposed project;
- Access to the achievements, internal use in the scope of the cluster, sharing the commercial benefits and the management of the IP; and

<sup>1</sup> <http://www.business.gov.au/grants-and-assistance/innovation-rd/InnovationAustralia/Pages/default.aspx>

- Involvement in the definition of the Technology and Industrial Roadmap up to the business plan.

The other cluster participants would benefit through:

- Access to a skilled and engaged technical chair able to assess, mitigate, challenge the proposition, help to identify the gap, focus on the key point of interest and support an effective innovation process;
- The opportunities to build their business and grow into adjacent industries;
- Support, behind the incubation, to engage a prototype or an industrialisation activity; and
- Access to more important funding.

## 4.4.2 Centres of Excellence

### 4.4.2.1 Concept

DCNS intends to build Centres of Excellence (CoE) modelled on the Competitive Clusters established throughout France. Over 70 of these clusters are operating and DCNS is an active participant in three of them. The French Government website<sup>2</sup> describes competitive clusters as follows:

- A partnership, based around a specific theme and a specific region:
  - A competitiveness cluster brings together large and small firms, research laboratories and educational establishments, all working together in a specific region to develop synergies and cooperative efforts. Other partners may be brought in, such as public authorities, either local or national, as well as firms providing business services.
- Competitiveness clusters think big:
  - The goal of competitiveness clusters is to build on synergies and innovative, collaborative projects in order to give partner firms the chance to become first in their fields, both in France and abroad.

### 4.4.2.2 Presentation

DCNS proposes to establish technology-specific CoE to provide an enduring presence in Australia for industry capabilities and skills required for all phases of the FSP. CoE provide real and meaningful methods for the creation of an innovation culture and collaboration amongst Enterprise stakeholders. In the role of PSI, DCNS proposes to consult closely with the CoA, using the AIP Candidate Project List, to determine the application and research directions of CoE.

- The centres will be created at the beginning of the NSP and are maintained throughout the life of the Program. They gather the appropriate stakeholders, including industry firms, research centres, government bodies and universities;
- The existing French ecosystem would act as an input and a catalyst to the CoE, through the reinforcement or the creation of links between the French organisations and their equivalents in Australia.;
- On the industry side, Tier 1 and Tier 2 original DCNS suppliers and their Australian partners would contribute to the Centres through their R&D efforts and their production

<sup>2</sup> <http://competitivite.gouv.fr/home-903.html>

and maintenance activities linked with the program. They would benefit, in return, from the Research bodies' activities and from the general advantages of being part of a network; and

- Outside of the industrial firms directly involved in the dedicated technology areas, adjacent industries will also invest in the Centres for R&D purposes whether financially or through human capital, anticipating returns on investment for their industry (e.g. technology breakthrough, productivity gains, etc.).



What will emerge from the centres is an enhanced and enduring Australian industry network delivering:

- Continuous technology capability and competitive improvement of the FSM suppliers;
- Enhanced economic viability through the access for FSM suppliers to export programs and other naval projects;
- Benefits to other Australian naval projects through the technology improvements achieved in the centres; and
- Companies involved in adjacent industries outside of the naval field benefit from the technology improvements achieved in the Centres.

To illustrate the concept of Centres of Excellence, DCNS suggests five test cases of Centres that could be developed in the NSP:

- The Hull Material and Welding Centre of Excellence;
- The Hydrodynamics Centre of Excellence;
- The Composite Materials Centre of Excellence;
- The Energy Optimisation Centre of Excellence; and
- The Marine Growth Corrosion Centre of Excellence.

Similarly, other centres dedicated to the technology areas identified in § 4.1 will be considered for establishment.

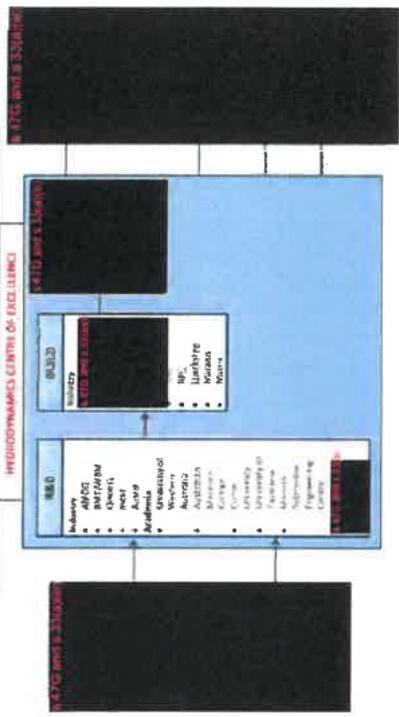
The capabilities, stakeholders, activities and outputs of the five proposed CoE are illustrated below.

SENSITIVE PROPRIETARY INFORMATION  
Contract DMO/FSP/00419/2015 – Clause 9.3

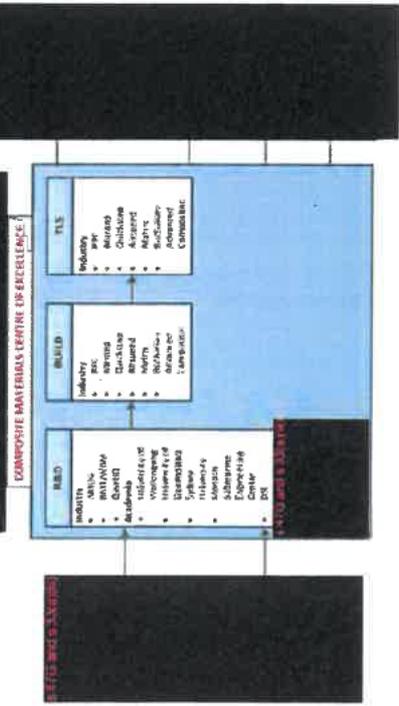
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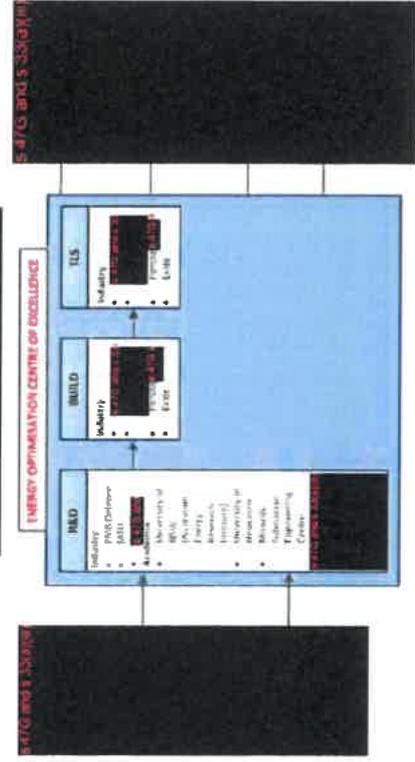
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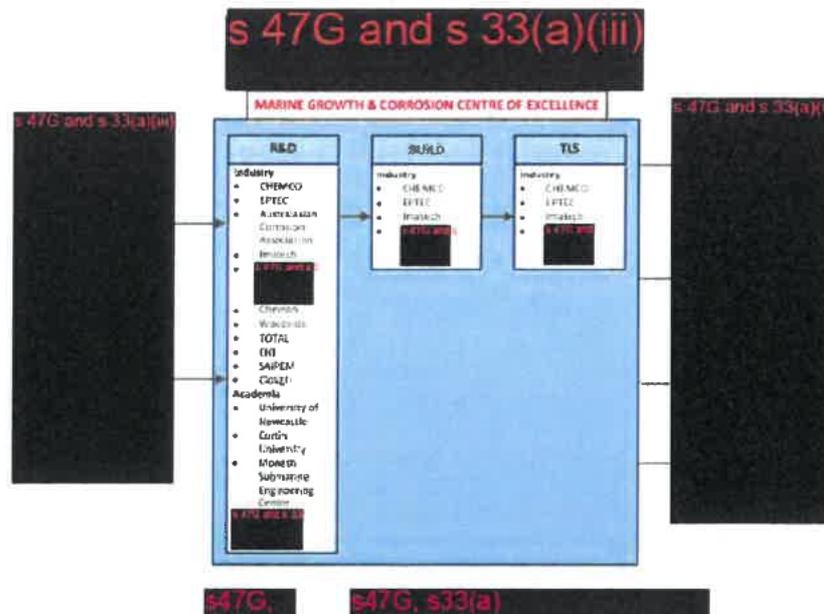


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## 4.5 Education and Training Programs

### 4.5.1 DCNS Universeaty

DCNS is able to offer training solutions for Australia's naval industry workforce, from tradesmen through to technicians and engineers for conception, production and research. The transmission of knowledge is in DCNS' DNA and the Group's ambition, beyond the naval field, is to develop industrial skills in Australia. The service life of a vessel is forty (40) years on average, which is more or less the time span of an individual's career. Those who design and build ships will not be the same as those maintaining them over time. Passing on knowledge is essential for the sustainability of a naval force. And in a sense, DCNS has been practising on-the-job-training for more than 300 years, with senior staff members continuously training newcomers.

To better coordinate and manage all training related activities, DCNS has created in 2013 its own corporate university, named 'DCNS Universeaty'. The Group's approach to training involves a number of key points:

- 200 critical skills have been identified as being at the core of the Group's knowledge and have been linked to a network of over 600 experts within the Group;
- DCNS trainers are in operational positions within the Group and volunteer to give part of their time to training activities. They are therefore aware of the latest developments in their field of activity and attend special courses to be able to teach. This unique talent pool effectively covers all the specialisations within DCNS;
- 'DCNS Universeaty' advanced training courses can be delivered at the customer's premises or at one of DCNS sites in France or anywhere around the world. DCNS trainers can train the customer's own trainers or help them design and set up their own training infrastructures;
- Dedicated teams are built up for each project:
  - They manage the design of the training courses, ensure the smooth running of the lessons, and provide a permanent link between the client, the trainers and the other teams of DCNS Universeaty; and



To continuously improve its offer, DCNS Universeaty puts cooperation and partnerships with industrial firms, academic and training partners at the heart of its development. It relies on a training ecosystem made up of:

- The French training ecosystem
- Campus Naval France
- French Navy Training Centres
- The Jules Verne Manufacturing Valley

#### 4.5.1.1 The French Training Ecosystem

The French ecosystem is illustrated at Figure 6



Figure 6. DCNS Training Ecosystem

#### 4.5.1.2 Campus Naval France

Created by DCNS and the GICAN in 2012, Campus Naval France brings together industry and the training bodies of the French naval sector. It aims at optimising the training offers in the naval field and at answering the needs of industry. It is also helps DCNS remaining at the heart of the latest developments in the field of training. Campus Naval France objectives are to:

- Adapt and develop the organisation of professional training, which promotes access to employment;

- Generate skills related to the environment and to products (of the vessels, infrastructure and high-tech equipment); and
- Develop a network of exchanges between the different employment and training stakeholders including the Campus of trades and Qualifications Industries of the Sea.

