

**Email from Mr Dave Sweeney**

**Date: 25 May 2015**

Greetings Kevin,

At last week's JSCOT hearing into proposed uranium sales to India I made reference to documents obtained under FoI from DFAT and undertook to provide these to the Committee.

The documents can be accessed via the website Right To Know at the below link:

<http://www.righttoknow.org.au/request/4/response/212/attach/2/1212%20F458%20Documents%20for%20Release.pdf>

There is much of interest here, however key points for the Committee's consideration include:

- Domestic protests against the Indian nuclear sector and safety related incidents at Indian nuclear facilities – pages 5/6/24
- A persistent pattern of refusal to address outstanding legal issues (nb: *Public comment on content of any legal advice should be avoided* -p35) – this theme is repeated throughout including on pages 9/10/19/21/29/47
- Indian reluctance to advance non-proliferation – eg/ India 'lukewarm' re dialogue and 'broadly uninterested' in what it views as 'peripheral matters' – p.37

Please feel free to contact me should any clarification or further detail be of value to the Committee.

Thanks and best,

Dave Sweeney



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FOREIGN AFFAIRS AND  
TRADE

I-2

**India - Uranium: Exports**

Possible Question

Will the Government reconsider selling uranium to India?

Talking Points

- *As the Prime Minister announced with Indian Prime Minister Singh on 17 October, "India and Australia would commence negotiations on a bilateral civil nuclear cooperation agreement which, for Australia, is a prerequisite for uranium sales to other countries".*
- *She also said that Australia is open to selling uranium to India, but this would be subject to negotiation of a bilateral civil nuclear cooperation agreement including safeguards.*
- *There can be no exports until such an agreement is concluded and brought into force.*
- *The two Prime Ministers also agreed to annual officials' level bilateral non-proliferation and disarmament discussions.*

If asked: When will the negotiations commence and conclude?

- *There is no set timeframe for commencement or conclusion of negotiations.*
- *But subject to agreement with India, negotiations could be expected to start in the first half of 2013.*
- *Negotiations will take time; similar negotiations have taken a year or more.*

If asked: When will exports of uranium to India begin?

- *Exports can only commence when:*
- *Australia and India have concluded a nuclear cooperation agreement;*
- *the Government is satisfied its requirements are met; and*
- *the bilateral agreement is in force and being implemented.*
- *Also, the Australian Government has made an Additional Protocol with the International Atomic Energy Agency (IAEA) a pre-condition for the export of Australian uranium.*
- *India has signed an Additional Protocol with the IAEA, and will need to give effect to its provisions.*

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If asked: Won't our uranium exports free up India's own uranium for nuclear weapons?

- India already imports uranium from other countries and has sufficient uranium for its military needs from domestic sources.

If asked: Won't Australian uranium help fuel an arms race in a volatile region?

- No. Australia would be helping India provide energy to its people.

If asked: Won't uranium exports to India breach Australia's treaty obligations?

- Any Australian uranium exports to India will comply with our international legal obligations.

If asked: Hasn't India neglected nuclear safety to date?

- *The Indian Government is reviewing its national nuclear safety arrangements and is putting forward legislation to strengthen independence and accountability for India's nuclear regulators.*
- *The Nuclear Safety Regulatory Authority Bill 2011, which is under consideration by an Indian parliamentary standing committee, responds to many of the concerns raised in the recent report by India's Comptroller and Auditor-General on India's nuclear safety.*
- *The Australian Safeguards and Non-Proliferation Office (ASNO) has already indicated that the safety of India's civil nuclear power reactors is being taken into account in the decision making process for a bilateral nuclear safeguards agreement between Australia and India.*
- *The safety of India's civil nuclear power reactors will of course be taken into account when decisions are made regarding nuclear safeguards for our bilateral agreement*
  - *The Australian Safeguards and Non-Proliferation Office (ASNO) has already made that clear.*

If asked: Won't the Government reconsider, given poor nuclear safety in India?

- India is a robust, liberal democracy governed by the rule of law.
- Anti-nuclear protestors in India can raise their grievances freely.
- India is a member of the Convention on Nuclear Safety, is committed to the International Atomic Energy Agency's Action Plan on nuclear safety, and is putting forward legislation to strengthen its nuclear regulators.
- Nuclear safety will be addressed in negotiations with India for a bilateral nuclear cooperation agreement.
- Australia expects India to follow international best practise for nuclear safety.

If asked: Don't the recent radiation leaks at the Rajasthan Atomic Power Station demonstrate India's poor safety record?

- *The Australian Government is aware of reports of radiation leakage at the Rajasthan Atomic Power Station in June and July.*
- *At the IAEA General Conference in September, the Indian Government stated its commitment to the IAEA Action Plan on Nuclear Safety and to that end invited the IAEA to conduct an Operational Safety Review Team (OSART) mission to the Rajasthan Atomic Power Station during October and November 2012.*
- *The IAEA OSART mission is currently underway.*

If asked: Doesn't this weaken Australia's non-proliferation credentials?

- *No. Australia steadfastly supports non-proliferation and disarmament.*
- *Australian uranium will only ever be used for peaceful purposes.*
- *Australian uranium exports to India will accord with Nuclear Suppliers Group rules and be under International Atomic Energy Agency safeguards.*

If asked: Isn't Australia out of step with the rest of the world?

- *No. The Nuclear Suppliers Group exemption for India cleared the way for nuclear exports to India, including by Australia.*
- *India has already signed civil nuclear cooperation agreements with countries such as the United States and Canada.*

If asked: Why are special arrangements being made for India?

- *Australia supports India's commitment to safe use of nuclear energy.*
- *Over the next decade, new reactors should more than double India's nuclear generating capacity, which currently accounts for three per cent of India's power generation.*

If asked: Will Australia support India joining the Nuclear Suppliers Group (NSG)?

- *Australia participated in India's Nuclear Suppliers Group exemption and will consider on its merits India's NSG membership.*

If asked: Will Australia also export uranium to Pakistan?

- *Australia has excellent relations with Pakistan and we are well aware of Pakistan's interest in importing uranium*
  - *however, potential recipients for Australian uranium are considered on a case-by-case basis*
  - *the possibility of uranium exports to Pakistan is not under consideration, and no formal requests have been put to us to do so.*

If asked: Will Australia agree to a Nuclear Suppliers Group exemption for Pakistan?

- A Nuclear Suppliers Group exemption for Pakistan is not under consideration.

## **Background**

### **India and Australia's uranium exports policy**

Government policy has been not to export uranium to states outside the Nuclear Non-Proliferation Treaty (NPT), principally India, Pakistan and Israel. On 4 December 2011 the ALP exempted India from its ban on uranium exports to non-NPT states and in light of this, the Government has exempted India from its policy. *On 17 October, the Prime Minister and Indian Prime Minister Singh announced India and Australia would commence negotiations for a bilateral civil nuclear cooperation agreement which, for Australia, is a prerequisite for uranium sales to other countries.* She said: "Negotiating a ... safeguards agreement is going to take some time ... We will of course, want the assurances about the use of Australian uranium, and oversight by the International Atomic Energy Agency" (IAEA). Australia's bilateral nuclear cooperation agreements ensure Australia's requirements are met, including: IAEA safeguards coverage (with an Additional Protocol); fallback safeguards in the event IAEA safeguards no longer apply; physical security requirements; and prior consent for transfer of Australian-obligated nuclear material to a third party, enrichment beyond 20 per cent uranium-235 or reprocessing.

### **Australia's treaty obligations**

On 12 October 2012, Prof. Don Rothwell of the ANU said on ABC Radio Australia: "Australia ... has an obligation to ensure that its sale of uranium mined from within Australia is dealt with consistently with the provisions of the South Pacific Nuclear Free Zone Treaty" (Treaty of Rarotonga), and "any objection under the Treaty of Rarotonga would have to be brought by one of the Pacific nations that are signatories to the agreement." Previously, the International Campaign to Abolish Nuclear Weapons (ICAN) obtained legal advice from Prof. Rothwell, concluding that Australia is prohibited under international law from exporting uranium to India unless India accepts comprehensive IAEA safeguards. On 23 November 2011, ICAN provided the advice to the Prime Minister, Attorney-General and Minister for Foreign Affairs. ICAN asserts the advice means Australia is prohibited from exporting uranium to India.

### **Indian nuclear safety**

In August 2012, a report by India's Comptroller and Auditor General "Activities of the Atomic Energy Regulatory Board (AERB)" detailed faults in India's nuclear regulatory regime, and on 15 October, Fairfax Media's Ben Doherty highlighted the report in an article "Gillard ready to discuss Indian nuclear exports despite fears over safety". The report found the AERB lacks independence and cited significant delays in reporting on nuclear safety inspections and responding to safety reports by nuclear operators. On 10 September 2012, a protest against India's Kudankulam Nuclear Power Plant in turned violent and police dispersed some 5000 protestors. In a related incident, police shot dead a protesting fisherman after a checkpoint was set on fire. Subsequently, Tamil Nadu Chief Minister Jayalithaa appealed for calm, announced compensation to the dead man's family, and outlined government steps taken, including an assistance package for villages affected by land acquisition. In the early 1990s, India had some significant nuclear incidents, including: a fire in the turbine building at Narora Nuclear Power Plant leading to loss of power to the unit for over 17 hours; flooding of the Kakrapar nuclear power plant from heavy rains and a weir

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failure and collapse under construction of the inner containment dome of the Kaiga reactor.

#### **Radioactive leaks at the Rajasthan Atomic Power Station**

ABC News of 30 October reported on an IAEA inspection of the Rajasthan Atomic Power Station in response to leaks of radioactive tritium that occurred in June and July 2012 at two different nuclear reactors at the site. The 23 June 2012 incident occurred when workers were preparing for welding to repair a faulty coolant pipe at the Unit 5 reactor. In that incident 38 workers were exposed to some radiation with two workers receiving a dose equivalent to the annual permitted dose of radiation. Those two workers were assigned to other duties in the plant. According to a Nuclear Power Corporation of India Limited (NPCIL) report, there was no radiation leakage to the environment. The 19 July 2012 incident occurred when four workers were exposed to tritium radiation while repairing a faulty pipe at reactor Unit 4. These four workers were exposed to up to 25% of the permitted annual radiation dose. At the September 2012 IAEA General Conference India invited the IAEA to conduct an Operational Safety Review Team (OSART) mission to the Rajasthan Atomic Power Station. The OSART mission involving 12 IAEA inspectors commenced in late October and is planned to continue until mid-November.

#### **India's nuclear status**

India cannot fit the NPT definition of a nuclear-weapon State and will not abandon its nuclear weapons to join the NPT as a non-nuclear-weapon State. In 2005 the US and India announced a bilateral civil nuclear cooperation initiative and in 2006 they signed a nuclear cooperation agreement, under which India committed to: separate its civil and military nuclear facilities; place its separated civil nuclear facilities under IAEA safeguards; sign and adhere to an IAEA Additional Protocol; and maintain its nuclear testing moratorium. In 2008, the Nuclear Suppliers Group (NSG) exempted India from certain NSG rules preventing nuclear trade with it. Australia joined the NSG decision. India's undertakings became the basis for nuclear cooperation with it by nuclear suppliers. For example, Canada and the United States are working to settle administrative arrangements to implement their nuclear cooperation agreements with India. In 2010, the US and India also announced that the US would support India's membership of the international export control regimes, including the NSG.

#### **India's uranium needs and Australia's supply capacity**

India has little available indigenous uranium for its civilian reactors. India reportedly plans to increase its nuclear energy production capacity from 4.4 Gigawatt electric (GWe) to 20 GWe by 2020, when its demand for civil uranium could increase to around 6,000 tonnes uranium oxide per year. Australia has 33 per cent of global 'reasonably assured resources' of uranium, with exports forecast to increase out to 2030 as new projects come online. By 2016-17, Australia's exports of uranium oxide are forecast to reach 13,500 tonnes per year.

#### **Pakistan's interest in 'the same deal as India'**

Pakistan has publicly expressed its interest in receiving an exemption from the NSG, similar to India's, and in being able to import Australian and other countries' uranium under similar terms to India. Australia holds regular officials dialogues with Pakistan, but we have received no formal request from Pakistan for such treatment. Pakistan's chequered proliferation history is not on a par with India's sound proliferation record. An NSG exemption for Pakistan is not yet in prospect.

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Edit Date: 5 November 2012 04:57:05 PM

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**REDACTED**

### **India: Uranium - Legality**

#### **1. Legality of Australian uranium exports to India**

***Don't Australia's international legal obligations (for example, under the Nuclear Non-Proliferation Treaty or the South Pacific Nuclear Free Zone Treaty) prevent uranium supply to India?***

Any exports of Australian uranium to India would comply with Australia's international legal obligations.

***Is the Department aware of legal advice from Professor Don Rothwell that Australia is under international legal obligations not to provide India with nuclear material until such time as India has concluded a full-scope safeguards agreement?***

Yes.

Will not comment on that advice except to say that any exports of Australian uranium to India would comply with Australia's international legal obligations.

