

The Agreement

Background

- 3.1 The proposed *Agreement between the Government of Australia and the Government of India on Cooperation in the Peaceful Uses of Nuclear Energy* (the proposed Agreement) is intended to permit the export of Australian uranium to India and create reciprocal obligations regarding the application of safeguards and physical security to the transfer and use of nuclear and associated material.¹
- 3.2 This Chapter contains a description of the proposed Agreement, and will feed into the discussion of the issues arising out of the Agreement, particularly in Chapter 6 of the Report, which will deal with some of the specific provisions of the proposed Agreement.
- 3.3 According to the Australian Safeguards and Non-proliferation Office (ASNO):

Australia has looked at the issue of uranium sales to India on a number of occasions. In the latter part of the Howard government, the then government made a decision that it would be willing to pursue nuclear cooperation with India. In the Rudd government, that decision was then reversed and the important steps leading up to where we are now was that, in December of 2011, the ALP National Conference changed their policy, thus supporting the possibility of uranium sales to India. The Gillard government then, in October of 2012, announced the commencement of negotiations. The first negotiations were held on 19 March 2013 and have

1 National Interest Analysis, [2014] ATNIA 22, *Agreement between the Government of Australia and the Government of India on Cooperation in the Peaceful Uses of Nuclear Energy*, [2014] ATNIF 26, (hereafter referred to as the NIA), para 3.

continued on for the treaty, the Nuclear Cooperation Agreement as well as the administrative arrangement since then. So that has gone across a couple of governments.²

- 3.4 The Minerals Council of Australia (MCA) is also keen to emphasise the fact that the negotiations for the proposed Agreement have been authorised by both Coalition and Australian Labor Party Governments:

Putting in place the nonproliferation infrastructure to facilitate uranium sales to India comes with bipartisan support. The agreement has been several years in the making, and we commend the former government as well as the current Abbott government for delivering this agreement.³

The Agreement

- 3.5 The proposed Agreement recognises India's commitment to the development and use of nuclear energy for peaceful purposes with a view to achieving sustainable development and strengthening energy security including fuel reserves, and the role Australia could play as a long term reliable supplier of uranium to India.⁴

- 3.6 The proposed Agreement also notes that the parties share common concerns and objectives regarding non-proliferation of nuclear weapons and their delivery systems.⁵

- 3.7 The preamble states:

... UNDERLINING their shared belief that international cooperation in the use of nuclear energy for peaceful purposes should be consistent with the objectives of non-proliferation of nuclear weapons and with the respective international obligations of states; ...⁶

2 Dr Robert Floyd, Director General, Australian Safeguards and Non-Proliferation Office (ASNO), Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 15 June 2015, p. 3.

3 Dr Vanessa Guthrie, Board Member, Minerals Council of Australia (MCA), *Committee Hansard*, Canberra, 9 February 2015, p. 14.

4 *Agreement between the Government of Australia and the Government of India on Cooperation in the Peaceful Uses of Nuclear Energy*, [2014] ATNIF26 (hereafter referred to as the proposed Agreement), preamble.

5 The proposed Agreement, preamble.

6 The proposed Agreement, preamble.

- 3.8 The preamble also affirms the signatories' support for the objectives of the Statute of the International Atomic Energy Agency (IAEA).⁷
- 3.9 The National Interest Analysis (NIA) points out that Australia's nuclear cooperation agreements, while broadly similar, do vary according to the requirements of each case, including whether the other party is a signatory of the Nuclear Non-proliferation Treaty (NPT). Specifically, the NIA claims:
- The provisions of the proposed Agreement would implement Australia's policies for the safeguarding and accountability of supplied nuclear materials for the case of India.⁸
- 3.10 Article II of the proposed Agreement defines cooperation in the peaceful uses of nuclear energy in the following terms:
- the supply of uranium;
 - the production and application of radioisotopes and radiation in industry, agriculture, medicine and the environment;
 - nuclear safety, radiation and environment protection and management of radioactive waste;
 - safe, secure, sustainable safeguarded use of civil nuclear energy, including regulatory and technological advancements; and
 - any other areas of cooperation to be determined in writing between the parties.⁹
- 3.11 The proposed Agreement foreshadows cooperation taking the following forms:
- the supply of:
 - ⇒ nuclear materials, non-nuclear materials, equipment, components and technology;
 - ⇒ equipment produced by the application of transferred technology;
 - ⇒ nuclear material and non-nuclear material produced by the transferred equipment or technology; and
 - ⇒ nuclear material that is produced or processed by the use of any nuclear material or non-nuclear material subject to the proposed Agreement;
 - exchange and training of personnel;
 - organisation of symposia and seminars;
 - provision of relevant technical assistance and services;
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7 The proposed Agreement, preamble.