#### 4.5.1.3 French Navy Training Centres

The Group has a special links with the 'Ecole Navale' (Naval Academy), which trains officers of the French Navy. DCNS and the French Navy collaborate on training projects, such as a new e-learning module on cyber-security.

'DCNS Universeaty' also contributes to best practices exchanges with the 'Pôle Ecoles Méditerranée', another navy training centre dedicated to maintenance and operational activities.

#### 4.5.1.4 The Jules Verne Manufacturing Valley

This French initiative has developed an open innovation ecosystem dedicated to advanced manufacturing. With 300 companies, 1,000 researchers, a campus of 2,000 students and a Fablab with 150 makers, this Technological Research Centre covers 4 strategic manufacturing sectors: aeronautics, automotive, shipbuilding and energy.

### 4.5.2 Generating Vocations to Develop an Enduring Skills Base

#### 4.5.2.1 STEM-related Skills

In the tertiary education sector, Australia has a declining rate of Science, Technology, Engineering and Mathematics (STEM)-related course completions which have decreased over the past 10 years from 22% to 16%. Despite attempts by governments over the last decade to increase school student participation, the proportion of students commencing in STEM has flat-lined at around 10 per cent or less. At the same time, the Australian Bureau of Statistics has reported that STEM skills jobs grew at about 1.5 times the rate of other jobs in recent years: by 14% compared to 9% between 2006 and 2011. As a consequence, according to a 2014 survey conducted by the Australian Industry Group almost 44% of employers continue to experience difficulties recruiting STEM qualified technicians and trade workers. The main barriers are a lack of qualifications relevant to the business (36%) and a lack of employability skills and workplace experience (34%).

The FSP represents a unique opportunity to inspire vocations and offer the perspective to younger generations to contribute to a long-term Australian program with the highest level of technological complexity, and therefore to attract students into STEM. Having a sustainable and enduring skills base for high skills job will be paramount for the life of the program and will drive innovation in Australia as a whole. Capitalising on the attractiveness of a project the ambition of the FSP, DCNS as the PSI will take a number of initiatives to build up aspirations for a naval-oriented career.

#### 4.5.2.2 Workplace Experience

Faithful to the French tradition of apprenticeship ("compagnonnage"), DCNS offers internships to around 250 graduate students with various backgrounds each year and 330 apprenticeships per year to graduate students with vocational and academic education.

DCNS also enjoys enduring relationships with the best French Engineering Schools such as Ecole Centrale Nantes, Ecole Centrale Lyon, Telecom Bretagne, ENSTA Paris, ENSTA Bretagne, Centrale-Supelec, etc. DCNS experts deliver technical lectures in these schools (for instance, in Centrale Lyon on acoustic discretion of submarines) and contribute to scientific chairs (e.g. 'Naval Cybersecurity' with Telecom Bretagne and the French naval academy, 'Complex systems engineering' with ENSTA Paris, 'Nuclear Security' with Mines Nantes).

As a result of this experience, DCNS has been made very well aware of the importance of building as many links as possible between the academic world and industry and of providing workplace experience to students or industry application opportunities to researchers.

DCNS Universeaty will therefore set in place programs in the FSP allowing for around 50 Australian graduate students per year to complete graduate programs or traineeships within the DCNS Group or its suppliers. The candidates will be young engineers completing their degree, PhD students or teachers researchers. They will discover the Group's workshops, shipyard and research centres spread out throughout the French territory (Paris region, Cherbourg, Brest, Lorient, Nantes-Indret, Ruelle, Toulon and Saint-Tropez). The trainees will be involved in exciting development projects and will have access to high level experts in their fields, in particular the 600 experts mentioned in § 4.5.1. The duration of these training programs would be a minimum of 6 months.

DCNS is already hosting PhD researchers on an opportunity basis. As an example, a teacher researcher on chemistry and corrosion from the AGH University of Science and Technology (Krakow, Poland), is currently embedded within DCNS Research in Cherbourg, working with DCNS experts to apply its academic research to industrial issues related to ships and submarine hulls, welding, materials, painting, etc. Making the most of her presence in France, DCNS is organising a seminar about corrosion in Cherbourg this month. This type of experience would be incorporated into the FSP.

#### 4.5.2.3 Setting up Tailored Naval Engineering Degrees

DCNS has identified a number of universities such as s47G, s33(a)

which are already offering degrees in relation to naval engineering. A wide range of courses are available through these organisations. The FSP and other upcoming naval shipbuilding projects in Australia will naturally encourage students to choose these degrees, providing them tangible work opportunities for many years to come. In order to enhance existing degrees attractiveness and improve their relevance to the PSI needs in the NSP, DCNS will choose a tertiary education institution to partner with to tailor these degrees or build up new ones with particular emphasis on submarine-related subjects. French higher education institutions will also contribute to this partnership, giving the opportunity to use DCNS experts or teachers from these schools as contributors to the courses. This will also help offering the best possible curriculum.

DCNS Universeaty has experience in developing partnerships with local universities to create training programs:

- In Malaysia, in collaboration with two engineering schools, it is creating a Naval Master's Degree within a Malaysian University.
- In Brazil, it has established a partnership with Senai (a Brazilian organisation for professional training), Itaguai Construções Navais and the French Ministry of Education to set up technical training courses in subjects such as industrial maintenance, equipment handling, etc.

s47G, s33(a)

it offers a combination of face to face learning sessions and eLearning options. DCNS as the PSI also intends to extract some good practices out of this and contribute itself on its own site to the development of knowledge and the creation of a corporate culture and identity.

#### 4.5.2.4 Secondary Education

DCNS recognises the benefits of equipping students with the employability skills and knowledge to prepare them for higher education systems described earlier. To that end, it intends to sponsor schools participating in the SUBS in Schools Program<sup>3</sup> developed by Re-Engineering Australia, Defence and a number of industry stakeholders.

The program is focused on engaging student interest in the technology of submersible vehicles and submarines and is built on the fundamentals of project-based learning. It is structured on the same underlying fundamentals successfully employed in the F1 in Schools™ (F1iS) program. F1iS has been successfully running in Australia since 2003 and has been proven to have a significant impact on the career decision choices of those students who take part.

DCNS will also seek to support other initiatives such as the shipbuilding-focussed vocational approach adopted by the Le Fevre High School in Adelaide, SA.

<sup>3</sup> <http://rea.org.au/subs-in-schools/>

## 5 Establishing a Strong Australian Supply Chain (FOUO) s47G, s33(a)

A strong Australian supply chain is fundamental to sovereign sustainment and to maximise Australian Industry Involvement.

### 5.1 Inputs

In order to achieve a sovereign submarine capacity in Australia two interrelated features are considered:

- An **operational imperative** to act in autonomy and to allow the RAN to carry out its missions; and
- An **industrial sustainment capability** for upkeep, update and upgrade of the FSM.

Operational independence is based on three main perspectives:

- **Performance:** gathering of the best available technologies will allow DCNS to deliver the most capable FSM;
- **Safety:** the ability to provide safe and effective equipment and also to provide rapid resupply should a safety-related defect occur; and
- **Reliability:** each supply will be assessed to provide a high level of reliability and with the aim of easing the physical management of the FSM.

Independent Sustainment has to be addressed on three levels:

- **Upkeep:** maintaining a seaworthy submarine through planned maintenance and the ability to support repair of defects;
- **Update:** addressing emerging obsolescence; and
- **Upgrade:** enhancing the FSM's operational capabilities as to meet emerging threats.

The inter-dependence between these features is illustrated at Figure 7.

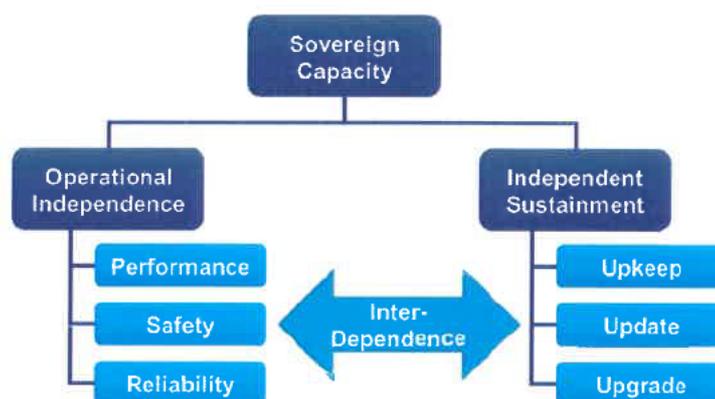


Figure 7. Approach to Sovereign Capacity

From an Australian industry perspective, this means an indigenous capacity to meet operational needs of performance, safety and reliability while also supporting the capability to sustain through upkeep, update and upgrade.



It is therefore important that systems in the submarines are developed with these sustainment imperatives in mind from the very outset. This requires a mapping of Australian capabilities and the identification of potential of gaps, by:

- Qualifying the reliable suppliers (companies with skills, experience, tools, process, performance, etc.); and
- Comparing with overseas suppliers to identify any Risks and Opportunities.

DCNS has made a preliminary assessment of the systems and activities that should be performed in Australia. The purpose of this assessment is to illustrate the extent of capability in Australia, provides a preliminary indication of the extent of Technology Transfer that will be required and indicates where DCNS believes the gaps exist in the Australian market.