#### **2. Legal advice to Government by DFAT**

***Will the Government need to put in place any changes to legislation or regulations in order to export uranium to India?***

The legislative framework in Australia is already in place to cater for new nuclear cooperation agreements.

Any specific legal requirements with respect to uranium supply to India will be addressed in the context of negotiations for a bilateral civil nuclear cooperation agreement.

***Has the Government sought or received legal advice on this?***

Yes.

The content of any legal advice is confidential.

### **BACKGROUND**

#### ***Legality of Uranium Sales to India***

There is a range of complex legal issues that will need to be addressed, including in negotiations with India on a civil nuclear cooperation agreement, before any uranium could be exported to India. It would therefore be premature to engage in a public discussion on this issue at this stage.

#### ***International Campaign to Abolish Nuclear Weapons (ICAN)***

ICAN obtained legal advice from Prof. Don Rothwell of the Australian National University, concluding that Australia is prohibited under international law from exporting uranium to India unless India

accepted comprehensive International Atomic Energy Agency (IAEA) safeguards. ICAN provided a copy of the advice to the Prime Minister, the Attorney-General and the Minister for Foreign Affairs on 23 November 2011. ICAN asserts the advice states Australia is prohibited under international law from exporting uranium to India unless India accepts comprehensive safeguards.

On 12 October 2012 ABC Radio Australia quoted Prof. Rothwell as saying "Australia ... has an obligation to ensure that its sale of uranium mined from within Australia is dealt with consistently with the provisions of the South Pacific Nuclear Free Zone Treaty" (Treaty of Rarotonga), and that "any objection under the Treaty of Rarotonga would have to be brought by one of the Pacific nations that are signatories to the agreement."

31 October 2012

s 22 1(a)(ii)

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**From:** s 22 1(a)(ii)  
**Sent:** Thursday, 18 October 2012 9:48 AM  
**To:** Shannon, Peter; Kalish, John  
**Cc:** s 22 1(a)(ii) Robinson, Jeff;  
s 22 1(a)(ii)  
**Subject:** RE: Updated estimates brief India Uranium [SEC=UNCLASSIFIED]

The India uranium stuff is in para 15 of the joint statement (below for those that did not get it). The joint statement also said (para 25) that both PMs "agreed to annual bilateral non-proliferation and disarmament discussions at the level of officials" and there is a slight reference in that para to the India's potential membership of the export control regimes ("recognition of the importance of". ("ht John Tilemann", as they say in the blogs)

**JOINT STATEMENT  
PRIME MINISTER OF AUSTRALIA  
PRIME MINISTER OF INDIA**

1. The Prime Minister of Australia Ms Julia Gillard paid a State Visit to India from 15-17 October, 2012 at the invitation of Prime Minister Dr Manmohan Singh.
2. Prime Minister Ms Julia Gillard was accorded a ceremonial welcome at the Rashtrapati Bhavan on 17 October, 2012. She laid a wreath at the memorial to Mahatma Gandhi at Rajghat.
3. Prime Minister Dr Manmohan Singh held delegation level talks with Prime Minister Ms Julia Gillard on bilateral, regional and multilateral issues. Prime Minister Ms Julia Gillard called on President Shri Pranab Mukherjee, received External Affairs Minister Shri S.M. Krishna and Leader of Opposition Smt Sushma Swaraj, and met Chairperson, UPA Smt Sonia Gandhi. Four Memoranda of Understanding were concluded and significant initiatives launched.
4. The Prime Ministers acknowledged the strengthening of ties in recent years and agreed there was great potential for further growth in the relationship. The India-Australia relationship is anchored in shared values as liberal democracies, converging interests and shared opportunities in the Asian Century. The bilateral strategic partnership is given effect through rapidly expanding trade and investment ties, common interest in a stable and outward looking Indian-Pacific region, growing collaboration in multilateral and regional forums, and fast growing people-to-people links.

**Bilateral Cooperation**

5. The Prime Ministers welcomed the progress made since the relationship was raised to the level of a strategic partnership, in 2009.

6. Noting the considerable potential to develop further this partnership, the Prime Ministers agreed to provide high-level political oversight to this process through annual Prime Ministerial meetings, either bilaterally or in the margins of international meetings.

### **Trade and investment**

7. Trade and investment ties are expanding rapidly. The Prime Ministers noted that trade between both countries had more than doubled in the past six years to over \$20 billion. They noted that trade must expand for mutual benefit and encouraged balanced growth in trade as a long term, sustainable boost to economic growth in both countries.

8. The Prime Ministers welcomed the progress towards a Comprehensive Economic Cooperation Agreement (CECA) to facilitate greater trade and investment links. They renewed the commitment of both countries for achieving an equitable, comprehensive and high-quality agreement.

9. The Prime Ministers noted the report of the second India-Australia CEO Forum and welcomed the contribution made by business in broadening and deepening the bilateral economic relationship.

10. Noting the expanding economic links between India and Australia, the Prime Ministers welcomed more regular engagement and dialogue between the two Finance Ministries.

11. The Prime Ministers noted the potential to further develop and diversify commercial relations and that this would be supported by the conclusion of the Memorandum of Understanding on Cooperation and Mutual Administrative Assistance in Customs Matters which would enable effective enforcement of Customs laws and facilitate legitimate trade.

12. The Prime Ministers welcomed the conclusion of the Memorandum of Understanding on Wool, which would further facilitate bilateral trade, and the Memorandum on Cooperation in Civil Space Science, which would create a framework for peaceful space cooperation.

13. Underlining the importance of greater connectivity to support growing commercial and cultural ties, including in the education and tourism sectors, the Prime Ministers welcomed the announcement that Air India would commence direct flights to Australia by the first quarter of 2013.

### **Energy and resources**

14. The Prime Ministers agreed to deepen the cooperation between India and Australia on energy security through an annual Ministerial-level dialogue, to be led by the Deputy Chairman of the Planning Commission of India and the Australian Minister for Resources and Energy.

15. Prime Minister Dr Manmohan Singh welcomed the decision of the Australian Government on uranium sales to India, noting that nuclear energy will play an important rôle in India's future energy needs. The Prime Ministers announced that India and

Australia would commence negotiations on a <sup>13</sup> bilateral Civil Nuclear Cooperation Agreement which, for Australia, is a prerequisite for uranium sales to other countries.

16. Australia's supplies of energy and mineral resources to India have been rising steadily. Indian investment in Australia in the mining and resources sector has been growing rapidly. Australia welcomed the interest of both private and public sector companies from India in the resources sector.

17. The Prime Ministers agreed that India and Australia should collaborate more closely on the common challenge of managing scarce water resources. To give effect to this, they announced a Water Technology Partnership, under which Australia and India would share technologies to build capacity to better manage this vital natural resource. The partnership would include sharing of advanced Australian modelling work on river basin flows.

### **Regional and international cooperation**

18. India and Australia share a common interest in the Indian Ocean and in the maintenance of stability and security through the Indian-Pacific region. As Indian Ocean states both also recognise the importance of the maritime theatre to our future security.

19. India and Australia, as Chair and Vice Chair respectively of the Indian Ocean Rim Association for Regional Cooperation, will work closely to strengthen the Association, the apex pan-Indian Ocean multilateral forum, through concrete steps towards more effective practical cooperation in the six priority areas of maritime security and piracy; fisheries management; disaster risk reduction; tourism and cultural exchanges; academic and S&T cooperation; and trade and investment facilitation; which were identified by the member countries in the 11th meeting of Council of Ministers held in Bengaluru, in 2011. Both countries look forward to taking this collaboration within the Association to deeper level during the 12th Council of Ministers meeting in Gurgaon, India on 2 November 2012.

20. The Prime Ministers reaffirmed the positive security and defence ties between both countries, and committed to enhance maritime cooperation further, including through continued joint naval exercises.

21. India and Australia both recognise the importance of the East Asia Summit (EAS) as a crucial regional institution with the mandate to consider a broad range of strategic, political and economic issues. The Prime Ministers reaffirmed the commitment of both countries to work together to strengthen further the agenda of the EAS.

22. The Prime Ministers welcomed ongoing cooperation through other regional bodies such as the ASEAN Regional Forum and the Asia Europe Meeting. Prime Minister Ms Julia Gillard reaffirmed Australia's support for India's membership of the Asia Pacific Economic Cooperation forum (APEC).

23. As Australia prepares to chair the G-20 meeting in 2014, the Prime Ministers committed both countries to continue to engage closely in that forum to deliver concrete outcomes that will promote strong, sustainable and balanced growth of the global economy.

24. The two leaders reaffirmed the importance<sup>14</sup> of reform of the UN, including the Security Council, to better reflect contemporary realities. Prime Minister Dr Manmohan Singh warmly welcomed Australia's continued support for India as a permanent member in a reformed United Nations Security Council. India underlined Australia's continued contribution to international peace and security under the UN charter and, in this context, acknowledged Australia's candidature for a non permanent seat in the United Nations Security Council for the 2013-2014 term.

### **International security**

25. The Prime Ministers underlined the importance of achieving universal nuclear disarmament and of countering the proliferation of weapons of mass destruction. Prime Minister Ms Julia Gillard noted India's sound non-proliferation record and expressed Australia's recognition of the importance of India's engagement with the four multilateral export control regimes with the objective of full membership. Both Prime Ministers agreed to annual bilateral non-proliferation and disarmament discussions at level of officials.

26. The Prime Ministers noted the ongoing work of the Joint Working Group on Counter-terrorism and recommitted both countries to close collaboration against the threat of terrorism.

27. The Prime Ministers committed both countries to continue to work together closely to fight organised crime. They noted these efforts would be supported by the Memorandum of Understanding on Narcotics to be concluded by both countries, and announced the decision to negotiate a Agreement on Transfer of Sentenced Persons between India and Australia.

### **Knowledge partnership**

28. India and Australia continue to be enriched by high quality knowledge partnerships in education, skills and research that support mutual efforts towards greater economic and social progress. Central to this progress is fostering academic, scientific and professional links between India and Australia.

29. The Prime Ministers welcomed the success of the Australia-India Strategic Research Fund in bringing together leading scientists from both countries for world-class research and fostering long-term scientific linkages. The Prime Ministers noted the broad range of projects supported by the Fund. They welcomed the Australia-India Fellowship Scheme, which will support Indian and Australian researchers spending time at research institutions in the other country, fostering linkages that will underpin the bilateral science relationship into the future.

30. The Prime Ministers noted the vital role played by the expanding bilateral education and training relationship and its contribution to our national goals for innovation, productivity and growth. They commended the work of the Australia-India Education Council (AIEC) in providing strategic guidance to advance education, training and research partnerships. Prime Minister Ms Julia Gillard launched the new Endeavour AIEC Research Fellowships, which will support two fellows per year. Under the AIEC, Australia and India agreed to build partnerships between India's Sector Skills Councils and Australia's Industry Skills Councils in key industry areas.

31. Prime Minister Dr Manmohan Singh expressed appreciation for the continuing efforts of Australian authorities to ensure the welfare and security of Indian students studying in Australia. In support of this objective, the Prime Ministers welcomed the new Memorandum of Understanding on Student Mobility and Welfare which will expand cooperation on student welfare matters.

### **People to People and cultural Links**

32. Rapidly growing people-to-people links between Australia and India underpin our developing partnership and will enable both countries to build even stronger relations into the future. Both Prime Ministers noted with appreciation that the Indian community, which this year was the largest source of skilled migration to Australia and the second largest source of students, is contributing significantly to the economic and social life of Australia.

33. The Prime Ministers agreed to the recommencement of Social Security Agreement negotiations, including consideration of totalisation provisions.

34. Arts and culture can be powerful forces for bringing people together and the two countries are committed to strengthening of bilateral cultural relationship. The Prime Ministers welcomed the staging of Oz Fest, Australia's biggest cultural festival in India, which will see 100 events across 18 Indian cities between October 2012 and January 2013.

35. To give further impetus to expanding personal and cultural links, the Prime Ministers directed officials to pursue an Audio-Visual Agreement which would facilitate greater investment in film making in both countries.

36. Prime Minister Dr Manmohan Singh announced that India would establish ICCR Chairs of Indian Studies in five Universities in Australia to promote academic and student exchanges. Prime Minister Ms Julia Gillard announced that Australia would provide additional funding of \$1.5 million over three years for the Australia-India Institute, and confirmed a grant to help establish a Nalanda University Chair in Environmental Studies would commence in 2013.

37. The Prime Ministers announced the commencement of negotiations towards a Memorandum of Understanding on the Movement of Persons which will promote dialogue on the regular movement of professional labour and combat irregular migration.

### **Agreements**

38. The following bilateral memoranda of understanding were signed in the presence of the two Prime Ministers:

- ▲ Memorandum of Understanding on Cooperation in the field of Wool and Woollen Products
- ▲ Memorandum of Understanding on Cooperation in Student Mobility and Welfare
- ▲ Memorandum of Understanding on Cooperation in Civil Space Science, Technology and Education



16  
A Memorandum of Understanding between Skills DMC and the National Skill Development Corporation

39. Prime Minister Ms Julia Gillard renewed her invitation to Prime Minister Dr Manmohan Singh to visit Australia. It was agreed that the dates of the visit would be finalized through diplomatic channels.