8 NIA, para 14.

9 The proposed Agreement, Article II.

- the exchange of scientific and technical information and documentation;
 - joint research and development of projects; and
 - other forms of cooperation determined in writing by the parties.¹⁰
- 3.12 Cooperation in a field specified in Article II would be carried out following a written arrangement between the parties.¹¹
- 3.13 The materials subject to the proposed Agreement remain subject to it until:
- if it is nuclear material, the material has been consumed or diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become irrecoverable; or
 - in the case of all material, it has been transferred beyond the control of Australia or India in accordance with Article IX of the proposed Agreement; or
 - the parties mutually agree in writing that the material should no longer be subject to the proposed Agreement.¹²
- 3.14 The proposed Agreement is to be implemented through authorities designated by the parties. For Australia, the designated authority is ASNO. For India, the designated authority is the Nuclear Controls and Planning Wing of the Department of Atomic Energy.¹³
- 3.15 Each party to the proposed Agreement will maintain a system of accounting for and control of items subject to the proposed Agreement.¹⁴ Such items will only be transferred to entities that have been authorised by the receiving party's designated authority.¹⁵
- 3.16 The proposed Agreement foreshadows visits of experts to the respective territories of the parties for the implementation of the Agreement.¹⁶
- 3.17 Agreement states that India will be permitted to process nuclear material subject to the proposed Agreement in facilities meeting IAEA safeguards detailed in the *Arrangements and Procedures Agreed between the United States of America and the Government of India* pursuant to Article 6(iii) of their *Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy*.¹⁷
- 3.18 The processed material can only continue to be used as long as the IAEA Safeguards Agreement with the United States remains in force, and any
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10 The proposed Agreement, Article II.

11 The proposed Agreement, Article II.

12 The proposed Agreement, Article III.

13 The proposed Agreement, Article III.

14 The proposed Agreement, Article III.

15 The proposed Agreement, Article III.

16 The proposed Agreement, Article V.

17 The proposed Agreement, Article VI.

fissionable material obtained from processing is used by India '...under Agency safeguards to implement India's planned nuclear energy programme.'¹⁸

- 3.19 India must notify Australia when it engages in processing, and must include information 'available to the Government of India on the IAEA safeguards approaches for the facility that is not classified as safeguards confidential' and a confirmation that the physical protection measures required under Article VIII of the proposed Agreement will be applied during processing.¹⁹
- 3.20 Processing material subject to the proposed Agreement can be carried out to an enrichment level of less than 20 per cent in the isotope 235 of uranium. Enrichment above this level can be undertaken with Australia's prior consent.²⁰
- 3.21 Article VII, which ASNO considers is a key provision of the proposed Agreement,²¹ binds the parties to ensure:
- ... that the items subject to this Agreement as well as by-products are used only for peaceful and non-explosive purposes.²²
- 3.22 The requirements of the *Agreement between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities* are to apply to all the items subject to the proposed Agreement so long as they remain under the jurisdiction or control of the parties. According to the proposed Agreement:
- If the IAEA decides that the application of IAEA safeguards is not possible, the Parties shall consult and agree on appropriate verification measures.²³
- 3.23 Each party shall ensure that adequate physical protection measures are applied to items subject to the proposed Agreement. This requirement extends to the international carriage of the items.²⁴
- 3.24 The parties are required in their physical protection measures to meet the *Convention on the Physical Protection of Nuclear Material* and the recommendations of the IAEA publication '*Nuclear Security*

18 The proposed Agreement, Article VI.

19 The proposed Agreement, Article VI.

20 The proposed Agreement, Article VI.

21 Dr Floyd, ASNO, *Committee Hansard*, Canberra, 12 February 2015, p. 7.

22 The proposed Agreement, Article VII.

23 The proposed Agreement, Article VII.

24 The proposed Agreement, Article VIII.

*Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities.*²⁵

- 3.25 Items subject to the proposed Agreement will not be transferred beyond the jurisdiction or control of the recipient party without the prior consent of the supplying party, except:
- where the recipient party has received assurances from the third state to which the items are being transferred that IAEA safeguards and physical security protections are in place; and
 - where the parties keep and exchange lists of third parties to which transfers have occurred and the nuclear fuel cycle processes that may be applied to the transferred items.²⁶
- 3.26 Dispute settlement under the proposed Agreement will take place through negotiation between the parties.²⁷
- 3.27 The proposed Agreement can be terminated with 12 months' notice. The proposed Agreement states:
- Unless otherwise mutually determined in writing between the Parties, termination or suspension of this Agreement or any cooperation under it for any reason shall not release the Parties from obligations under Articles III, VI, VII, VIII, IX and X of this Agreement in respect of nuclear material, non-nuclear material, equipment, components and technology transferred while the Agreement is in force.²⁸

Differences with other Nuclear Cooperation Agreements

- 3.28 The proposed Agreement differs from other nuclear cooperation agreements to which Australia is a party. The most recent of these is the *Agreement between the Government of Australia and the Government of the United Arab Emirates on Cooperation in the Peaceful Uses of Nuclear Energy*, on which the Committee reported in March 2014.²⁹ This United Arab Emirates (UAE) Agreement will be used as a comparison to identify points of difference.

25 The proposed Agreement, Article VIII.

26 The proposed Agreement, Article IX.

27 The proposed Agreement, Article XII.

28 The proposed Agreement, Article XIV.

29 Parliament of Australia, Joint Standing Committee on Treaties (JSCOT), *Report 137*, tabled 18 March 2014.

- 3.29 The following are the key differences between the two agreements:
- the proposed Agreement specifically does not apply to nuclear materials developed independent of the proposed Agreement;
 - the proposed Agreement permits reprocessing and enrichment to less than 20 per cent in the isotope 235 of uranium, with enrichment above this level undertaken with Australia's prior consent, while the UAE Agreement does not permit reprocessing;
 - in the event of material non-compliance with IAEA standards, the UAE Agreement requires the return of Australian nuclear material, while there is no provision for material non-compliance in the proposed Agreement; and
 - the proposed Agreement contains an Article applying key provisions of the Agreement to Australian nuclear materials even if the Agreement is terminated.
- 3.30 Having described the proposed Agreement's provisions, the Report will now turn to issues associated with nuclear non-proliferation.