From a list of systems and activities associated with design and the build of a submarine, made against criteria described in § 5.1.1, § 5.1.2 and § 5.1.3 for:

§ s47G, s33(a)

- 4 Australian Involvement Imperatives; and
- Sustainment Importance;

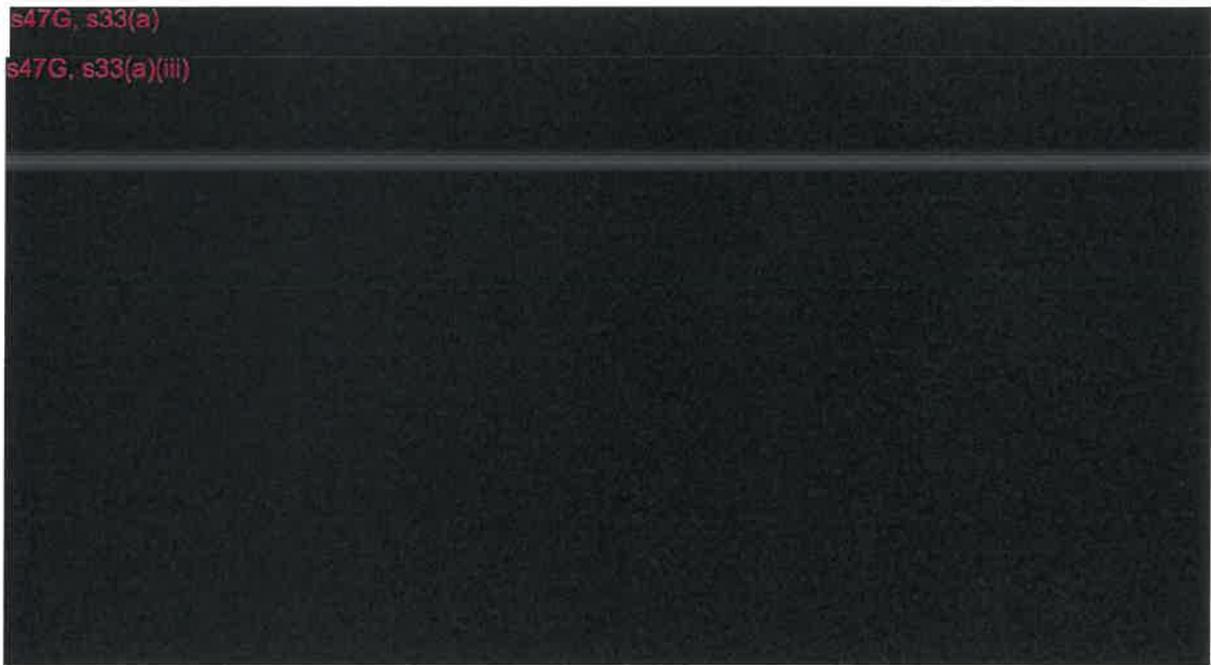
The sustainment criteria are given the strongest weight as they incorporate assessments for Safety, Performance and Reliability, therefore reflecting the DCNS sustainment driven approach for the supply chain..

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s47G, s33(a)

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s47G, s33(a)(iii)





### 5.1.2 Australian Involvement Imperatives

Sustainment of any system is enhanced if the entities involved in the sustainment have know-how generated through involvement in the build. There are four (4) levels of importance that DCNS applies to consideration of Australian Industry Involvement (AII) in the context of the FSM:

- Crucial;
- Significant;
- Beneficial; and
- Helpful.

A score is applied on a sliding scale from 0-4 based on the effect of the following criteria:

- Improved know-how;
- The extent to which certainty of supply is guaranteed;
- The strategic imperative to retain or grow the capability in Australia; and

The vulnerability of the system to shelf-life and/or supply delays.

### 5.1.3 Sustainment Importance

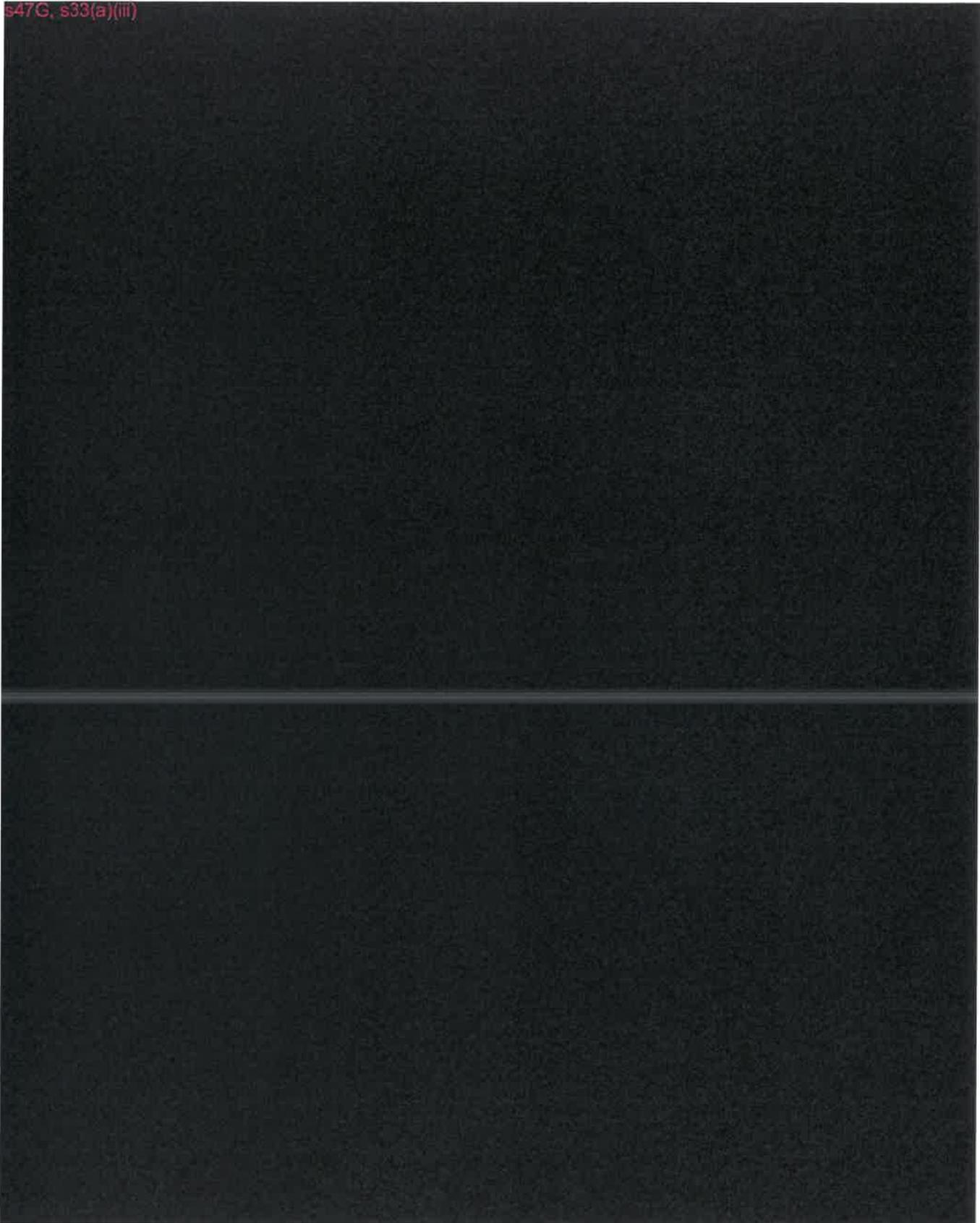
In this approach, the essentiality of procurement activities including items and services with regards to sustainment are assessed. In accordance with criteria (impact on performance, safety and reliability) these activities are ranked in four (4) categories:

- **Essential:** Is Australian know-how essential for this equipment to be sustained?
- **Important:** Is Australian know-how important for this equipment to be sustained?
- **Highly Desirable:** Would sustainment outcomes be enhanced if there was Australian know-how for this equipment/system?
- **Desirable:** Would it be desirable for other reasons that this equipment/system was sourced from Australia?

### 5.1.4 Global Rating

Having assessed the systems using the criteria at § 5.1, the resultant table is sorted by Global Rating and AIP Capability Level (as explained at 3.3) so as to select the order of Priority Systems.

s47G, s33(a)(iii)





### 5.2.1 Australian Industry Management, Monitoring and Reporting

An overview of the particular management of procurement contracts with Australian Industry, including particular reference to DCNS' suppliers' commitment to involving Australian industry is provided below. Full details of the management, monitoring and reporting are at Appendix B.

AIP progress will be summarised through its reporting activity, and corresponding progress reviews. DCNS proposes this reporting to be performed via a dedicated CoA/DCNS progress group.

- The AIP Progress Group (AIPPG) will consider all matters relevant to the AIP;
- The CoA and DCNS will each appoint a permanent representative for the AIPPG; and
- For specific matters, DCNS and the CoA can add experts to support the AIPPG activities.

DCNS also proposes to use two different tools to monitor All in the FSP:

- Candidate Project (CP); and
- Procurement Decision Proposal (PDP).

#### 5.2.1.1 Candidate Project

During the FSP, and to meet the requirement of autonomy in the sustainment, numerous negotiations will be lead. Some issues about expectations regarding performance, skills, ToT and Intellectual Property (IP) may be known before reaching the base of final contracts between all the actors (CoA, DCNS and the Overseas/Australian suppliers).

To share and involve the CoA in the management progress of these issues, DCNS has assessed thanks to the multi criteria analysis explained in § 5.1, the procurement activities, including equipment and services.