40. Both sides agreed that the State Visit of the Prime Minister of Australia will lead to strengthening of the cooperative relations between the two countries, and will provide further impetus for the future development of the strategic partnership.

NEW DELHI  
17 OCTOBER 2012

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**From:** s 22 1(a)(ii)  
**Sent:** Thursday, 18 October 2012 9:24 AM  
**To:** s 22 1(a)(ii)  
**Cc:** Shannon, Peter; Robinson, Jeff; s 22 1(a)(ii)  
**Subject:** Updated estimates brief India Uranium [SEC=UNCLASSIFIED]

Kalish, John; s 22 1(a)(ii)

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s 22 1(a)(ii)

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**India: Uranium**

**Handling Note:** The Prime Minister announced with Indian Prime Minister Singh in New Delhi on 17 October that negotiations are to commence for a bilateral nuclear cooperation agreement to enable Australian uranium exports to India.

1. Key Message
2. Australian uranium exports to India and nuclear safeguards
3. Legality of Australian uranium exports to India
4. India's proposed Nuclear Suppliers Group (NSG) membership
5. Treatment of other non-NPT States, including Pakistan
6. Nuclear safety in India
7. Policy advice to Government by DFAT
8. Legal advice to Government by DFAT

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9. Side Issue: possible Southern Hemisphere Nuclear Weapons Free Zone

**1. Key Message**

***Will Australia sign a nuclear safeguards agreement with India?***

The Prime Minister has announced with Indian Prime Minister Singh that "India and Australia would commence negotiations on a bilateral Civil Nuclear Cooperation Agreement which, for Australia, is a prerequisite for uranium sales to other countries."

The Prime Minister has also said Australia is open to selling uranium to India under the terms of such a civil nuclear cooperation agreement.

***When will negotiations commence and conclude?***

There is no set timeframe for commencement or conclusion of negotiations

- but negotiations could be expected to commence early in 2013 (if not before).

**2. Australian uranium exports and nuclear safeguards**

***Won't exports of Australian uranium free up India's own uranium resources for its nuclear weapons program?***

India is a robust democracy and has a sound non-proliferation record.

India already imports uranium from other countries and has sufficient indigenous resources of uranium for its military needs.

***When will exports of uranium to India begin?***

Exports can only commence when:

- Australia and India have negotiated and brought into force a bilateral nuclear cooperation agreement;
- the Government is satisfied Australia's policy requirements have been met; and
- Australia and India have mutually determined, and India has implemented, administrative arrangements associated with the bilateral agreement.

Also, the Australian Government has made an Additional Protocol with the International Atomic Energy Agency (IAEA) a pre-condition for the export of Australian uranium

- India has signed an Additional Protocol with the IAEA, and will need to give effect to its provisions.

***Doesn't this weaken Australia's non-proliferation credentials?***

No.

Australia steadfastly supports non-proliferation and disarmament

- Australia will continue to apply robust measures to ensure Australian uranium is used only for peaceful purposes
- any uranium supply to India would be fully consistent with rules of the Nuclear Suppliers Group (NSG)—Australia is a member of the NSG
- any exports of uranium to India would be subject to International Atomic Energy Agency (IAEA) safeguards—Australia is a member of the IAEA's Board of Governors.

***Isn't Australia out of step with the rest of the world?***

The Australian Government has exempted India from its policy allowing supply of Australian uranium only to those States which are Parties to the NPT.

Australia's policy change is aligned with other major uranium suppliers in the Nuclear Suppliers Group (NSG), which has granted India an exemption to certain rules governing nuclear trade by its members, including Australia.

India has already signed civil nuclear cooperation agreements with countries such as the United States and Canada.

**Why are special arrangements being made for India?**

India's fleet of 20 nuclear power reactors currently accounts for around 4.4 Gigawatt electric, about three per cent, of the country's power generation

- new reactors scheduled to be completed over the next decade should more than double India's nuclear generating capacity;
- ambitious further plans could lead by 2050 to nuclear energy providing around 60 Gigawatt electric, about 25%, of India's future power requirements (source: World Nuclear Association).

Australia supports India's commitment to using safe civil nuclear energy as part of its energy mix, to solve power shortages.

India is not a member of the Nuclear Non-Proliferation Treaty (NPT).

India has nuclear weapons but the NPT defines nuclear-weapon States as those that conducted a nuclear explosion prior to 1 January 1967

- so India does not have the status of a nuclear-weapon State under the NPT (the five NPT nuclear-weapon States are the US, Russia, France, the UK and China)
- but there is no expectation that India will renounce its nuclear weapons and join the NPT.

**What nuclear policy changes have others made towards India?**

In 2006, the United States and India signed a bilateral nuclear cooperation agreement, and India made a number of non-proliferation commitments, including to:

- separate its civil and military nuclear facilities;
- place its civil facilities under International Atomic Energy Agency (IAEA) safeguards;
- sign and adhere to an IAEA Additional Protocol;
- maintain its nuclear testing moratorium; and
- cooperate in international efforts to negotiate a ban on the production of fissile material for nuclear weapons.

In 2008, the Nuclear Suppliers Group (NSG) including all major nuclear trading countries granted India an exemption from rules restricting nuclear trade with non-nuclear-weapon states to enable civil nuclear cooperation with India, including uranium supply to India

- Australia participated in the NSG exemption for India.

In November 2010, US President Obama and Indian Prime Minister Singh announced that the US would support India's membership of the international export control regimes, including the NSG.

**3. Legality of Australian uranium exports to India**

**Don't Australia's international legal obligations (for example, under the Nuclear Non-Proliferation Treaty or the South Pacific Nuclear Free Zone Treaty) prevent uranium supply to India?**

Any exports of Australian uranium to India would comply with Australia's international legal obligations.

***Is the Department aware of legal advice from Professor Don Rothwell that Australia is under international legal obligations not to provide India with nuclear material until such time as India has concluded a full-scope safeguards agreement?***

Yes.

Will not comment on that advice except to say that any exports of Australian uranium to India would comply with Australia's international legal obligations.

**4. India's proposed Nuclear Suppliers Group (NSG) membership**

***Will Australia support India's proposed NSG membership?***

Australia participated in the NSG decision to exempt India from certain NSG rules and will consider positively India's proposed NSG membership.

**5. Treatment of other non-NPT States, including Pakistan**

***Will Australia also export uranium to other non-NPT States?***

The only matter under consideration by the Government relates to uranium exports to India

***Will Australia also export uranium to Pakistan?***

Potential recipients for Australian uranium are considered on a case-by-case basis  
- the possibility of uranium exports to Pakistan is not under consideration.

***Will Australia agree to a Nuclear Suppliers Group (NSG) exemption for Pakistan, similar to that for India?***

The issue of an NSG exemption for Pakistan is not under consideration in the NSG.

**6. Nuclear safety in India**

***How can Australia ensure the safe use of its uranium in India?***

Australia expects India to follow international best practise in relation to safety of its nuclear industry.

Australia's negotiators would address nuclear safety along with other matters in any bilateral negotiations for a nuclear cooperation agreement with India.

Australia's recently concluded bilateral agreement with the United Arab Emirates addressed this in terms of adherence to key international nuclear safety conventions.

***Does Australia have confidence in Indian nuclear safety?***

India has not experienced a major nuclear incident in 40 years of civil nuclear power.

India is seized of the importance of nuclear safety and other regulatory provisions for the development of its civil nuclear industry.

India is a party to the Convention on Nuclear Safety and other nuclear safety treaties.

India is committed to the International Atomic Energy Agency's (IAEA's) Action Plan on Nuclear safety, developed following the Fukushima accident in Japan.

India has invited IAEA officials to visit India this month (October) to review Indian nuclear power reactors under construction

- and again in the near future to undertake a peer review of India's nuclear regulatory framework.

**Hasn't India neglected nuclear safety to date?**

- . No.
- . The Indian Atomic Energy Regulatory Board (AERB) has prepared and released some 168 nuclear and radiation safety documents since its inception in 1983, including safety guidance in 2001
  - and understand the AERB is working to produce a comprehensive safety policy document.

**If asked about India's Comptroller and Auditor General's (CAG's) report and findings about India's nuclear regulatory framework.**

- . The Indian government is reviewing its national nuclear safety arrangements and is putting forward legislation to strengthen independence and accountability for India's nuclear regulators.
- . The *Nuclear Safety Regulatory Authority Bill 2011*, which is under consideration by a parliamentary standing committee, responds to many of the concerns raised by the CAG's report.
- . Australia encourages India to adopt such legal and other measures as will ensure that India's nuclear regulatory framework is consistent with international best practice.

**If asked about reported delays by Indian nuclear utilities in responding to Indian government inspection reports.**

- . Australia expects India to follow international best practise in relation to safety of its nuclear industry.

**If asked about nuclear safety incidents in India.**

- . Aware of some safety incidents at Indian nuclear power plants in the 1990s (1993 fire at Narora nuclear power plant, 1994 flood at Kakrapar nuclear power plant, and 1994 collapse during construction at Kaiga nuclear power plant).
- . India's nuclear safety standards have improved from the 1990s, including specific responses to safety incidents.

**If asked about Indian protests against nuclear power plants.**

- . India is a robust, liberal democracy governed by the rule of law.
- . Grievances of anti-nuclear protestors in India can be raised in India's free media and pursued through India's judicial system.

**7. Policy advice to Government by DFAT**

**Did the Department provided policy advice to the Government on this matter prior to, or following, the 2011 ALP National Conference?**

- . Prior to the ALP National Conference, the Department of Prime Minister and Cabinet (PM&C) provided advice to the Government, and DFAT was consulted in the preparation of the advice.
- . Since then, DFAT has prepared and provided advice for the Government. <sup>1</sup>

**8. Legal advice to Government by DFAT**

**Will the Government need to put in place any changes to legislation or regulations in order to export uranium to India?**

- The legislative framework in Australia is already in place to cater for new nuclear cooperation agreements.
- Any specific legal requirements with respect to uranium supply to India will be addressed in the context of negotiations for a bilateral civil nuclear cooperation agreement.

***Has the Government sought or received legal advice on this?***

- Yes.
- The Government frequently receives legal advice ahead of potential international negotiations.
- The content of any legal advice is confidential.

***When exactly was the legal advice sought and provided?***

- Preliminary legal advice was sought by PM&C on 25 November 2011.
- The Office of International Law, AGD (OIL) and DFAT provided the preliminary legal advice to PM&C on 30 November 2011.
- Further legal advice was provided by OIL and DFAT on 2 May 2012, the Solicitor-General on 14 March 2012 and the Australian Government Solicitor (AGS) on 16 March 2012.

***What was the content of legal advice?***

- It is the long-standing practice of Australian Governments not to comment on, or disclose, the nature of legal advice provided.
- Furthermore, any question about content of legal advice is a matter for the relevant Minister, not officials. "

***What was the cost of legal advice?***

- The cost of legal advice requested by DFAT of the Australian Government Solicitor (AGS) was \$119,551.08, made up of:
  - advice by AGS on the domestic legal framework applicable to the transfer of uranium to India cost \$55,414.70; and
  - preparation by AGS of a 'Brief to Advise' for the Solicitor-General cost \$64,136.38.
- PM&C have advised DFAT that the cost of earlier preliminary legal advice requested by PM&C of AGD was \$10,030.57.

**9. Side Issue: possible Southern Hemisphere Nuclear Weapons Free Zone**

***Will the Government also implement the 2012 ALP National Conference resolution to work towards the establishment of a Southern Hemisphere Nuclear Weapons Free Zone?***

- It is not Government policy to pursue the establishment of a Southern Hemisphere Nuclear Weapons Free Zone.
- If the Government wished to take up the ALP proposal, then possible policy steps would be considered.

**BACKGROUND**

On 17 October 2012, a Joint Statement released in New Delhi by Prime Minister Gillard and Indian Prime Minister Singh said: "Dr Manmohan Singh welcomed the decision of the Australian Government on uranium sales to India, noting that nuclear energy will play an important role in India's future energy needs. The Prime Ministers announced that India and Australia would

commence negotiations on a bilateral Civil Nuclear<sup>22</sup> Cooperation Agreement which, for Australia, is a prerequisite for uranium sales to other countries."

The Prime Minister also said in New Delhi on 17 October 2012: "Prime Minister Singh and I have agreed that we will commence negotiations for the nuclear safeguards agreement, the civil nuclear cooperation agreement given Australia is now prepared to sell uranium to India".

In an earlier doorstep interview in New Delhi on 17 October 2012, in response to the question "On uranium, when you meet with Prime Minister Singh today how advanced do you think it will get in discussions on negotiations for safeguards, and will you be raising some of the sticking points that you have?", the Prime Minister also said: "Negotiating a comprehensive safeguards agreement is going to take some time. We have found this when we have negotiated them with other countries, and that will be true of India. We will of course, want the assurances about the use of Australian uranium, and oversight by the International Atomic Energy Agency. So with Prime Minister Singh today, I will not be discussing the specifics, the word by word of what would be in a comprehensive agreement; that lies for the future."