[Redacted]

[Redacted]

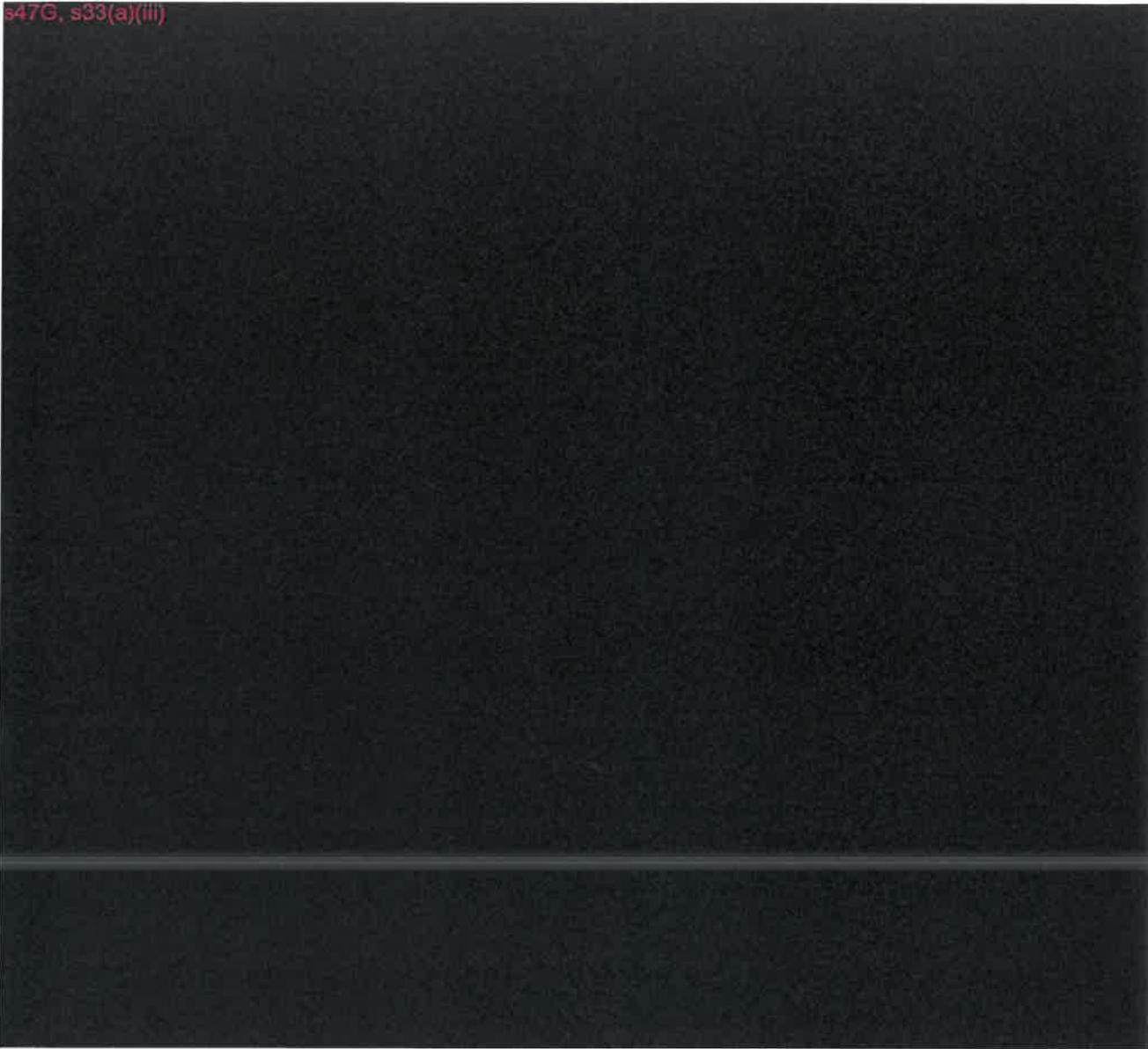
#### 5.2.1.2 Procurement Decision Proposal

[Redacted] DCNS proposes to formalise a Procurement Decision Proposal (PDP) sent to CoA for acceptance. This document will present the project's achievements, justify the supplier's choice and highlight the IP and sovereignty status at the time of the delivery.

[Redacted] s47G, s33(a)

[Redacted] s47G, s33(a)

s47G, s33(a)(iii)





s47G and s33(a)(iii)

s47G, s33(a)

## 5.2.4 Supply Chain Management

The main objective of the Supply Chain Management is to put all the materials and devices at the disposal of the shipyard in accordance with the technical requirements and with the submarines' construction schedule.

Therefore the supply chain management combines 'purchasing' and 'industrial equipment flow' management activities. This organisation is explained in [R3] – PMP: Supply Chain Management.

To reach the goal, a couple of actions are necessary:

- Manage the creation of the production Bill of Materials (BoM) and the master schedule;
- Define procurement policy for secondary equipment items;
- Set up master data for Master Resource Planning (MRP);
- Place order according the MRP results for secondary equipment items;
- Follow up the delivery of the critical and main equipment items;
- Receipt items, make the quality inspection, store and pick items according the shipyard or workshop demand; and
- Assure the support of the shipyard according emergency, scrap, over needs.

### 5.2.4.1 Bill of Materials Definition

The BOM is the master data of the Supply Chain Manager. It is built from engineering data and it conforms to the building process.

The creation of the BOM needs a cross work between process engineering, method and supply chain engineering method. The process engineering method defines the build.

strategy which becomes the structuration of the BOM. Each level of the BOM represents a sub-assembly needed for the building of the submarine.

Each sub-assembly is fulfilled with all the items necessary for the realisation. The data is completed with the quantity. This quantity is defined by supply chain engineering; assuming the entire production margin (over length, scrap %, etc.).

#### 5.2.4.2 Master Schedule

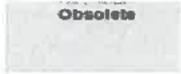
The master schedule defines the 'need' date to the supply organisation. For each level of the BOM, a date is defined. This coupling of BOM level and beginning date define the first date of the item requirement to the supply chain.

#### 5.2.4.3 Define Procurement Policy

The procurement policy is applied to the secondary equipment items. For the other item, the exact quantity will be ordered according the need of the BOM.

The procurement policy will be defined regarding the forecast consumption profile.

Table 4. Consumption Profiles

Consumption profile	Criteria
1) Obsolete 	Obsolete equipment items are those that are no longer used because their technology is out of date...
2) Dying 	Dying equipment items have not been used for several months...
3) New 	New equipment items are those which have started being used lately or will be soon. Past records cannot be used for stock management purposes.
4) Sporadic 	Lumpy equipment items are those with a low rotation but whose average consumption is high
5) Erratic 	Erratic equipment items are those with a high rotation rate and high standard deviation
6) Slow 	Slow moving items are those with a low rotation and a low average consumption; those complement lumpy items
7) Fast 	Fast moving items are those with a high rotation and a low standard deviation; they complement erratic items



After the definition of the consumption profile for every part number, the procurement policy is applied:

Table 5. Procurement Policy for Supply Chain

Price	New	Sporadic	Erractic	Slow	Fast
< 500 €	EOM quantity	Safety Stock + BOM quantity	Min/Max	Safety Stock + BOM quantity	Min/Max
> 500 €	BOM quantity	Safety Stock + BOM quantity			

### 5.2.4.4 Master Data for MRP

The Master Data Item is set up in the ERP (see [R3] – PMP: 4.2.6 – Project Management Tools Landscape). The ones which have to be set up are:

- Order, Production and Reception lead time;
- Procurement policy;
- Safety stock or Min/Max quantity; and
- MOQ (Minimum Order Quantity).

s47G, s33(a)

s47G, S33(a)(iii)

### 5.2.5 Understanding and Engaging Australian Industry

DCNS has been able to map the existing submarine capabilities in Australia through inputs from industry associations and government agencies, open source databases and directories.

To assess these capabilities and, in a two-way approach, to enable Australian industry to establish contact with DCNS, Industry Briefings have been held as follows:

- Adelaide (25-05-2015);
- Melbourne (02-07-2015);
- Sydney (10-07-2015);
- Darwin (29-07-2015);
- Brisbane (30-07-2015);
- Perth/Henderson (05-08-2015); and
- Sydney (Pacific 2015) (7-10-2015).

Through these briefings to over 300 companies, DCNS has presented its involvement in the CEP, its approach to managing the Supply Chain and how potential suppliers could join the



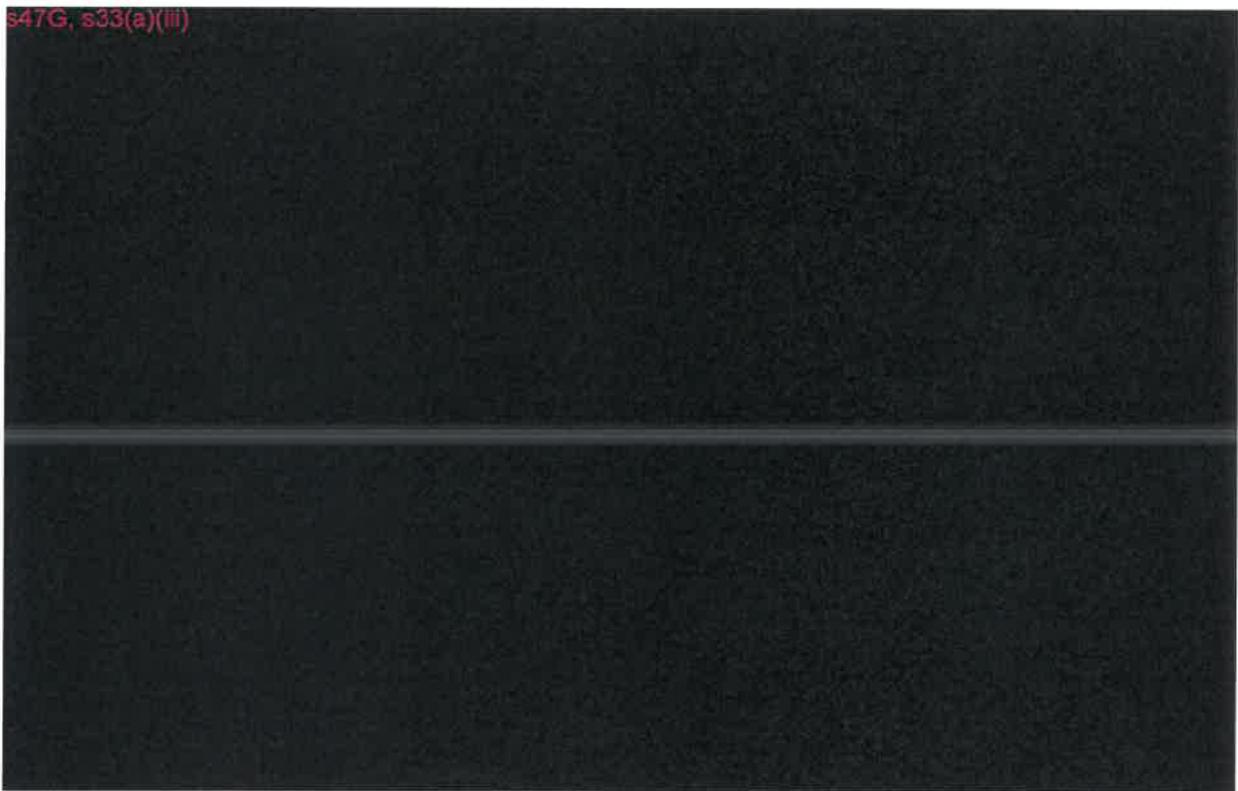
DCNS Global Supply Chain, not only for the SEA1000 program but also for other shipbuilding programs in Australia or around the world involving DCNS.

During the Industry Briefings, DCNS has conducted one-on-one meetings to give them the opportunity to present their capabilities. In conjunction with these meetings site visits have been organised to inspect suppliers' facilities.

In this process of engagement towards Australian industry, DCNS gave suppliers the opportunity to complete a Supplier Pre-Qualification Questionnaire (SPQQ)<sup>4</sup>. This questionnaire captures information on the companies such as skills, experience, tools, processes, performances, financial situation, etc. To date, 103 companies have completed the questionnaire providing a broad understanding of local capability which, when coupled with the existing ASC supply chain of over 2,600 companies, provides a sound basis for the NSP. ~~s47G, s33(a)~~

~~s47G, s33(a)~~

~~s47G, s33(a)(iii)~~



<sup>4</sup> <http://dcnsgroup.com.au/supplier-pre-qualification-questionnaire/>



Figure 12. Australian Companies engaged by DCNS

Submarine Applications (referring the PBS) Technology Fields		Declared Australian Supplier	Evaluated Australian Potential Contributors
Air & Surface Detection	Sagem Australasia Thales Australia	Daromont Technologies Owen International	Raytheon Australia Sea Technologies Sonartech Atlas Stealth Surveillance System Motion Technologies
Mast	s 47G and s 33(a)(iii)	Motion Technologies (SEP)	
Sonar Detection		Avalon Systems Uvs	Sypacq Systems Saab Australia Ultra Electronics
Combat Management System		Processing Systems Militarytech	Owen International Milspec Manufacturing Cirrus Real Time
Weapon Handling & Control	Babcock Australia	Allied Technology International Nova Systems	Nepean Engineering Jered
Communications		Thales Australia Jenkins Engineering Defence Systems Instruments Exelis C4i	Ultra Electronics Avalon Systems Indra Australia Afc Group Diamond Optics Aero & Military Products Novamarine Instruments Boeing Defence Australia Amphenol Australia Bellinger
Navigation		s 47G and s 33(a)(iii) Allied Data Systems	Sagem Australasia Veem Raytheon Australia

Submarine Applications Technology Fields		Declared Australian Supplier	Evaluated Australian Potential Contributors
Pressure Hull	ASC		
Non-Strength External Structures	s 47G and s 33(a)(iii)	Able Industries Engineering Barden Fabrications Hofmann Engineering	Adelaide Profile Services Briser & Co Calm Aluminium Baker & Provan



Submarine Applications Technology Fields		Declared Australian Supplier		Evaluated Australian Potential Contributors	
Miscellaneous Coatings & Insulations	§ 47G and s 33(a)(iii)			Defence Coating Systems, Akzonobel, Arkote, Eptec, Electromold Australia, Australian Inhibitor, A S Harrison & Co, Sec Plating	
Energy Propulsion	Pmb Defence Australia, Socomec Australia, Schneider Australia, Man Australia			Metromatics, Austindo, Century, Wärtsilä Jovyatlas Euroatlas, Wayout Evacuation Systems	
Steering Gear	Rpc Technologies			Airspeed	
Manoeuvre	Mc Taggart Scott Australia, Cortland Jeyco			Isca	
HP Hydraulic Fluid Distribution	H.I. Fraser			B.L. Shipway & Co, Delta Hydraulics, Hydraulic Distributors, Ryco Hydraulics, Bosch Rexroth, Parker Hannifin, Hydac	
Lightening	Compair Australasia			H.I. Fraser, Hydraulic Distributors, Draeger Safety Pacific, Stace, Smart Fabrication, Bosch Rexroth, Parker Hannifin, § 47G and s 33(a)(iii)	
Radiological Control	§ 47G and s 33(a)(iii)			Owen International, Bruck Textiles	
Safeguarding and Survival at Sea				Allied Technology International, Jfd, Divex Asia Pacific, Rfd, Bruck Textiles, Indepth Project Management	
Flooding and Leakage Control				Tr Vms	
Fire Detection/Suppression	Fire Protection Technologies			Morgan Advanced Materials, Wormald Fire Systems	
Air Conditioning & Ventilation	Howden Australia, Hill Defence Products, Fluid Dynamics, Alfa Laval Australia			§ 47G and s 33(a)(iii), J&H Williams Holdings, § 47G and s 33(a)(iii), Cgb Precision Products, Intertek Adelaide Inspection Services, Pall Corporation, Noske Kaeser Nz	
Cooling				Ebsray Pumps, Alfa Laval Australia, Pump Technology, Hydac, § 47G and s 33(a)(iii)	
Potable Water	Pall Corporation Australia, Sea Recovery			Ami Marine Sales, Parker Hannifin	

SENSITIVE PROPRIETARY INFORMATION  
 Contract DMO/SP/000419/2015 – Clause 9.3

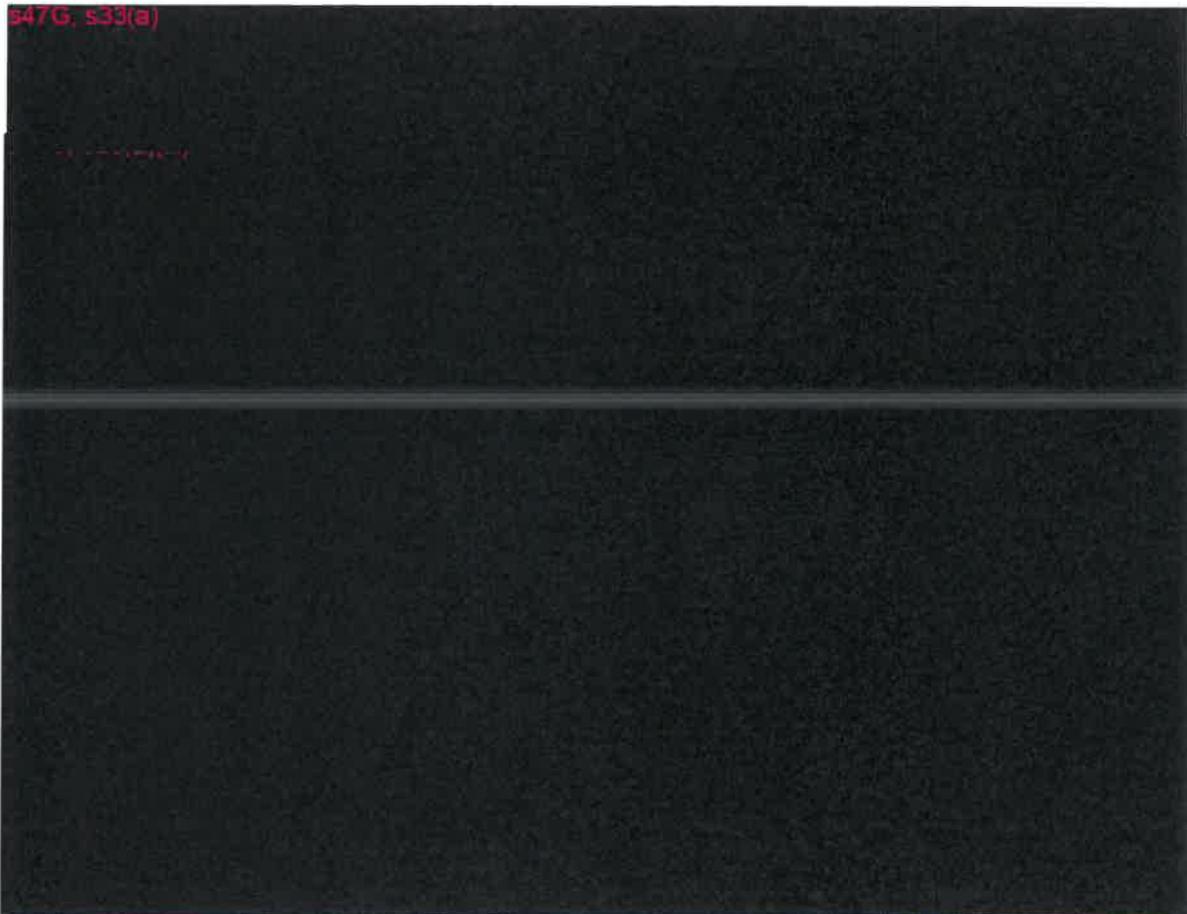
Submarine Applications Technology Fields	Declared Australian Supplier	Evaluated Australian Potential Contributors
Waste Processing	s 47G and s 33(a)(iii)	s 47G and s 33(a)(iii) Environmental Fluid Systems
Elastic Mounts	s 47G and s 33(a)(iii)	Trelleborg Engineered Systems Australia
Studies, Naval Architecture, System Engineering, Transverse Engineering	Amog	Austest Laboratories, Austindo, Codarra Advanced Systems, Coconosis Contractors, Jmc Specialised Solutions, Kinetic Australia, Gibbs & Cox Australia, Amd Marine Consulting, Amt, Cadgill
Steel Plates/Profiles	s 47G and s 33(a)(iii)	A.W. Bell, Bisalloy Steels, Cmc Australia, Onesteel, Arrium Steel, Atlas Steel, Austral Wright Metals
Piping s 47G and s 33(a)(iii)		Adlingtons Australia
On Line Fluid Equipment (valves, manifolds, gaskets, etc.)	isca	Frontline Australasia, Moog Australia, Ruag Australia, Stace, Smart Fabrication, Bosch Rexroth
Casts, Forgings	s 47G and s 33(a)(iii)	A.W. Bell, Castech, Ferrous Forgings, Townley, Adarsh, Intercast & Forge, Overall Forge, Trigg Bros., Pcc Forged Products, Cgc Kymon
Electrical cables & Accessories		Amphenol Australia, Cablex, Interconnect Systems, Tyco Electronics
Composite s 47G and s 33(a)(iii)		Bac Technologies, Axloom Diemould, Baron Rubber, Cad Australasia, Dc Rowe, Mackay Consolidated, Morgan Advanced Materials, Quickstep, Aerospace Materials
Logistics Through-Life Services		Bae Systems Australia, Bellinger Instruments, Logistics, Memko, Mincham Aviation, Northrop Grumman Integrated Services, Unitronix, Novamarine Instruments, Phoenix Australasia, Schenker Australia, Dms Maritime - Engineering Services, Laserbond Limited
In-Network Equipment		Thomas Electronics Of Australia, Apc Technology, Meltromatics, Mfb, Bellinger Instruments
Training		Bmt Design & Technology, Inventio s 47G and s 33(a)(iii), Amw Professional Services