On 15 October in a Press Conference in New Delhi, the Prime Minister said, in response to questions on uranium exports to India:

"I anticipate that I will have some discussions on uranium", followed by: "We are now open to selling uranium to India. In order to do so we would need to negotiate a comprehensive agreement that would go to civil nuclear arrangements, so during the course of being here I am sure the issue will be raised.", and, while outlining Australia's requirements for uranium exports to India: "All of these things would be part of the kind of agreement we would negotiate with India."

On 26 September 2012, The Times of India reported that India and Australia "are likely to ink a civil nuclear pact during the visit of Australian Prime Minister Julia Gillard". The report was incorrect. Negotiations on an agreement have not started.

Negotiations for a bilateral civil nuclear cooperation (safeguards) agreement could start in early 2013. There is no set timeframe for the negotiations. Other such agreements between Australia and its bilateral partners have typically taken at least many months to finalise. Such an agreement with India could take two to four years to finalise and longer to bring into operation. Measures will also need to be agreed for safeguarding and accounting for Australian uranium and nuclear material. Once an agreement has been finalised and is being implemented, it would be up to Australian uranium producers to enter into commercial arrangements with Indian buyers.

#### ***Government Policy with respect to uranium exports and the NPT***

Special considerations for Australia include that India is a nuclear-armed state which is not a Party to the Nuclear Non-Proliferation Treaty (NPT). The Government's policy has been that no exports of Australian uranium are permitted to states outside the NPT (principally India, Pakistan and Israel).

On 4 December 2011 the Australian Labor Party (ALP) exempted India from its Party Platform policy banning the export of Australian uranium to states not party to the NPT. In light of the ALP decision, the Government exempted India from its policy, and is currently considering details of a mandate to negotiate a civil nuclear cooperation agreement with India. Approval of such a mandate is necessary for formal negotiations to start.

#### ***India's Nuclear Status***

India possesses nuclear weapons but cannot fit the NPT definition of a nuclear-weapon State. There is no expectation India will join the NPT as a non-nuclear-weapon State.

In 2005 the US and India announced a bilateral civil nuclear cooperation initiative, and in 2006 they signed a nuclear cooperation agreement. Under the agreement India committed to, inter alia: separate its civil and military nuclear facilities; place its separated civil nuclear facilities under International Atomic Energy Agency (IAEA) safeguards; sign and adhere to an IAEA Additional Protocol; and maintain its nuclear testing moratorium.

In 2008, the Nuclear Suppliers Group (NSG) exempted India from certain NSG rules preventing nuclear trade with a non-NPT State. Australia joined the NSG decision. India's undertakings

then became the basis for nuclear cooperation with India by several nuclear suppliers including the US, Canada and the Republic of Korea which have concluded bilateral nuclear cooperation agreements with India.

In 2010, the US and India announced that the US would support India's membership of the international export control regimes, including the NSG.

### ***International Campaign to Abolish Nuclear Weapons (ICAN)***

ICAN obtained legal advice from Prof. Don Rothwell of the Australian National University, concluding that Australia is prohibited under international law from exporting uranium to India unless India accepted comprehensive International Atomic Energy Agency (IAEA) safeguards. ICAN provided a copy of the advice to the Prime Minister, the Attorney-General and the Minister for Foreign Affairs on 23 November 2011. ICAN asserts the advice states Australia is prohibited under international law from exporting uranium to India unless India accepts comprehensive safeguards.

On 12 October 2012 ABC Radio Australia quoted Prof. Rothwell as saying "Australia ... has an obligation to ensure that its sale of uranium mined from within Australia is dealt with consistently with the provisions of the South Pacific Nuclear Free Zone Treaty" (Treaty of Rarotonga), and that "any objection under the Treaty of Rarotonga would have to be brought by one of the Pacific nations that are signatories to the agreement."

### ***India's Uranium Needs***

India has little available indigenous uranium for use in its civilian nuclear fuel cycle. India reportedly plans to increase its nuclear energy production capacity from 4.4 Gigawatt electric (GWe) to 20 GWe by 2020, when its demand for uranium for nuclear power could increase to around 6,000 tonnes of uranium oxide per year (source: IAEA/NEA Redbook 2011), depending on reactor types and further civil nuclear construction plans. In order to secure uranium supply, India is involved in nuclear cooperation with major uranium suppliers. For example, Canada and the United States are working towards settling implementation arrangements for their nuclear cooperation agreements with India.

### ***Australia's Capacity to Supply Uranium to India***

Australia has 33 per cent of global 'Reasonably Assured Resources' of uranium, with uranium exports forecast to increase out to 2030 as new projects come online. By 2016-17, Australia's exports of uranium oxide are forecast to reach 13,500 tonnes per year (source: Bureau of Resource and Energy Economics, March 2011). Historically, the larger proportion of Australian uranium has been committed under long-term contracts with mature markets, including Europe and US.

### ***Nuclear Safety in India and the Report of the Indian Comptroller and Auditor General (CAG)***

In August 2012, the Comptroller and Auditor General (CAG) of India released a report titled "Activities of the Atomic Energy Regulatory Board (AERB)" which highlighted several key faults in India's nuclear regulatory regime.

On 15 October 2012, Fairfax Media's South Asia Correspondent Ben Doherty's article "Gillard ready to discuss Indian nuclear exports despite fears over safety" highlighted several features of the report.

The CAG report's findings included that:

- The AERB (India's nuclear regulatory body) is not truly independent and was legally subordinate to the Central Government, not created by separate legislation (AERB was created under the 1963 Indian Atomic Energy Act).
- The AERB does not have the authority to frame or revise rules relating to nuclear and radiation safety, and fines are too low and AERB has no role in deciding or enforcing them.
- The AERB failed to prepare a nuclear and radiation safety policy for the country in spite of a specific mandate in its Constitution Order of 1983 to do so.

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There are significant delays in both the production of reports on safety inspections of nuclear facilities (although not in the conduct of inspections) and in the response to safety reports by nuclear facility operators.

India does not have proper oversight and control of radiological sources within the country - many radiological facilities are not properly licensed.

### **Protests against Indian nuclear power plants**

A year-long protest movement against the establishment of the **Kudankulam** Nuclear Power Plant in Tamil Nadu turned violent on 10 September 2012. Around 5000 protestors were forcibly dispersed by police after attempting to set up camp 500 metres from the plant.

In a related incident, a protesting fisherman was shot dead by police in a village outside the city of Tiruchendur (70 km from Kudankulam) after a police checkpoint was set on fire. Tamil Nadu Chief Minister J Jayalithaa issued a statement appealing for calm, announced compensation to the family of the deceased fisherman, and outlined steps taken by the government since the protests, including a package of assistance for villages affected by the land acquisition.

On 22 September, a flotilla of 3000 fishermen and activists in 500 small boats conducted a protest at sea outside Tuticorin port. On 27 September protesters symbolically buried themselves up to their necks in sand. Another sea protest took place on 8 October, including around 700 boats carrying 3000 fishermen and protesters.

The protests are fuelled by concerns about safety and livelihoods, if a Fukushima-style disaster were to occur. There is also concern about the exemption of the plant from India's Civil Liability for Nuclear Damage Act of 2010 (the 2008 nuclear cooperation agreement between India and Russia for its construction predates the Act).

In August 2012, Minister Narayanasamy, Minister of State for Personnel, Public Grievances and Pensions and Prime Minister's Office reassured the Indian Parliament: *"The Kudankulam nuclear power plant meets International Atomic Energy Agency (IAEA) safety requirements. Kudankulam reactors are Generation III+ reactors and have advanced safety features. The safety of the reactors has been reviewed by the Russian Regulatory authorities and the Atomic Energy Regulatory Board (AERB). Post Fukushima, safety review of the Kudankulam plant has been carried out by the Task Force of Nuclear Power Corporation of India Limited (NPCIL) and expert committee of the AERB, which have found that the plant is safe from extreme natural events. ... The facts ... have been explained to the representatives of the protesting people by the Expert Group constituted by the Central Government [which] has also put their reports in the public domain. Department of Atomic Energy (DAE) and NPCIL have also got a dedicated wing to make public outreach efforts to allay such misplaced apprehensions."*

**Jaitapur**, a coastal site in the state of Maharashtra, is earmarked for up to six 1650 MW reactors to be constructed by France's Areva. Since the Fukushima incident the Jaitapur project has become a controversial issue nationally. Jaitapur is considered a 'moderate' seismic zone, the highest rating of any of India's proposed reactors. The Indian government's efforts to acquire land for the project have met with resistance: at least 800 people were detained at a protest against the plant in December 2010.

A two-year protest by farmers against the **Gorakhpur** Nuclear Power Plant was called off in September after the compensation of farmers for land acquisition. The protest was led by Kisan Sangharsh Samiti, whose president, Hans Raj Siwach called off the agitation in mid-September, announcing: *"The government's approach towards farmers had always been very responsive. Farmers had received their compensation cheques in lieu of the acquired land, which clearly reflect that farmers had shown their solidarity with the decision of the government"*.

### **Safety-related incidents at Indian nuclear power plants**

In March 1993 a major fire in the turbine building at **Narora** Nuclear Power Plant resulted in total loss of power to the unit for over 17 hours. The event was rated in the International Nuclear Event Scale at level-3 ('Serious Incident', INE scale goes from 0-7 with all ratings above 4 considered an 'accident').

In 1994 the **Kakrapar** nuclear power plant near <sup>25</sup> the west coast of India was flooded due to heavy rains together with failure of weir control for an adjoining water pond, inundating turbine building basement equipment. The back-up diesel generators on site enabled core cooling using fire water, a backup to process water, since the offsite power supply failed. Following this, multiple flood barriers were provided at all entry points, inlet openings below design flood level were sealed and emergency operating procedures were updated.

On 13 May 1994, the inner containment dome of the **Kaiga** reactor caved in while under construction. The Atomic Energy Regulatory Board and the Nuclear Power Corporation investigated the issue.

**Side Issue: Southern Hemisphere Nuclear Weapons Free Zone**

On 4 December 2011, the ALP National Conference also adopted a resolution to 'work towards the future establishment of a Southern Hemisphere Nuclear Weapons Free Zone Treaty, based on the provisions in the Rarotonga Treaty'. The Government has not considered, nor expressed a wish to consider, the ALP proposal.

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<sup>1</sup> The advice is Cabinet-in-Confidence.

<sup>2</sup> Because the legal advice is under professional privilege, officials cannot divulge it. The PM or FM, but not officials, could decide that the Government, as the client, might waive its right to the immunity provided by legal professional privilege.

### **India: Uranium**

**Handling Note:** To be updated around timing of PM's visit to India (15 October), when there may be an announcement concerning a bilateral nuclear cooperation agreement with India to enable uranium exports.

#### ***Will the Government shortly sign a 'civil nuclear pact' with India (as reported in The Times of India, 29 September 2012)?***

- Reports that the Prime Minister will soon sign a 'civil nuclear pact' during her India visit are incorrect.
- There is not yet an agreement to sign.

#### ***What is the Government doing about uranium exports to India?***

- The Government has exempted India from its policy allowing supply of Australian uranium only to those States which are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).
- Before exports of Australian uranium can commence, Australia must be assured through a bilateral nuclear cooperation agreement that India will use Australia's uranium exclusively for peaceful purposes, and provide transparency and controls on Australian uranium and nuclear material derived from it
  - Australia has 22 nuclear cooperation agreements in place
  - Australia has not started negotiations with India on a nuclear cooperation agreement.
- The Government is considering the nature and scope of the agreement we will negotiate with India
  - there is no set timeframe for conclusion of negotiations.
- Australia's bilateral nuclear cooperation agreements ensure inter alia that the countries that receive our uranium:
  - provide legally-binding commitments to International Atomic Energy Agency safeguards and international nuclear security standards;
  - report to Australia on their use of our nuclear material;
  - seek our consent for any transfer of our nuclear material to a third country; and
  - seek our consent for enrichment to high levels and for reprocessing.
- Australia is a leading global exporter of uranium for peaceful purposes and nuclear electricity generation plays a key role in India's national policies.

Australia's policy change on uranium export to India is aligned with the policies of other major uranium suppliers in the Nuclear Suppliers Group, which has granted India an exemption to certain rules governing nuclear trade by its members, including Australia.

***When will exports of uranium to India begin?***

Exports can only commence when:

- Australia and India have negotiated and brought into force a bilateral nuclear cooperation agreement;
- the Government is satisfied Australia's policy requirements have been met; and
- Australia and India have mutually determined, and India has implemented, administrative arrangements associated with the bilateral agreement.

India would also need to bring into force the Additional Protocol on strengthening safeguards it has signed with the International Atomic Energy Agency (IAEA).

There is no set timeframe for negotiations for a bilateral nuclear cooperation agreement with India.

***Is India pressing for negotiations to commence?***

No.

***When will negotiations commence and conclude?***

There is no timeframe for negotiations to commence or conclude.

***Won't exports of Australian uranium free up India's own uranium resources for its nuclear weapons program?***

India is a robust democracy and has a sound non-proliferation record.

India already imports uranium from other countries and has sufficient indigenous resources of uranium for its military needs.

***Does this signal a weakening in Australia's non-proliferation and disarmament policy?***

No.