## 5.4 Labour, Materials and other Cost Categories from Australian Industry

From the preliminary engagement with Australian industry described at § 5.2.5 and beyond, it is apparent that Australian industry possesses many of the skills likely to be needed to support all three Build scenarios for the FSM. From heavy engineering developed to support the resources sector through to highly capable metal foundries and sophisticated composites companies, the success in the export market demonstrates that many of the necessary skills are already resident in Australian industry.

Where important skills are not yet at the required level, DCNS will support suitable companies through ToT and mentoring in order to attain supplier status.

DCNS assesses that the following cost categories, as a preliminary list that reflects its current understanding of the Australian marketplace, can be sourced from Australian industry for the FSM.



## 5.5 Working in Partnership with an Australian Build and Sustainment Organisation

DCNS proposes a contractual program delivery model for Australian build activities that includes a partnership with ASC Pty Ltd. In the course of build activities, DCNS also proposes to transfer technology for sustainment activities to the CoA's nominated ASO.

For build activities, DCNS has drawn on the Australian supply chain presently supporting the Collins class submarine. To assure itself of the validity of this approach, DCNS has been working in partnership with ASC in the course of the CEP. DCNS assess ASC to have common processes and supply chain management systems though overall maturity and capability is still developing. DCNS proposes to focus on strategic risk management and supplier relationship management as priority areas for improvement in the next stage of the FSP. DCNS will also benefit from learning more about the specific risks of doing business in the Australian marketplace and other constraints faced by ASC.

ASC data indicates that around 92% of the Collins class supply chain is now sourced from Australia and this provides a basis for development of the Future Submarine supply chain. Following the recommendations of the study into the business of sustaining Australia's strategic Collins Class Submarine Capability (Coles Review) [A1], ASC has made a number of changes in its operations to improve the availability of the Collins class submarines. In 2012, ASC was given control of the management of the supply chain under a Performance Based Contract.

This has led to improvements over the past three years:

- The number of on-time purchase orders has improved;
- The suppliers delivery performance has improved, even though performances are better for purchased rather than for repaired items;
- ASC's supply chain department includes a Strategic Sourcing function (as well as a Supply Support and a Warehouse and Scheduling department); and
- The inventory is more efficiently managed.

DCNS and ASC use common processes such procurement-related activities (suppliers' qualification processes, suppliers' relationship management...) and standard gates processes (RFI, Audits, RFQs, qualification on first item). Even though sometimes organised differently to DCNS, the buying activities are consistent with the ISO 9001 norm for which ASC holds a certification and the key features are mastered. ASC Enterprise Resource Planning (ERP) system enables the leading and monitoring of all Supply Chain activities however though there is no automatic link with the Product Lifecycle Management.

DCNS was able to assess ASC qualification process for a new item through the example of parts of the CCSM diesel engines being remanufactured in Australia independently from the OEM. This included the visit of some of the suppliers involved in the process, namely Castech and A.W. Bell for the production of castings, Intertek for the laboratory testing and Nylastex for precision manufacturing.

They are assessed using mostly objective Key Performance Indicators (KPIs) of Cost, Quality, Schedule, and Technical, but also against relationship-type ones (e.g. responsiveness to queries) for major subcontractors. An element of differentiation with DCNS is the fact that most of ASC subcontractors are diversified and not specialised in the naval field, which allows on the one hand avoiding economic dependencies issues but on the other hand makes it more difficult to empower the subcontractor in his activity.

As a result of this analysis of ASC procurement-related activities, DCNS has acknowledged the level of capability of the existing CCSM Supply Chain and therefore been able to use ASC Suppliers list to facilitate sourcing activities. In the NSP, this will allow accelerating the Gate Process above described to qualify new DCNS suppliers or to qualify existing suppliers for other types of relevant activities.

## 5.6 Build Scenario Procurement Guidelines and Variations

The overarching focus of the procurement will be maximisation of Australian Industry Involvement. Taking into account the complexity of the supplies to deliver a capable submarine, the following procurement guidelines have been developed:

s47G and s33(a)(iii)

The supply chain formed for Critical and Main equipment will ship to the selected integration facility associated with the build option. This method creates the optimum solution between maximisation of Australian industry involvement, and cost and risk to the build program.

- As an assumption for the Rough Order of Magnitude (ROM) Offer process, 50% of the Secondary equipment will be purchased from the Australian Market; and
- 100% of the Standard Equipment and services will be supplied where the shipyard activities occur, building on the existing CCSM supply chain.

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s47G, s33(a)(iii)

These considerations will be affected by the availability status of the supplies:

- The supply is available;
  - The necessary supply for the build or the sustainment of the FSM is already available in Australia.
- The supplier can develop the adequate supply:
  - The selected supplier will be able to provide the necessary supply following specifications from the designer. It will not be a catalogue based procurement order and, while this approach generates an upward impact on cost, it is also an opportunity to generate added value that becomes recognised in the company's skillset.



- A capability needs to be developed in Australia to provide the supply, or the supply has to be procured from overseas:
  - The necessary supply is presently unavailable in Australia. Depending on the necessity to set up locally the relevant industrial capacity for sovereignty purposes, or for the benefit of Australian Industry Involvement, a number of ToT mechanisms identified in § 3.1 will be used.

Circumstances involving safety or programmatic issues: some adaptations can require skills or technologies not yet possessed by Australian companies. This could be a major issue in relation to safety imperatives or the cost/schedule implications for the program. In such cases, decisions to modify or adapt existing supply sources in favour of local outcomes will need to be addressed during the design phase, very early in the project schedule. Working collaboratively within the design team, involving industry stakeholders, architects, procurement experts and the end users will be important.

### 5.7 DCNS Global Supply Chain

One of the DCNS plans to maximise Australian Industry Involvement involves access by Australian suppliers to the DCNS Global Supply Chain (GSC).

DCNS will integrate activities performed in the context of the FSP to its Corporate Procurement Strategy. That includes:

- The study and analysis of the Australian market;
- The identification of qualified and skilled suppliers; and
- The technology roadmaps of the proposed Centres of Excellence or shared in a bilateral agreement.

DCNS is also conducting many programs around the world, including in Brazil, Malaysia and India. Each of them involves building and maintaining supply chains. Newly qualified Australian suppliers within the DCNS Global Supply Chain will be considered for these programs and evaluated according to cost, quality and performance. Success in these endeavours will not only be good for the companies in question: it will ensure the long-term viability of the Australian supply chain.

DCNS has experience in this form of program with for example India building submarine hatches for both Brazil and itself.

DCNS will also be joining Defence's GSC Program that has proven successful for Australian companies.

<sup>s47G and s33(a)(iii)</sup>

[Redacted]

<sup>s47G, s33(a)</sup>

[Redacted]