Australia steadfastly supports non-proliferation and disarmament

- Australia will continue to apply robust measures to ensure Australian uranium is used only for peaceful purposes
- any uranium supply to India would be fully consistent with rules of the Nuclear Suppliers Group (NSG)—Australia is member of the NSG

- any exports of uranium to India would be subject to International Atomic Energy Agency (IAEA) safeguards—Australia is a member of the IAEA's Board of Governors
- India has already signed nuclear cooperation agreements with countries such as the United States and Canada.

#### **Policy Advice**

***Has the Department provided policy advice to the Government on this matter prior to, or following, the ALP National Conference?***

- . Prior to the ALP National Conference, the Department of Prime Minister and Cabinet (PM&C) provided advice to the Government, and DFAT was consulted in the preparation of the advice.
- . Following the ALP Conference, DFAT has prepared advice for the Government.<sup>1</sup>

#### **Legal Advice**

***Is the Department aware of legal advice from Professor Don Rothwell that Australia is under international legal obligations not to provide India with nuclear material until such time as India has concluded a full-scope safeguards agreement?***

- . Yes
  - will not comment on that advice except to say that any exports of Australian uranium to India would comply with Australia's international legal obligations.

***Don't Australia's international legal obligations (for example, under the Nuclear Non-Proliferation Treaty or the South Pacific Nuclear Free Zone Treaty) prevent uranium supply to India?***

- . Any exports of Australian uranium to India would comply with Australia's international legal obligations.

***Has the Government sought or received legal advice on this matter?***

- . Yes
  - the Government frequently receives legal advice ahead of potential international negotiations
  - the content of any advice is confidential.

<sup>1</sup>The advice is Cabinet-in-Confidence.

***When exactly was the legal advice sought and provided?***

Preliminary legal advice was sought by PM&C on 25 November 2011

- the Office of International Law, AGD (OIL) and DFAT provided the preliminary legal advice to PM&C on 30 November 2011
- further legal advice was provided by OIL and DFAT on 2 May 2012, the Solicitor-General on 14 March 2012 and the Australian Government Solicitor (AGS) on 16 March 2012.

***What was the content of legal advice?***

It is the long-standing practice of Australian Governments not to comment on, or disclose, the nature of legal advice provided

- furthermore, any question about content of legal advice is a matter for the relevant Minister, not officials.<sup>2</sup>

***What was the cost of legal advice?***

The cost of legal advice requested by DFAT of the Australian Government Solicitor (AGS) was \$119,551.08, made up of:

- advice by AGS on the domestic legal framework applicable to the transfer of uranium to India cost \$55,414.70; and
- preparation by AGS of a 'Brief to Advise' for the Solicitor-General cost \$64,136.38.

PM&C have advised DFAT that the cost of earlier preliminary legal advice requested by PM&C of AGD was \$10,030.57.

***Will the Government need to put in place any changes to legislation or regulations in order to export uranium to India?***

The legislative framework in Australia is already in place to cater for new nuclear cooperation agreements

- any specific legal requirements with respect to uranium supply to India would be addressed in the context of negotiations for a bilateral civil nuclear cooperation agreement.

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<sup>2</sup> Because the legal advice is under professional privilege, officials cannot divulge it. The PM or FM, but not officials, could decide that the Government, as the client, might waive its right to the immunity provided by legal professional privilege.

**India's proposed Nuclear Suppliers Group (NSG) membership**

***Will Australia support India's proposed NSG membership?***

- . Australia participated in the NSG decision to exempt India from certain NSG rules and will consider on its merits any application by India to join the NSG.

**Treatment of other non-NPT States, including Pakistan**

***Will Australia also export uranium to other non-NPT States?***

- . The only matter under consideration by the Government relates to uranium exports to India

***Will Australia also export uranium to Pakistan?***

- . Potential recipients for Australian uranium are considered on a case-by-case basis
  - the possibility of uranium exports to Pakistan is not under consideration.

***Will Australia agree to a Nuclear Suppliers Group (NSG) exemption for Pakistan, similar to that for India?***

- . The issue of an NSG exemption for Pakistan is not under consideration in the NSG.

***What is India's status within the international non-proliferation regime?***

- . India is not a member of the Nuclear Non-Proliferation Treaty (NPT).
- . India has nuclear weapons but the NPT defines nuclear-weapon States as those that conducted a nuclear explosion prior to 1 January 1967
  - so India does not have the status of a nuclear-weapon State under the NPT (the five nuclear-weapon States are the US, Russia, France, UK and China)
  - there is no expectation that India will renounce its nuclear weapons and join the NPT.
- . In 2006, the United States and India signed a bilateral nuclear cooperation agreement
  - India made a number of non-proliferation commitments, including to:
    - : separate its civil and military nuclear facilities;
    - : place its civil facilities under International Atomic Energy Agency (IAEA) safeguards;
    - : conclude an IAEA Additional Protocol;
    - : maintain its nuclear testing moratorium; and
    - : cooperate in international efforts to negotiate a ban on the production of fissile material for nuclear weapons.

In 2008, the Nuclear Suppliers Group (NSG) granted India an exemption from rules restricting nuclear trade with non-nuclear-weapon states to enable civil nuclear cooperation with India, including uranium supply to India

– Australia participated in the NSG exemption for India.

For example, the US and Canada have concluded nuclear cooperation agreements with India.

In November 2010, US President Obama and Indian Prime Minister Singh announced that the US would support India's membership of the international export control regimes, including the Nuclear Suppliers Group.

**Side Issue: India's Ballistic Missiles**

***Has India's possession of nuclear-weapon-capable ballistic missiles (India launched a long-range missile on 19 April 2012) cause the Government to re-think exports of uranium to India?***

No.

**Side Issue: Southern Hemisphere Nuclear Weapons Free Zone**

***Will the Government also implement the 2012 ALP National Conference resolution to work towards the establishment of a Southern Hemisphere Nuclear Weapons Free Zone?***

It is not Government policy to pursue the establishment of a Southern Hemisphere Nuclear Weapons Free Zone

– if the Government wished to take up the ALP proposal, then possible policy steps would be considered.

**Background**

On 4 December 2011 the Australian Labor Party exempted India from its policy banning the export of Australian uranium to states not party to the Nuclear Non-Proliferation Treaty (NPT).

On 26 September 2012, *The Times of India* reported that India and Australia "are likely to ink a civil nuclear pact during the visit of Australian Prime Minister Julia Gillard here from October 15, within months of a positive reversal of the policy by the ruling Labour party on supply of uranium to India". The report is incorrect. There are no plans to sign any nuclear agreement with India during the Prime Minister's visit. (However, see box next page.)



**Sensitive**

The Government has exempted India from the policy ruling out uranium exports to states outside the NPT. (This is not yet in the public domain.) The next step for enabling uranium exports to India would be for the Government to provide a mandate to negotiate a civil nuclear cooperation agreement with India. The PM may announce during her India visit (possibly with Indian PM Singh on 17 October) negotiations are to commence for a bilateral nuclear cooperation agreement. Negotiations could start in early 2013.

There is no set timeframe for negotiations between Australia and India for a nuclear cooperation agreement. Negotiations for other such agreements between Australia and its bilateral partners have typically taken between two and four years. Measures will need to be agreed for safeguarding and accounting for Australian uranium and nuclear material. Also, there are special considerations for Australia, due to India being a nuclear-armed non-Party to the NPT.

Once an agreement has been finalised and is being implemented, it would be up to Australian uranium producers to enter into commercial arrangements with Indian buyers.

**International Campaign to Abolish Nuclear Weapons (ICAN)**

ICAN obtained legal advice from Prof. Don Rothwell of the Australian National University, concluding that Australia is prohibited under international law from exporting uranium to India unless India accepted comprehensive International Atomic Energy Agency (IAEA) safeguards. ICAN provided a copy of the advice to the Prime Minister, the Attorney-General and the Minister for Foreign Affairs on 23 November 2011. ICAN asserts the advice states Australia is prohibited under international law from exporting uranium to India unless India accepts comprehensive safeguards.

**India's Nuclear Status**

India is not a State Party to the NPT. India possesses nuclear weapons but cannot fit the NPT definition of a nuclear-weapon State. There is no expectation India would join the NPT as a non-nuclear-weapon State. However, in 2005 the US and India announced a bilateral civil nuclear cooperation initiative, and in 2006 they signed a nuclear cooperation agreement. Under the agreement India committed to, *inter alia*: separate its civil and military nuclear facilities; place its separated civil nuclear facilities under International Atomic Energy Agency (IAEA) safeguards; conclude an IAEA Additional Protocol; and maintain its nuclear testing moratorium.

In 2008, the Nuclear Suppliers Group (NSG) exempted India from certain NSG rules preventing nuclear trade with a non-NPT State. Australia joined the NSG decision. Several countries including the US, Canada and the Republic of Korea have since concluded bilateral nuclear cooperation agreements with India. In 2010, the US and India announced that the US would support India's membership of the international export control regimes, including the NSG.

**India's Uranium Needs**

India has little available indigenous uranium for use in its civilian nuclear fuel cycle. India reportedly plans to increase its nuclear energy production capacity from 4.4 Gigawatt electric (GWe) to 20 GWe by 2020, when its demand for uranium for nuclear power could increase to around 6,000 tonnes of uranium oxide per year (source: IAEA/NEA Redbook 2011), depending on reactor types and further civil nuclear construction plans. In order to secure uranium supply, India is involved in nuclear cooperation with major uranium suppliers. For example, Canada and the United States are working towards settling implementation arrangements for their nuclear cooperation agreements with India.

**Australia's Capacity to Supply Uranium to India**

Australia has 33 per cent of global 'Reasonably Assured Resources' of uranium, with uranium exports forecast to increase out to 2030 as new projects come online. By 2016-17, Australia's exports of uranium oxide are forecast to reach 13,500 tonnes per year (source: Bureau of Resource and Energy Economics, March 2011). Historically, the larger proportion of Australian uranium has been committed under long-term contracts with mature markets, including Europe and the US.

**Side Issue: Southern Hemisphere Nuclear Weapons Free Zone**

On 4 December 2011, the ALP National Conference also adopted a resolution to 'work towards the future establishment of a Southern Hemisphere Nuclear Weapons Free Zone Treaty, based on the provisions in the Rarotonga Treaty'. The Government has not considered, nor expressed a wish to consider, the ALP proposal.

<b>Prepared by:</b>	<b>(to be) Cleared by AS ACB:</b>
s 22 1(a)(ii)	Jeff Roach
s 22 1(a)(ii)	Mob: 0421 589 023 Ext: 3265
Date: 28/09/2012	Date: 02/10/2012
<b>Consultation:</b> ILD/SMD/ASNO	

F-45, T-13

FOREIGN AFFAIRS AND  
TRADE

I-1

**India - Nuclear: Supply of uranium to India**

Possible Question

Will the Government rethink its decision to sell uranium to India?

Talking Points

- The Government is considering how it might give effect in policy to a decision to permit exports of uranium to India.
- Australia applies stringent safeguards and transparency requirements to ensure all Australian uranium is only exported for peaceful purposes.

If raised: When will exports of uranium to India begin?

- Exports of uranium to India could not begin until Australia and India have concluded a bilateral nuclear safeguards agreement
  - there is no decision as to when this agreement will be put in place.

If raised: ANU Prof. Rothwell's legal advice that Australia's treaty obligations prevent uranium supply to India

- Any uranium exports to India would comply with our legal obligations.

If raised: India's relationship with the Nuclear Suppliers Group (NSG)

- Australia recognises the significance of India's NSG exemption and would consider any application by India to join the NSG.

### Background

On 4 December 2011 the ALP took a party policy decision to allow for future uranium exports to India, subject to safeguards. Government policy has been to supply uranium only to countries that are parties to the Nuclear Non-Proliferation Treaty (NPT). In light of the ALP decision, the Government is considering how it might adjust Government policy settings.

The International Campaign to Abolish Nuclear Weapons (ICAN) obtained legal advice from ANU Prof. Don Rothwell concluding Australia could not supply uranium to India unless it accepted comprehensive safeguards. ICAN sent a copy to the PM, Attorney-General and then Foreign Minister on 23 November. The Government is considering the legal aspects of any Australian supply of uranium to India. Public comment on content of any legal advice should be avoided.

Our bilateral nuclear agreements include provisions to ensure countries to which we sell uranium: commit to International Atomic Energy Agency (IAEA) safeguards and security standards; report on use of our nuclear material throughout the fuel cycle; seek our consent for reprocessing or high-enrichment of Australian nuclear material, or transfer to a third country; and allow fallback safeguards in the event IAEA safeguards no longer apply.

Pakistan has expressed its expectations (publicly and bilaterally) that Australia would also allow uranium exports to Pakistan. The proposed change to Government policy applies only to India. Unlike India, Pakistan does not have a Nuclear Suppliers Group exemption.

India's 2008 NSG exemption (Australia supported) was based on India's commitments, including to a nuclear testing moratorium. India has entered - or is discussing - civil nuclear cooperation agreements with the US, France, Japan, Russia, ROK, Argentina, Canada, Namibia and Kazakhstan, although not all are in effect. The IAEA Board of Governors (Australia is a member) approved in 2009 India's safeguards Additional Protocol, which is still being brought into force. In 2010, Pres. Obama said the US would relax controls on dual-use nuclear exports for India and support India's membership of the NSG and other export control regimes (Australia Group, Missile Technology Control Regime and Wassenaar Arrangement). At the 2011 NSG plenary, the US tabled a paper on future Indian membership; NSG members expressed views but made no decision. India has not made a formal approach to the NSG or other regimes seeking membership.

On 8 August 2012, an article by Crispin Rovere in the *Canberra Times* argued that export of uranium to India could help nuclear disarmament, and that Australia should tie uranium exports to Indian ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT).

**Prepared By:**  
s 22 1(a)(ii)  
Director  
ISD/ACB/ACS  
s 22 1(a)(ii)

**Cleared By:**  
Jeff Roach  
Assistant Secretary  
ISD/ACB/  
Phone: 3265

s 22 1(a)(ii)

**REDACTED**

India: Nuclear Cooperation with Australia: State of Play and Prospects

Engagement with India since December 2011

- DG ASNO (Floyd) visited **India** (January 2012) to discuss *inter alia* potential nuclear cooperation with India
  - he outlined Australia's approach to establishing negotiations
  - but discussions were of a general nature, to avoid undermining yet-to-be-settled policy and negotiating positions.
- AS ACB (Robinson) visited **India** (May 2012) as Australia Group chair, and took the opportunity for discussions on non-proliferation and disarmament
  - Robinson reiterated a previous suggestion for a formal, ongoing bilateral non-proliferation and disarmament dialogue
    - : India responded in lukewarm terms but noted it would need Ministerial approval (as would Australia).

What scope is there for preliminary engagement with India prior to a decision by the Government on uranium sales?

There are some options available, however, India has been broadly uninterested in pursuing what it regards as peripheral matters. Its focus is on uranium supply. Nevertheless, possible options that would not prejudice negotiations include:

- we could seek to establish a formal, non-proliferation and disarmament dialogue
- **there is scope to share with India experiences on IAEA and bilateral safeguards implementation** (ASNO has had discussions with Canada and the US to develop such engagement with India)
- there is scope to **boost technical cooperation with India**, e.g. utilising ANSTO's Lucas Heights facilities, under a longstanding regional "Nuclear Cooperation Agreement" (RCA) under the auspices of the IAEA
- on other possible, if minor, steps:
  - there is scope to adjust controls on **dual-use goods for India's civil sector** where Australia's Defence Export Control Office can be assured such goods will not contribute to military purposes;
    - : we could enter into discussions with India towards **agreeing arrangements for India to provide robust end-use guarantees to Australia**; and
  - ISD also administers whole-of-government **visa scrutiny for WMD proliferation risk**, and there is **scope to adjust this** e.g. through obtaining Indian government guarantees under a similar framework to that envisaged for export controls on goods.

What is required by Cabinet to move forward on uranium supply?

Cabinet needs to (i) formally change the Government's policy which currently restricts Australian uranium supply only to NPT signatories; and (ii) settle on a negotiating mandate for a nuclear cooperation agreement governing uranium supply and safeguard guarantees. It is proposed that (i) occur at NSC on 23 July, and (ii) would come forward in a subsequent Cabinet submission.



SENATOR THE HON BOB CARR

MINISTER FOR FOREIGN AFFAIRS  
CANBERRA

Mr James Shaw  
Secretary  
ALP Parramatta FEC  
PO Box 3004  
NORTH PARRAMATTA NSW 1750

31 MAY 2012

Dear Mr Shaw

I refer to your letter of 27 April 2012, regarding the motion passed by the Harris Park branch of the ALP about the export of uranium to India.

On 4 December 2011, the ALP decided to change its policy on exports of uranium to India. The Government is currently considering how it might give effect in policy to the ALP decision to permit exports of uranium to India.

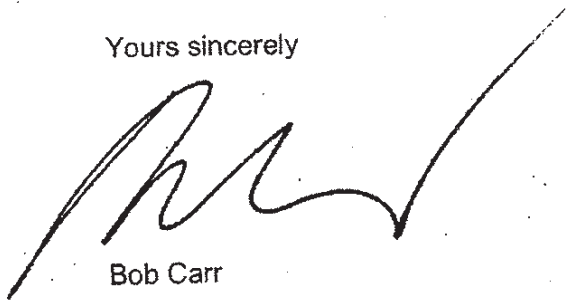
That said, Australia will continue to apply robust safeguards and transparency requirements for all uranium exports to ensure Australian exported uranium is used exclusively for peaceful purposes. Our bilateral safeguards agreements ensure that the countries we sell uranium to commit to International Atomic Energy Agency (IAEA) safeguards and international nuclear security standards, report on their use of Australian nuclear material, and seek Australian consent for any transfer of Australian nuclear material to a third country. Any exports to India would be subject to a bilateral safeguards agreement, which would need to be concluded before exports could commence.

Australia is and will remain a steadfast supporter of nuclear non-proliferation and disarmament, including through support for the Nuclear Non-Proliferation Treaty, the IAEA and the United Nations multilateral disarmament machinery.

The Government will continue to work to build international confidence and transparency in nuclear non-proliferation and disarmament, including by promoting negotiations for a treaty banning the production of fissile material for nuclear weapons, universal ratification of the Comprehensive Test Ban Treaty, stronger international nuclear safeguards, and greater transparency in nuclear disarmament. We see these measures as collectively making a significant contribution to the ultimate goal of a nuclear weapons-free world

Thank you for bringing this motion to my attention. I trust that this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bob Carr', written over a light blue horizontal line.

Bob Carr



## INDIA: URANIUM

### What is the Government doing about uranium exports to India?

- On 4 December 2011, the Australian Labor Party (ALP) amended its Platform to allow the export of uranium to India.
- The Government is considering how it might give effect in Government policy to allow the export of uranium to India.
- Australia applies stringent safeguards and transparency requirements for all uranium exports to ensure exported Australian uranium is only used for peaceful purposes.
- Before exports could take place, Australia and India would need to conclude a civil nuclear cooperation ('safeguards') agreement.
- The bilateral agreement would address Australia's stringent safeguards and transparency requirements for exported Australian uranium.
- Australia's bilateral civil nuclear cooperation ('safeguards') agreements include provisions to ensure that the countries to which we sell uranium
  - commit to International Atomic Energy Agency (IAEA) safeguards and international nuclear security standards;
  - report on the use of Australian nuclear material in all stages of the nuclear fuel cycle;
  - seek Australian consent for reprocessing or high-enrichment of Australian nuclear material, or its transfer to a third country (any of which could also only be for peaceful purposes); and
  - include fallback safeguards in the agreement in the event that IAEA safeguards no longer apply for any reason.

### When will exports of uranium to India begin?

- Firstly, the Government would need to decide how it might give effect in policy to allow the export of uranium to India.
- Exports could then be commenced once: Australia and India had negotiated and brought into force a bilateral nuclear cooperation agreement; the Government was satisfied Australia's policy requirements were met<sup>1</sup>; and Australia and India had mutually determined, and India had implemented, administrative arrangements associated with the bilateral agreement.

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<sup>1</sup> Except that India would have been exempted by that stage from the Government's policy preventing uranium supply to States not Parties to the Nuclear Non-Proliferation Treaty (NPT).

- India would also need to have brought into force the Additional Protocol on strengthening safeguards it has signed with the International Atomic Energy Agency (IAEA).
- There is no set timeframe for the commencement or conclusion of negotiations for a bilateral safeguards agreement with India.

**Is India pressing for negotiations to commence?**

- No.

**Won't exports of Australian uranium free up India's own uranium resources for its nuclear weapons program?**

- India is a robust democracy and has a sound non-proliferation record.
- India already imports uranium from other countries and has sufficient indigenous resources of uranium for its military needs.

**Does this signal a weakening in Australia's non-proliferation and disarmament policy?**

- No.
- Australia steadfastly supports non-proliferation and disarmament
  - Australia would continue to apply robust measures to ensure Australian uranium is used only for peaceful purposes
  - any uranium supply to India would be fully consistent with rules of the Nuclear Suppliers Group (NSG) (Australia is an NSG member)
  - any exports of uranium to India would be subject to International Atomic Energy Agency (IAEA) safeguards (Australia is a member of the IAEA's Board of Governors)
  - India has already signed nuclear cooperation agreements with countries such as the United States and Canada.

***Policy Advice***

**Has the Department provided policy advice to the Government on this matter prior to, or following, the ALP National Conference?**

- Prior to the ALP National Conference, the Department of Prime Minister and Cabinet (PM&C) provided advice to the Government, and DFAT was consulted in the preparation of the advice.
- Following the ALP Conference, DFAT has prepared advice for the Government.<sup>2</sup>

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<sup>2</sup> The advice is Cabinet-in-Confidence.

*Legal Advice*

**Is the Department aware of legal advice from Professor Don Rothwell that Australia is under international legal obligations not to provide India with nuclear material until such time as India has concluded a full-scope safeguards agreement?**

Yes

- will not comment on that advice except to say that any exports of Australian uranium to India would comply with Australia's international legal obligations..

**Don't Australia's international legal obligations (for example, under the Nuclear Non-Proliferation Treaty or the South Pacific Nuclear Free Zone Treaty) prevent uranium supply to India?**

Any exports of Australian uranium to India would comply with Australia's international legal obligations.

**Has the Government sought or received legal advice on this matter?**

Yes

- the Government frequently receives legal advice ahead of potential international negotiations
- the content of any advice is confidential
- it is the long-standing practice of Australian Governments not to comment on, or disclose, the nature of legal advice provided.

**When exactly was the legal advice sought and provided?**

Preliminary legal advice was sought by PM&C on 25 November 2011 and provided by AGD and DFAT on 30 November 2011

- the Office of International Law, AGD and the Department of Foreign Affairs and Trade provided preliminary legal advice to PM&C on 30 November 2011.

Further legal advice has been sought and received by DFAT

- the Solicitor-General provided legal advice on 14 March.

**What was the content of legal advice?**

It is the long-standing practice of Australian Governments not to comment on, or disclose, the nature of legal advice provided

furthermore, any question about content of legal advice is a matter for the relevant Minister, not officials.<sup>3</sup>

**What was the cost of legal advice?**

- The cost of legal advice requested by DFAT of the Australian Government Solicitor (AGS) was \$119,551.08, made up of:
  - advice by AGS on the domestic legal framework applicable to the transfer of uranium to India cost \$55,414.70; and
  - preparation by AGS of a 'Brief to Advise' for the Solicitor-General cost \$64,136.38.
- PM&C have advised DFAT that the cost of earlier preliminary legal advice requested by PM&C of AGD was \$10,030.57.

**Will the Government need to put in place any changes to legislation or regulations in order to export uranium to India?**

- The legislative framework in Australia is already in place to cater for new nuclear cooperation agreements
  - Any specific legal requirements with respect to uranium supply to India would be addressed during the negotiating phase of a bilateral civil nuclear cooperation agreement.

***India's proposed Nuclear Suppliers Group (NSG) membership***

**Will Australia support India's proposed NSG membership?**

- Australia participated in the NSG decision to exempt India from certain NSG rules and would consider on its merits any application by India to join the NSG.

***Treatment of other non-NPT States, including Pakistan***

**Will Australia also export uranium to other non-NPT States?**

- The only matter under consideration by the Government relates to uranium exports to India

**Will Australia also export uranium to Pakistan?**

- Potential recipients for Australian uranium are considered on a case-by-case basis
  - the possibility of uranium exports to Pakistan is not under consideration.

**Would Australia agree to a Nuclear Suppliers Group (NSG) exemption for Pakistan, similar to that for India?**

- The issue of an NSG exemption for Pakistan is not under consideration in the NSG.

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<sup>3</sup> Because the legal advice is under professional privilege, officials cannot divulge it. The PM or FM, but not officials, could decide that the Government, as the client, might waive its right to the immunity provided by legal professional privilege.

***Side Issue: Indian Missile Launch of 19 April 2012***

**Hasn't India's 19 April launch of a nuclear-weapon-capable, long-range ballistic missile cause the Government to re-think exports of uranium to India?**

No.

***Side Issue: Southern Hemisphere Nuclear Weapons Free Zone***

**Will the Government also implement the ALP National Conference resolution to work towards the establishment of a Southern Hemisphere Nuclear Weapons Free Zone?**

- It is not Government policy to pursue the establishment of a Southern Hemisphere Nuclear Weapons Free Zone
- should the Government wish to take up the ALP proposal, then possible policy steps would be considered.

**Background**

Government policy has been to supply uranium only to countries that are parties to the Nuclear Non-Proliferation Treaty (NPT). This precludes India from receiving Australian uranium.

**International Campaign to Abolish Nuclear Weapons (ICAN)**

ICAN obtained legal advice from Prof. Don Rothwell of the Australian National University, concluding that Australia is prohibited under international law from exporting uranium to India unless India accepted comprehensive International Atomic Energy Agency (IAEA) safeguards. ICAN provided a copy of the advice to the Prime Minister, the Attorney-General and the Minister for Foreign Affairs on 23 November 2011. ICAN asserts the advice states Australia is prohibited under international law from exporting uranium to India unless India accepts comprehensive safeguards.