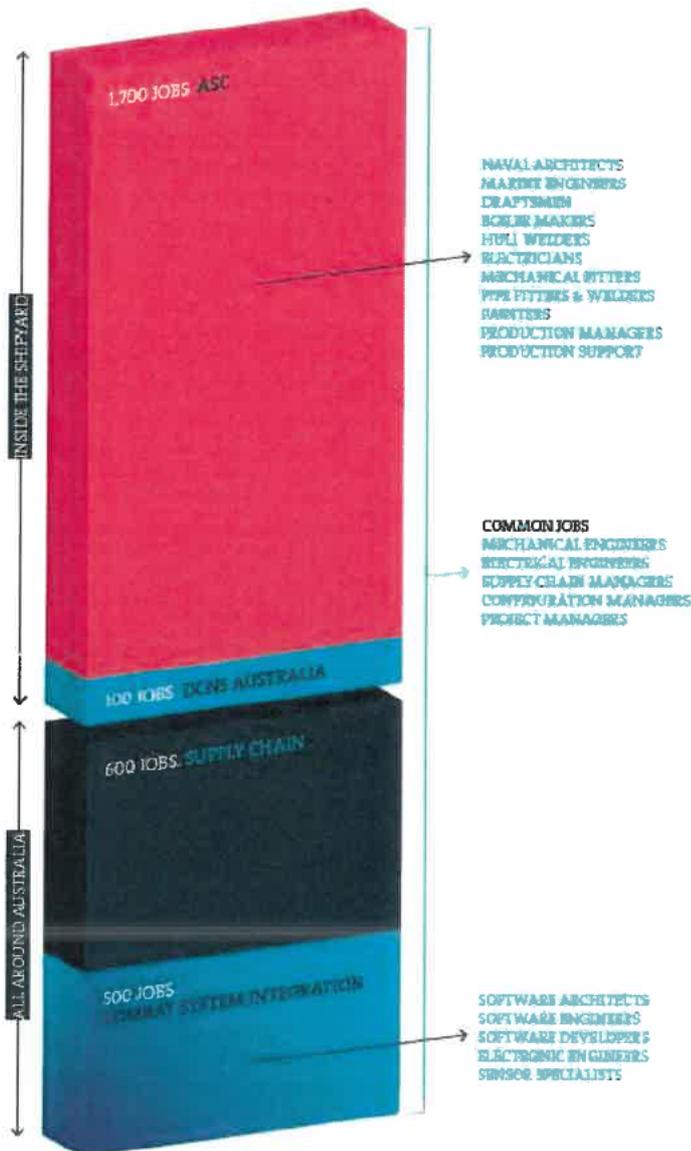


Figure 13. Anticipated Employment Outcomes from the FSP



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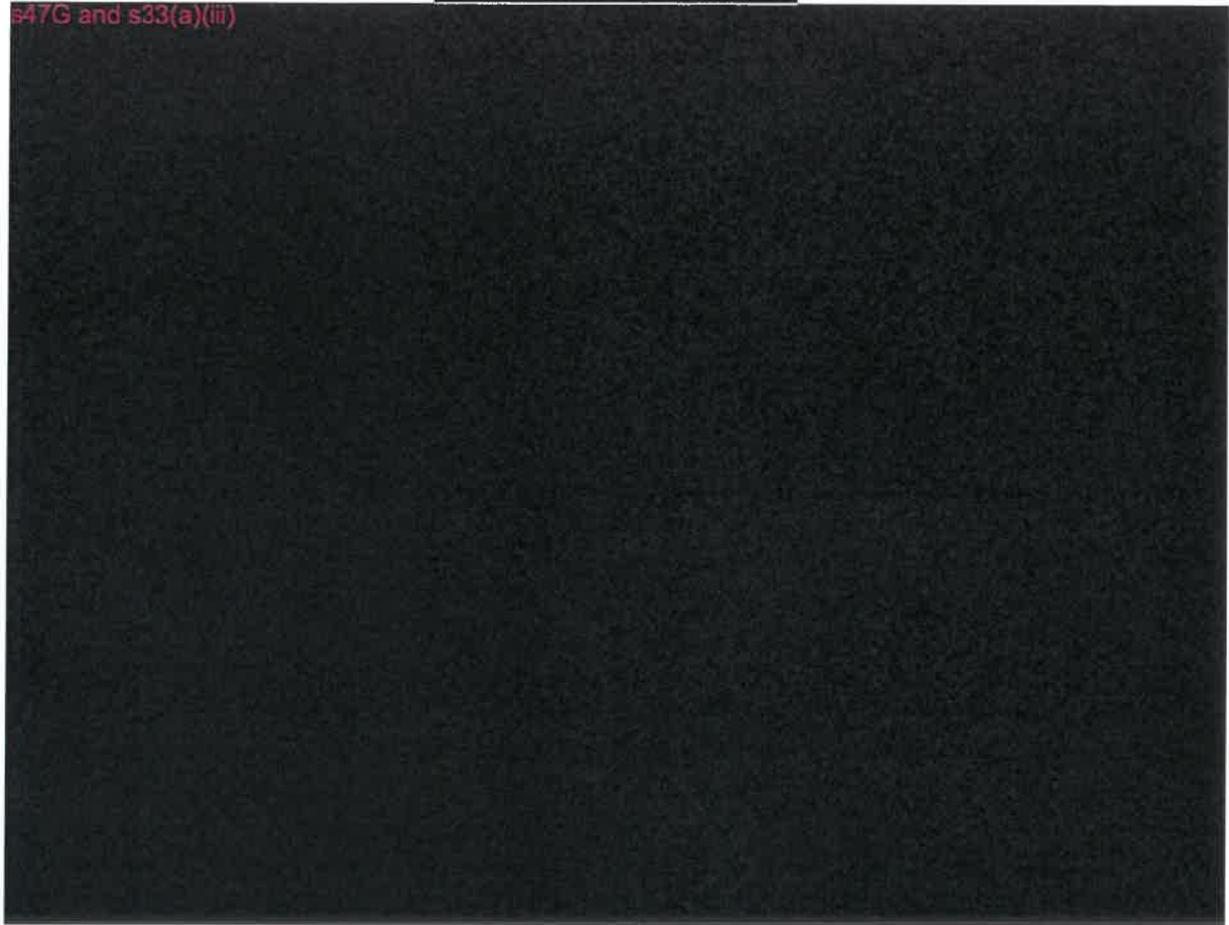
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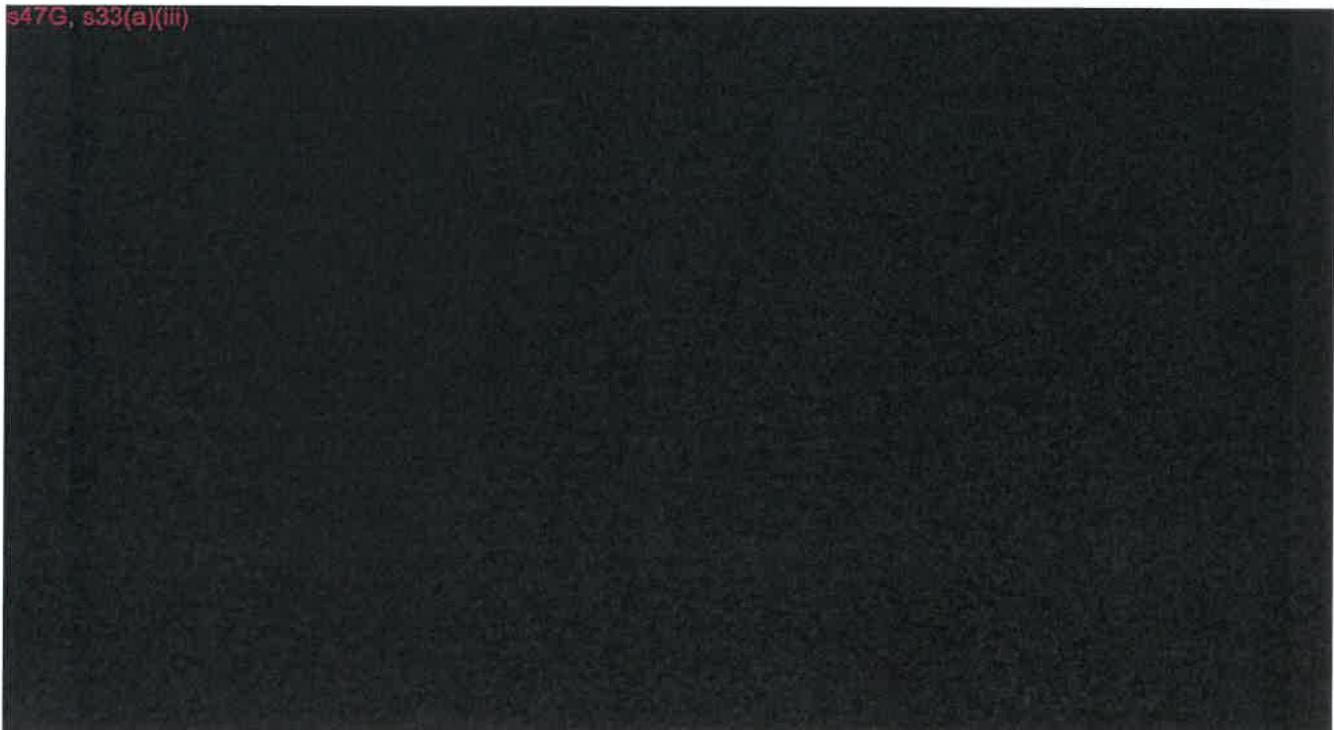
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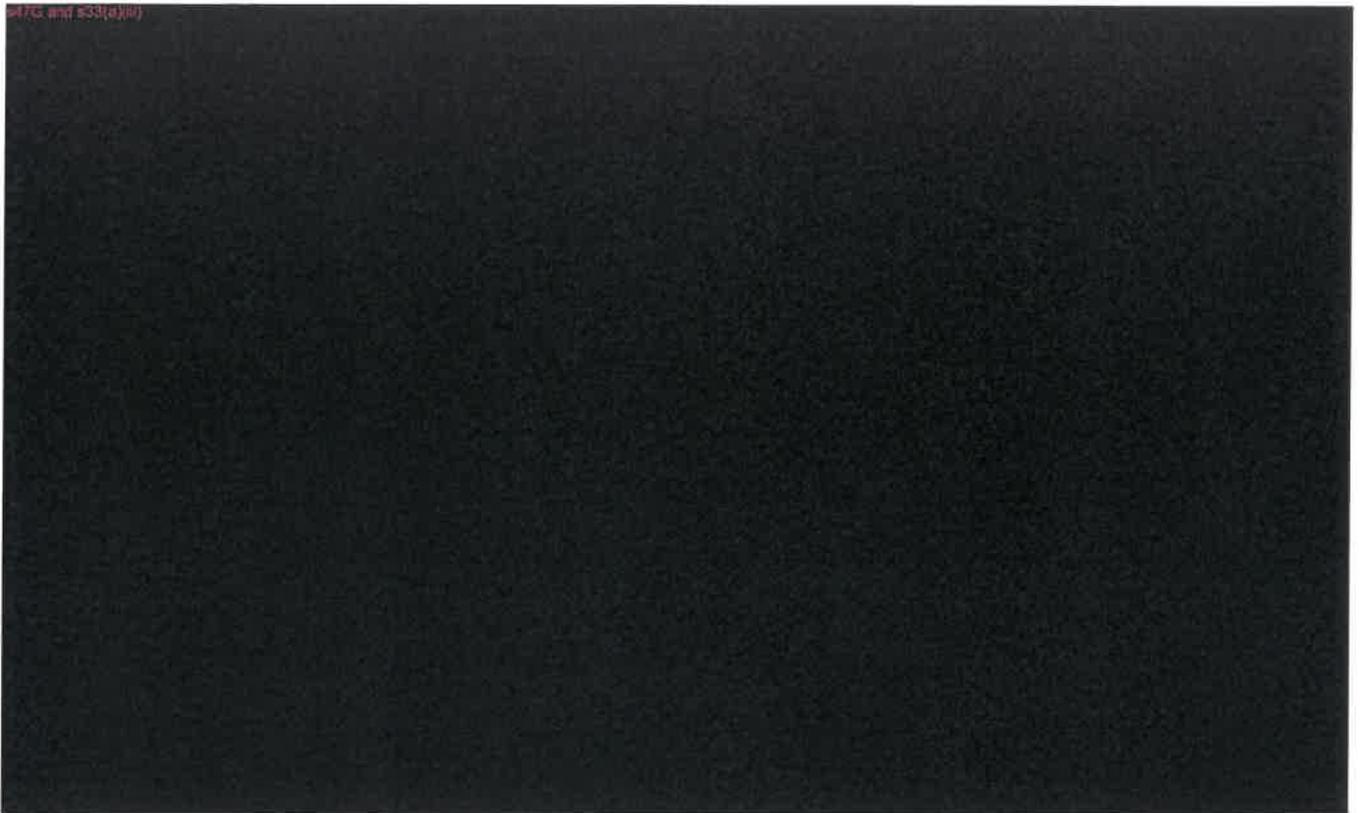


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## B Australian Industry Management, Monitoring and Reporting s47G, s33(a) – FOUO)

### B.1.1 Management

AIP progress will be summarised through its reporting activity, and corresponding progress reviews. DCNS proposes this reporting to be performed via a dedicated CoA/DCNS progress group.

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[Redacted]

s47G, s33(a)(iii) will perform the following tasks:  
[Redacted]

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[Redacted]

### B.1.2 SEA1000 Project Manager

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[Redacted]

### B.1.3 DCNS AIP Representative

The AIP Representative ensures:

- Regular contact with the CoA on all subjects relative to the AIP;
- Follow-up of the actions agreed between the CoA and DCNS;
- Follow-up of the ToT from DCNS to the CoA; and
- Follow-up of the ToT from DCNS to the Australian Shipyard.

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SENSITIVE PROPRIETARY INFORMATION  
Contract DMO/FSP/00419/2015 – Clause 9.3

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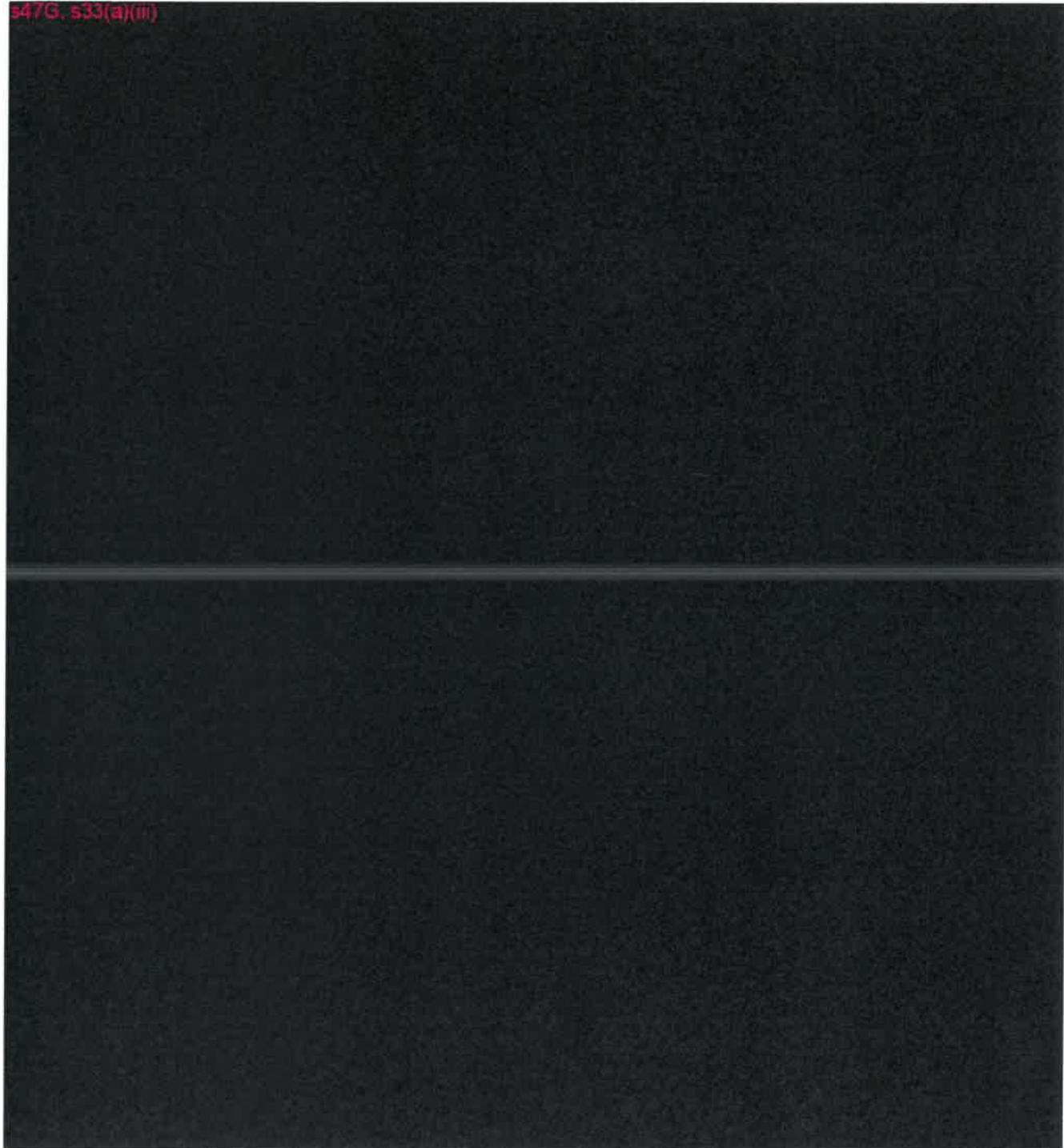
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## E Abbreviations/Acronyms/Glossary s47G, s33(a) – FOUO

### A

AIC	Australian Industry Capability
All	Austrian Industry Involvement
AIP	Australian Industry Plan
AIPPG	AIP Progress Group
AIPPM	AIP Progress Meeting
AIPPR	AIP Progress Report
ASO	Australian Sustainment Organisation

### B

BAFO	Best And Final Offer
BNS	Boustead Naval Shipyard
BS	Build Strategy

### C

CCSM	Collins Class Submarines
CEP	Competitive Evaluation Process
CESM	Communication Electronic Support Measures
CoA	Commonwealth of Australia
CoE	Centre of Excellence
CP	Candidate Project
CSI	Combat System Integrator

### D

DID	Data Item Description
DSTO	Defence Science and Technology Organisation

### F

FAT	Factory Acceptance Trial
FCD	Full Cycle Docking
FGD	Foreground
FOUO	For Official Use Only
FSM	Future Submarine
FSP	Future Submarine Program

### I

IP	Intellectual Property
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IPMS	Integrated Platform Management System
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### N

NDA	Non-Disclosure Agreement
NSP	Next Stage of the Program

### O

OEM	Original Equipment Manufacturer
OJT	On the Job Training

### P

PBS	Product Breakdown Structure
PDP	Procurement Decision Proposal
PMP	Program Management Plan
PSI	Platform System Integrator

### R

R&D	Research and Development
RACI	Responsible/ Accountable/ consulted/ Informed
RAN	Royal Australian Navy
RESM	Radar Electronic Support Measure
RFI	Request For Information
RFP	Request For Proposal
RFQ	Request For Quotation
ROM	Rough Order of Magnitude

### S

SA	South Australia
SME	Small-Medium Enterprise
SPQQ	Supplier Pre-Qualification Questionnaire

### T

TLS	Through-Life Services
ToT	Transfer of Technology





**Senator the Hon Marise Payne**  
Minister for Foreign Affairs  
Minister for Women



Ms Jackie Morris  
Secretary  
Australian Senate Committee of Privileges  
Parliament House  
CANBERRA SCT 2600  
[Priv.sen@aph.gov.au](mailto:Priv.sen@aph.gov.au)

Dear Ms Morris

**Possible improper interference – Economics Reference Committee naval shipbuilding inquiry**

I refer to the above letter, dated 24 June 2021, and the matter referred to the Committee of Privileges (the Committee) that:

*Having regard to the matters raised by Senator Patrick in correspondence tabled by the President on 12 May 2021:*

- (a) Whether any conduct of the former Minister for Defence, Senator Reynolds, or any other person amounted to an improper interference with the Economics Reference Committee inquiry into Australia's sovereign naval shipbuilding capability; and*
- (b) If so, whether any contempt was committed in respect of those matters.*

Further to your invitation to me to make a submission on matters relevant to the matter, I respond as follows:

1. The former Minister for Defence made claims for public interest immunity in writing and then before the Senate on 11 November 2020 based on advice from the Department of Defence (the Department).
2. It remains the considered position of the Government that the provision of the documents subject of the Order for Production of Documents is likely to compromise national security, damage the Commonwealth's commercial interests, and undermine the effective and efficient delivery of Australia's Sovereign Naval Shipbuilding Enterprise.

3. The concerns regarding disclosure of the subject documents is shared by senior officials from other Government agencies, including the Department of Finance, the Department of the Prime Minister and Cabinet, and the Attorney-General's Department.
4. To assist the Senate Economics Reference Committee (SERC) to report on the terms of reference referred to it by the Senate, the former Minister for Defence extended an invitation to voting members to receive a private briefing from the Department on the subject documents. In that invitation, Senators were offered an opportunity to view the un-redacted documents subject to some minor conditions.
5. The Chair of the SERC did not accept this invitation.
6. I can advise the Committee that this invitation to view the un-redacted documents in a secure location at Parliament House remains open.
7. I can further advise that the Minister for Defence is willing to extend this invitation to the Secretariat of the SERC, as well as voting members of the SERC, subject to those persons viewing the un-redacted documents agreeing to and remaining bound by the confidentiality obligations that the Minister for Defence will prescribe as necessary.
8. In regards to the matters raised by Senator Patrick in correspondence table by the President on 12 May 2021, I remain of the view that the conduct of the former Minister for Defence was in good faith and does not, in any way, amount to improper interference with the SERC.

Thank you for the opportunity to provide this submission.

Yours sincerely

**MARISE PAYNE**

21 JUL 2021