**India's Nuclear Status**

India is not a State Party to the NPT. India possesses nuclear weapons but cannot fit the NPT definition of a nuclear-weapon State. There is no expectation India would join the NPT as a non-nuclear-weapon State. However, in 2005 the US and India announced a bilateral civil nuclear cooperation initiative, and in 2006 they signed a nuclear cooperation agreement. Under the agreement India committed to, *inter alia*: separate its civil and military nuclear facilities; place its separated civil nuclear facilities under International Atomic Energy Agency (IAEA) safeguards; conclude an IAEA Additional Protocol; and maintain its nuclear testing moratorium.

In 2008, the Nuclear Suppliers Group (NSG) exempted India from certain NSG rules preventing nuclear trade with a non-NPT State. Australia joined the NSG decision. Several countries including the US, Canada and the Republic of Korea have since concluded bilateral

**ENTER NO.**

nuclear cooperation agreements with India. In 2010, the US and India announced that the US would support India's membership of the international export control regimes, including the NSG.

Side Issue: Southern Hemisphere Nuclear Weapons Free Zone

On 4 December 2011, the ALP National Conference also adopted a resolution to 'work towards the future establishment of a Southern Hemisphere Nuclear Weapons Free Zone Treaty, based on the provisions in the Rarotonga Treaty'. The Government has not considered, nor expressed a wish to consider, the ALP proposal.

<b>Prepared by:</b>	<b>Cleared by AS ACB:</b>
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s 22 1(a)(ii)	Mob: 0421 589 023 Ext: 3265
Date: 09/05/2012	Date: 09/05/2012
<b>Consultation:</b> ILD/SMD/ASNO/PMC	



Australian Government  
Department of Foreign Affairs and Trade

## MEDIA TALKING POINTS

Subject: **India: Nuclear: Possible Uranium Exports**  
Date/Version: 24 April 2012, Version 2 (to be cleared)

### Talking Points

- In December 2011, the Australian Labor Party (ALP) decided to change its party policy and allow for exports of uranium to India
  - in light of the ALP change to its party policy, the Government is addressing steps to allow for uranium exports to India
  - before exports can take place, Australia needs to negotiate and conclude a bilateral nuclear cooperation agreement to cover uranium exports to India
  - the agreement will address Australia's safeguards and transparency requirements.

### *If asked: When will exports of uranium to India begin?*

- Exports cannot begin until Australia and India have negotiated and brought into force a bilateral nuclear cooperation agreement and associated administrative arrangements
  - there is no set timeframe for the start or end of negotiations
  - Australia has strict safeguards and transparency requirements, which will be addressed in the bilateral agreement.
- India will also need to finalise domestic processes to bring into force the additional safeguards protocol it has signed with the International Atomic Energy Agency (IAEA)
  - Australia requires that countries to which it exports uranium have an Additional Protocol in place.

### *If asked: Does this signal a weakening in Australia's non-proliferation and disarmament policy?*

- No. Australia steadfastly supports non-proliferation and disarmament.
- Australia will continue to apply robust measures to ensure that Australian uranium is only used for peaceful purposes
  - uranium supply to India would be fully consistent with rules of the Nuclear Suppliers Group (NSG) (Australia is a long-standing NSG member)
  - exports of Australian uranium to India will be subject to IAEA safeguards (Australia is a long-standing member of the Agency's Board of Governors)
  - India has already signed civil nuclear cooperation agreements with countries such as the United States and Canada
  - as India grows, its energy needs are growing and India has identified nuclear power as important for its current and future energy supply
  - Australia will do its part to help India meet its energy needs.
- Australia's bilateral nuclear cooperation agreements ensure the countries we sell uranium to:
  - commit to IAEA safeguards and international nuclear security standards;
  - report on their use of Australian nuclear material; and
  - seek Australian consent for any transfer of Australian nuclear material to a third country.
- The Government will apply these same requirements to any uranium exports to India

- strict adherence to IAEA arrangements and strong bilateral undertakings and transparency measures will provide assurances our uranium will only be used for peaceful purposes.

***If asked: Will the Government need to put in place any changes to legislation or regulations in order to export uranium to India?***

- . The legislative framework in Australia is already in place to cater for new nuclear cooperation agreements
  - specific legal requirements will be addressed during the negotiating phase.

***If asked: Is the Government aware of legal advice from Professor Don Rothwell that Australia is under international legal obligations not to provide India with nuclear material until such time as India has concluded a full-scope safeguards agreement?***

- . The Government is aware of that advice
  - will not comment on that advice except to say that legal issues will be worked through.

***If asked: Don't Australia's international legal obligations prevent uranium supply to India?***

- . Any exports of uranium to India will comply with Australia's international legal obligations.

***If asked: Has legal advice been provided to the Government on this matter?***

- . The Government frequently receives advice ahead of international negotiations
  - the content of any legal advice provided to Government is confidential.

***If asked: What is India's status within the international non-proliferation regime?***

- . India is not a member of the Nuclear Non-Proliferation Treaty (NPT).
- . India has nuclear weapons but the NPT defines nuclear-weapon states as those that conducted a nuclear explosion prior to 1 January 1967
  - so India does not have the status of a nuclear-weapon state under the NPT (the five nuclear weapon states are the US, Russia, France, UK and China)
  - there is no expectation that India will renounce its nuclear weapons and join the NPT.
- . In 2006, the United States and India signed a bilateral nuclear cooperation agreement
  - in response to this agreement, India made a number of non-proliferation commitments, including to:
    - : separate its civil and military nuclear facilities;
    - : place its civil facilities under International Atomic Energy Agency (IAEA) safeguards;
    - : conclude an IAEA Additional Protocol;
    - : maintain its nuclear testing moratorium; and
    - : cooperate in international efforts to negotiate a ban on the production of fissile material for nuclear weapons.
- . In 2008, the Nuclear Suppliers Group (NSG) granted India an exemption from rules restricting nuclear trade with non-nuclear-weapon states to enable civil nuclear cooperation with India, including uranium supply to India
  - Australia supported the NSG exemption.
- . Since 2008, the US, Canada and the Republic of Korea have concluded bilateral nuclear cooperation agreements with India and in November 2010, US President Obama and India's Prime Minister Singh announced that the US would support India's membership of the international export control regimes, including the NSG.



***If asked: Won't exports of Australian uranium free up India's own uranium resources for its nuclear weapons program?***

India already imports uranium from other countries and has sufficient indigenous resources of uranium for its military needs.

***If asked: Will Australia support India's proposed membership of the Nuclear Suppliers Group (NSG)?***

Australia supported the NSG exemption for India and would consider on its merits any application by India to join the NSG.

***If asked: India's April 2012 test of its 'Agni V' ballistic missile***

India is not the subject of any UN Security Council bans on the launch of ballistic missile technology

- India has had a ballistic missile program for some time
- it is a robust democracy and has a solid non-proliferation record
- and India has productive and cooperative relations with the international community

***If asked: Will Australia export uranium to other non-NPT countries, e.g. Pakistan?***

Potential recipients for our uranium are considered on a case-by-case basis.

The only changes under consideration relate to exports to India

- unlike India, Pakistan does not have an Nuclear Suppliers Group (NSG) exemption
  - : Australia is an NSG member and abides by NSG decisions.

**Background**

Australian Government policy has been to supply uranium only to countries that are parties to the Nuclear Non-Proliferation Treaty (NPT). On 4 December 2011, the Australian Labor Party (ALP) decided to allow uranium exports to India, subject to application of strong safeguards.

Australia's uranium export policy requires recipient states *inter alia* to have concluded a bilateral nuclear safeguards agreement with Australia and to have in place an Additional Protocol with the International Atomic Energy Agency (IAEA). Also, all exports of Australian uranium require an export permit under the *Customs (Prohibited Exports) Regulations 1958*. These requirements will apply to India.

Australia's bilateral nuclear safeguards agreements include provisions to ensure countries to which Australia sells uranium: commit to IAEA safeguards and security standards; report on use of Australian nuclear material throughout the fuel cycle; seek Australia's consent for reprocessing or high-enrichment of Australian nuclear material, or transfer to a third country; and allow fallback safeguards in the event that IAEA safeguards no longer apply. They also contain appropriate dispute resolution provisions.

Regulations would be required to add a bilateral nuclear cooperation agreement with India to the list of 'prescribed agreements' under the *Nuclear Non-Proliferation (Safeguards) Act 1987*, which the Australian Nuclear Safeguards and Non-Proliferation Office (ASNO, within DFAT) administers, and the *Australian Radiation Protection and Nuclear Safety Act 1998*, which the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA, within the Health portfolio) administers.

The International Campaign to Abolish Nuclear Weapons (ICAN) obtained legal advice from ANU Professor Don Rothwell concluding Australia could not supply uranium to India unless it accepted

comprehensive safeguards. On 23 November 2011, ICAN sent a copy of Prof. Rothwell's advice to the Prime Minister, the Attorney-General and the Foreign Minister. The Government is considering the legal aspects of any Australian supply of uranium to India. Public comment on content of any legal advice should be avoided.

In 2008 India was granted an exemption by the Nuclear Suppliers Group (NSG) from its existing rules, which restrict nuclear trade with countries which have not signed the NPT. The NSG exemption for India was based on non-proliferation commitments made by India under its Civil Nuclear Cooperation Agreement with the United States and India's commitment to continuing its unilateral moratorium on nuclear testing. Australia supported India's NSG exemption.

In March 2009, the IAEA Board of Governors approved an Additional Protocol for India. India still needs to complete certain domestic processes to bring its Additional Protocol into force.

In November 2010, as a further step in the development of a strategic relationship between India and the United States, President Obama indicated the United States would relax export controls on some dual-use nuclear technologies for India and support India's membership of the NSG and other export control regimes (Australia Group, Missile Technology Control Regime and Wassenaar Arrangement). At the June 2011 NSG Plenary, the United States tabled a paper on future Indian membership and NSG members expressed their views but made no decision. India has not so far made a formal approach to the NSG or other export control regimes seeking membership.

India has entered or is discussing civil nuclear cooperation agreements (of treaty-level status) or arrangements (of less-than-treaty-level status) with the United States, France, Russia, South Korea, Argentina, Canada, Namibia and Kazakhstan, although not all are yet in effect. (Some countries do not require treaty-level bilateral agreements, or require lesser instruments, before entering into bilateral civil nuclear cooperation arrangements.)

Pakistan has expressed its expectations (publicly and bilaterally) that Australia would also allow uranium exports to Pakistan. For example, on 5 December 2011, Pakistan's High Commissioner to Australia, HE Mr Abdul Malik Abdullah, said that "if Australia is going to lift the ban on a country which has not signed a non-Nuclear Proliferation Treaty (sic), it is hoped it is also applied to Pakistan the same way". He also stated that it would be discriminatory for the Government to refuse any future requests for uranium from Pakistan.

### Media Interest

The possibility of uranium exports to India has been raised in the media, but commentary has waned since the ALP decision. Anti-nuclear NGOs (e.g. ICAN), and journalists will use opportunities to seek information on progress for uranium exports to India.

### Approval

Author	s 22 1(a)(ii)
Cleared by	Allan McKinnon, FAS ISD 62612151, 0421 894 626
Consultation	ASNO, SMD, ILD



Australian Government  
Department of Foreign Affairs and Trade

## MEDIA TALKING POINTS

Subject: **India: Nuclear: Possible Uranium Exports**  
Date/Version: 3 April 2012, Version 1

### Talking Points

- . In December 2011, the Australian Labor Party (ALP) decided to change its party policy and allow for exports of uranium to India
  - in light of the ALP change to its party policy, the Government is addressing steps to allow for uranium exports to India
  - before exports can take place, Australia and India need to negotiate and conclude a bilateral nuclear cooperation agreement
  - the bilateral agreement will address Australia's stringent safeguards and transparency requirements.

#### *If asked: When will exports of uranium to India begin?*

- . Exports cannot begin until Australia and India have negotiated and brought into force a bilateral nuclear cooperation agreement and associated administrative arrangements
  - there is no set timeframe for the start or end of negotiations
  - Australia has strict safeguards and transparency requirements, which will be addressed in the bilateral agreement.
- . India will also need to finalise domestic processes to bring into force the additional safeguards protocol it has signed with the International Atomic Energy Agency (IAEA)
  - Australia requires that countries to which it exports uranium have an Additional Protocol in place.

#### *If asked: Does this signal a weakening in Australia's non-proliferation and disarmament policy?*

- . No. Australia steadfastly supports non-proliferation and disarmament.
- . Australia will continue to apply robust measures to ensure that Australian uranium is only used for peaceful purposes
  - uranium supply to India would be fully consistent with rules of the Nuclear Suppliers Group (NSG) (Australia is a long-standing NSG member)
  - exports of Australian uranium to India will be subject to IAEA safeguards (Australia is a long-standing member of the Agency's Board of Governors)
  - India has already signed civil nuclear cooperation agreements with countries such as the United States and Canada
  - as India grows, its energy needs are growing and India has identified nuclear power as important for its current and future energy supply
  - Australia will do its part to help India meet its energy needs.
- . Australia's bilateral nuclear cooperation agreements ensure the countries we sell uranium to:
  - commit to IAEA safeguards and international nuclear security standards;
  - report on their use of Australian nuclear material; and
  - seek Australian consent for any transfer of Australian nuclear material to a third country.

- The Government will apply these same requirements to any uranium exports to India
  - strict adherence to IAEA arrangements and strong bilateral undertakings and
  - transparency measures will provide assurances our uranium will only be used for peaceful purposes.

***If asked: Will the Government need to put in place any changes to legislation or regulations in order to export uranium to India?***

- The legislative framework in Australia is already in place to cater for new nuclear cooperation agreements
  - specific legal requirements will be addressed during the negotiating phase.

***If asked: Is the Government aware of legal advice from Professor Don Rothwell that Australia is under international legal obligations not to provide India with nuclear material until such time as India has concluded a full-scope safeguards agreement?***

- The Government is aware of that advice
  - will not comment on that advice except to say that legal issues will be worked through.

***If asked: Don't Australia's international legal obligations prevent uranium supply to India?***

- Any exports of uranium to India will comply with Australia's international legal obligations.

***If asked: Has legal advice been provided to the Government on this matter?***

- Legal advice has been prepared. The content of the advice is confidential.

***If asked: What is India's status within the international non-proliferation regime?***

- India is not a member of the Nuclear Non-Proliferation Treaty (NPT).
- India has nuclear weapons but the NPT defines nuclear-weapon states as those that conducted a nuclear explosion prior to 1 January 1967
  - so India does not have the status of a nuclear-weapon state under the NPT (the five nuclear weapon states are the US, Russia, France, UK and China)
  - there is no expectation that India will renounce its nuclear weapons and join the NPT.
- In 2006, the United States and India signed a bilateral nuclear cooperation agreement
  - in response to this agreement, India made a number of non-proliferation commitments, including to:
    - : separate its civil and military nuclear facilities;
    - : place its civil facilities under International Atomic Energy Agency (IAEA) safeguards;
    - : conclude an IAEA Additional Protocol;
    - : maintain its nuclear testing moratorium; and
    - : cooperate in international efforts to negotiate a ban on the production of fissile material for nuclear weapons.

In 2008, the Nuclear Suppliers Group (NSG) granted India an exemption from rules restricting nuclear trade with non-nuclear-weapon states to enable civil nuclear cooperation with India, including uranium supply to India

- Australia supported the NSG exemption.

Since 2008, the US, Canada and the Republic of Korea have concluded bilateral nuclear cooperation agreements with India and in November 2010, US President Obama and India's Prime Minister Singh announced that the US would support India's membership of the international export control regimes, including the NSG.

***If asked: Won't exports of Australian uranium free up India's own uranium resources for its nuclear weapons program?***

- . India already imports uranium from other countries and has sufficient indigenous resources of uranium for its military needs.

***If asked: Will Australia support India's proposed membership of the Nuclear Suppliers Group (NSG)?***

- . Australia supported the NSG exemption for India and would consider on its merits any application by India to join the NSG.

***If asked: Will Australia export uranium to other non-NPT countries, e.g. Pakistan?***

- . Potential recipients for our uranium are considered on a case-by-case basis.
- . The only changes under consideration relate to exports to India
  - unlike India, Pakistan does not have an Nuclear Suppliers Group (NSG) exemption
  - : Australia is an NSG member and abides by NSG decisions.

***If asked: Hasn't Australia flip-flopped in its relations with India?***

- . Since coming to office the Government has:
  - established a Strategic Partnership with India and concluded a Joint Declaration on Security Cooperation;
  - taken forward the CEO Forum (first meeting took place on 5 March in Delhi co-chaired by Lindsay Fox and Naveen Jindal);
  - invested an additional \$50 million in the Australia-India Strategic Research Fund and \$20 million in agricultural research projects; and
  - committed to undertake a major promotion of Australian culture, OzFest, in late 2012, early 2013.

### **Background (not for public use)**

Government policy has been to supply uranium only to countries that are parties to the Nuclear Non-Proliferation Treaty (NPT). On 4 December 2011, the Australian Labor Party (ALP) took a party policy decision to allow uranium exports to India, subject to application of strong safeguards.

Australia's uranium export policy requires recipient states *inter alia* to have concluded a bilateral nuclear safeguards agreement with Australia and to have in place an Additional Protocol with the International Atomic Energy Agency (IAEA). Also, all exports of Australian uranium require an export permit under the Customs (Prohibited Exports) Regulations 1958. These requirements will apply to India.

Australia's bilateral nuclear safeguards agreements include provisions to ensure countries to which Australia sells uranium: commit to IAEA safeguards and security standards; report on use of Australian nuclear material throughout the fuel cycle; seek Australia's consent for reprocessing or high-enrichment of Australian nuclear material, or transfer to a third country; and allow fallback safeguards in the event that IAEA safeguards no longer apply. They also contain appropriate dispute resolution provisions.

Regulations would be required to add a bilateral nuclear cooperation agreement with India to the list of 'prescribed agreements' under the *Nuclear Non-Proliferation (Safeguards) Act 1987*, which the Australian Nuclear Safeguards and Non-Proliferation Office (ASNO, within DFAT) administers, and the *Australian Radiation Protection and Nuclear Safety Act 1998*, which the

Australian Radiation Protection and Nuclear Safety Agency (ARPANSA, within the Health portfolio) administers.

The International Campaign to Abolish Nuclear Weapons (ICAN) obtained legal advice from ANU Professor Don Rothwell concluding Australia could not supply uranium to India unless it accepted comprehensive safeguards. On 23 November 2011, ICAN sent a copy of Prof. Rothwell's advice to the Prime Minister, the Attorney-General and the Foreign Minister. The Government is considering the legal aspects of any Australian supply of uranium to India. Public comment on content of any legal advice should be avoided.

In 2008 India was granted an exemption by the Nuclear Suppliers Group (NSG) from its existing rules, which restrict nuclear trade with countries which have not signed the NPT. The NSG exemption for India was based on non-proliferation commitments made by India under its Civil Nuclear Cooperation Agreement with the United States and India's commitment to continuing its unilateral moratorium on nuclear testing. Australia supported India's NSG exemption.

In March 2009, the IAEA Board of Governors approved an Additional Protocol for India. India still needs to complete certain domestic processes to bring its Additional Protocol into force.

In November 2010, as a further step in the development of a strategic relationship between India and the United States, President Obama indicated the United States would relax export controls on some dual-use nuclear technologies for India and support India's membership of the NSG and other export control regimes (Australia Group, Missile Technology Control Regime and Wassenaar Arrangement). At the June 2011 NSG Plenary, the United States tabled a paper on future Indian membership and NSG members expressed their views but made no decision. India has not so far made a formal approach to the NSG or other export control regimes seeking membership.

India has entered or is discussing civil nuclear cooperation agreements (of treaty-level status) or arrangements (of less-than-treaty-level status) with the United States, France, Russia, South Korea, Argentina, Canada, Namibia and Kazakhstan, although not all are yet in effect. (Some countries do not require treaty-level bilateral agreements, or require lesser instruments, before entering into bilateral civil nuclear cooperation arrangements.)

Pakistan has expressed its expectations (publicly and bilaterally) that Australia would also allow uranium exports to Pakistan. For example, on 5 December 2011, Pakistan's High Commissioner to Australia, HE Mr Abdul Malik Abdullah, said that "if Australia is going to lift the ban on a country which has not signed a non-Nuclear Proliferation Treaty, it is hoped it is also applied to Pakistan the same way". He also stated that it would be discriminatory for the Government to refuse any future requests for uranium from Pakistan.

The Government has come under some criticism for a perceived lack of consistency on policy towards India. For example, on 14 February 2012, an article in *the Financial Review* "Ties that need to be clarified", John Denton, member of the Government's review of the Asian Century, was quoted as saying that one of the worst examples of Australia's engagement with Asia was "the flip-flop we have had on India for the last 20 years. We kind of rediscover India every five years". Mr Denton is Chief Executive, Corrs Chambers Westgarth and a Board Member of the Business Council of Australia.

### Media Interest

The possibility of uranium exports to India has been raised in the media, but commentary has waned since the ALP decision. Anti-nuclear NGOs (e.g. ICAN), and journalists will use opportunities to seek information on progress for uranium exports to India.

**Approval**

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### **India: Uranium**

- On 4 December 2011, the ALP amended its platform to permit the export of uranium to India. The Government is currently considering how it might give effect in Government policy to this adjustment.
- Australia applies stringent safeguards and transparency requirements for all uranium exports to ensure Australian uranium is only exported for peaceful purposes.
- Our bilateral nuclear cooperation agreements include provisions to ensure that the countries to which we sell uranium
  - commit to International Atomic Energy Agency (IAEA) safeguards and international nuclear security standards
  - report on the use of Australian nuclear material in all stages of the nuclear fuel cycle
  - seek Australian consent for reprocessing or high-enrichment of Australian nuclear material, or its transfer to a third country
  - and include fallback safeguards in the agreement in the event that IAEA safeguards no longer apply for any reason.
- The Government would apply the same requirements to any uranium exports to India as it does for other countries

#### ***When will exports of uranium to India begin?***

- Exports could not begin until Australia and India completed a bilateral nuclear cooperation agreement and the Government was satisfied that Australia's requirements were met.<sup>1</sup>
- There is no decision or set timeframe for the commencement or conclusion of negotiations for a bilateral nuclear safeguards agreement with India.

#### ***Did the Department provide advice to the Government on this matter prior to the ALP National Conference?***

- Advice was provided to the Government by the Department of the Prime Minister and Cabinet (PM&C). DFAT was consulted in the preparation of that advice. The content of the advice is confidential.<sup>2</sup>

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<sup>1</sup> The Government could exempt India from its policy preventing uranium supply to non-NPT states.  
<sup>2</sup> Because it is under legal professional privilege. Officials cannot divulge it. The Government, as the client, could choose to waive its right to the legal immunity; it would be for the PM or FM to decide.



***Has the Department provided advice to the Government on this matter following the ALP National Conference?***

- Advice has been prepared. The content of the advice is confidential.

***Has the Government sought or received any legal advice on this matter?***

- Preliminary advice was provided by the Department of Foreign Affairs and Trade and the Attorney-General's Department to PM&C in November 2011.
- Further advice has been sought from across Government (DFAT, AGD, AGS and Solicitor-General).
- *[If pressed on who sought the advice]* PM&C requested preliminary advice on 25 November 2011. Further advice has been sought by the Department of Foreign Affairs and Trade.

***What is the content of legal advice sought or received on this matter?***

- Any question about content is a matter for the relevant Minister, not officials.

***Is the Department aware of legal advice from Professor Don Rothwell that Australia is under international legal obligations not to provide India with nuclear material until such time as India has concluded a full-scope safeguards agreement?***

- The Department is aware of that advice
  - any proposed agreement to transfer uranium to India would comply with Australia's international legal obligations.

***What is India's status within international non-proliferation architecture?***

- India is not a member of the Nuclear Non-Proliferation Treaty (NPT).
- There is no expectation that India will join the NPT as a non-nuclear-weapon state.
- In 2006, the United States and India signed a bilateral nuclear cooperation agreement.

In response to this agreement, India made a number of non-proliferation commitments, including to

- separate its civil and military nuclear facilities
- place its civil facilities under International Atomic Energy Agency (IAEA) safeguards
- conclude an IAEA Additional Protocol
- and maintain its nuclear testing moratorium.

In 2008, the Nuclear Suppliers Group (NSG) granted India an exemption from rules preventing nuclear trade with a non-NPT member

- Australia supported the NSG exemption.

Since 2008, the US, Canada and the Republic of Korea have concluded bilateral nuclear cooperation agreements with India.<sup>3</sup>

In November 2010, President Obama and India Prime Minister Singh announced that the US would support India's membership of the international export control regimes, including the NSG.

**Background**

On 4 December 2011, the ALP amended its policy on uranium exports to allow supply to India, subject to the application of strong safeguards. The Government's policy has been to supply uranium only to those countries that are parties to the Nuclear Non-Proliferation Treaty (NPT). In light of the change to the ALP platform, the Government is currently considering how it might give effect to a concomitant adjustment in Government policy settings.

The International Campaign to Abolish Nuclear Weapons (ICAN) obtained legal advice from Professor Don Rothwell of the Australian National University, concluding that Australia is prohibited under international law from exporting uranium to India unless India accepted comprehensive safeguards. ICAN provided a copy of the advice to the Prime Minister, Attorney-General and Minister for Foreign Affairs on 23 November 2011. Public comment on the content of the advice should be avoided.

<b>Prepared by:</b>	<b>Cleared by AS ACB:</b>	
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Date: 24/01/2012	Date: 31/01/2012	
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<sup>3</sup> Some countries do not require treaty-level bilateral agreements, or require lesser instruments, before entering into civil nuclear cooperation arrangements. Others involved or seeking involvement in civil nuclear cooperation with India include Argentina, France, Kazakhstan, Mongolia, Namibia and the United Kingdom.