



Additional Comments—Australian Greens.

The Australian Greens acknowledge the work and analysis in the Committee report and support the Committee's view that uranium not be sold to India at this time.

However, despite this prudent finding, the Australian Greens believe the Committee report fails to adequately address other risks and deficiencies in the proposed Agreement. These include:

- the Agreement is inconsistent with Australia's treaty obligations and undermines international law and established standards;
- the Agreement undermines global nuclear non-proliferation efforts and destabilises the international non-proliferation architecture; and
- the Agreement erodes the independence and effectiveness of the Australian Safeguards and Non-Proliferation Office (ASNO).

The Report acknowledges some of these defects but does not require these issues to be resolved before the Agreement is ratified. The magnitude of these issues is underscored by evidence that the Committee received from former top-ranking officials in the Australian and international nuclear sector warning against the Agreement.

Nevertheless, the Committee report is in no way a green-light for the sale of yellowcake to India. The Committee report clearly recommends that no sales to India be permitted until a set of detailed preconditions are met. The committee report states that:

Australian uranium not be sold to India until the Indian Government has established a nuclear regulator with statutory independence and safety inspections of Indian nuclear facilities that meet best practice standards.

Irrespective, the Agreement is fundamentally inconsistent with both domestic and international obligations and puts short term political expedience above global security. As such, the Australian Greens cannot support this Agreement and urge others to do likewise.

Recommendation 1:

The Australia-India Nuclear Energy Cooperation Agreement not proceed.

The benefits for Australia and India

The commercial interests of a small and marginal industry sector must not be prioritised over global security concerns and Australia's international reputation. The Australian Greens dispute the Committee's acceptance of industry-sourced data on the value and importance of Australia's uranium sector. The sector remains a small employer and shrinking contributor to the economy.

The Australian Greens reject the false dichotomy that India must choose between nuclear and coal to meet future energy requirements; and instead note India's planned \$200 billion investment in renewable energy. The Australian Greens strongly believe that India's energy future should be renewable not radioactive, and that Australia is well placed to assist in this respect.

The Agreement

The Agreement is inconsistent with Section 51(2) and 70(1) of the *Nuclear Non-Proliferation (Safeguards) Act 1987*; and Article IV of the *South Pacific Nuclear-Free Zone Treaty* (Treaty of Rarotonga) which Australia is legally obliged to uphold under Article XVIII of the Vienna Convention on the Law of Treaties.

The Committee has concluded that it is not in a position to make an "informed judgement" on such issues; but anticipates a challenge to the proposed agreement "on the grounds that Australia has breached the provisions of the Treaty of Rarotonga." This uncertainty alone should be enough to defer ratification of the Agreement.

Further concerns about the legality of the Agreement were highlighted in a number of submissions to the inquiry, particularly those by the former Director General of ASNO John Carlson; and the former Chair of the International Atomic Energy Agency (IAEA) Board of Governors, Ron Walker. The gravity of the legal deficiencies and subsequent proliferation risk is clearly articulated in comments made by Mr Carlson:

It is understood Indian officials say they will not account for AONM [Australian obligated nuclear material], they will not do more than maintain IAEA accounts, because they say tracking AONM is expensive, complicated and unnecessary:

- I. the first objections are not true — AONM can be tracked simply by adding a two-or three-letter code to IAEA accounting forms,

this is the standard practice in all Australian partner countries (e.g. the code for Australia is “AU” or “AUS”. The entries for AONM are readily aggregated by the accounting software in use today;

- II. as to whether tracking is necessary this is not a matter for debate, it is a legal requirement – Article III.5 requires that it be done.

Essentially, Indian officials seem to be saying, before the agreement even enters into force that India has no intention of complying with Article III.5. If Australian officials, in the negotiation of the administrative arrangement, accept India’s refusal to track AONM, they will be acquiescing in the contravention of the agreement.”

ASNO is responsible for implementing Australian safeguards agreements and ensuring they are consistent with statutory obligations. As noted, this Agreement is not consistent with the existing Safeguards Act. This puts into question ASNO’s independence and ability to function within the law. This Agreement allows India to operate outside the law and reduces the legitimacy of Australian agencies wishing to enforce the law.

Recommendation 2:

The Australian Government should make public in full its legal advice on the compliance of the Agreement with obligations under the Treaty of Rarotonga.

Nuclear non-proliferation

The Committee report has clearly identified nuclear weapons proliferation risks with India and the role Australia could play in negotiating a nuclear arms limitations treaty; promoting the Comprehensive Nuclear-Test-Ban Treaty (CTBT); and advancing a fissile material cut-off treaty. The Committee also outlines the need for an independent regulator in India and the need for assurance from the IAEA that site inspections will be best practice.

The Committee rightly concludes that “nuclear cooperation with India is probably the biggest issue in nuclear non-proliferation for some decades”; and “that nuclear cooperation with India is opposed by the bulk of signatories to the NPT [Nuclear Non-Proliferation Treaty] and may destabilise the international non-proliferation architecture.”

India continues to expand its nuclear weapons program; is not a signatory to the NPT; and refuses to sign the CTBT. This indicates a complete disregard for Australian safeguards and international treaties.

As it stands, the Agreement tacitly endorses this behaviour. If Australia were to ratify the Agreement in its current form it would set an extremely dangerous precedent; would send the wrong message to purchasers of uranium; and would be out-of-step with international opinion.

The global risk of nuclear weapons production by India was identified in a resolution passed by the United Nations Security Council in 1998, which “encourages all States to prevent the export of equipment, materials or technology that could in any way assist programs in India or Pakistan for nuclear weapons”.

Again, Mr Carlson provides a succinct description of the link between Australian uranium sales and the threat of nuclear weapons production:

The nuclear material under this agreement will be usable for nuclear purposes for hundreds, if not thousands, of years. The material can undergo a number of recycling operations, producing further plutonium each time. Within the first decade or two there could be tonnes of plutonium derived from Australian uranium that would be well beyond any information available to Australia. The same situation applies to the uranium recovered from reprocessing, most of which could be recycled many times. Without a proper accounting system, once material loses its initial identity, there is no way of knowing where that material goes, or even quantifying it. There is no substitute or “equivalent” for accounting and tracking.

Mr Walker wrote to the Committee in May 2015 warning that that the Agreement “has a number of loopholes which mean that under the terms of the NCA India could use our uranium in the production of material that could end up in bombs.”

ASNO itself has conceded that “such a hypothetical situation could occur.” This situation is worsened because the checks and balances in relation to enrichment and reprocessing are deficient.

India’s nuclear weapons ambitions are not only a collection of external observations and speculation. K. Subrahmanyam, former head of the National Security Advisory Board in India, said in 2005:

Given India’s uranium ore crunch and the need to build up our nuclear deterrent arsenal as fast as possible, it is to India’s advantage to categorise as many power reactors as possible as civilian ones to be re-fuelled by imported uranium and conserve our native uranium fuel for weapons-grade plutonium production’. Clearly, Australian uranium would boost India’s nuclear weapons capacity.

India’s nuclear weapons ambitions are exacerbated not only by the extended conflict with Pakistan, but also because of strained relations with China which Indian officials consider as their “primary adversary”, as noted by Mr Carlson.

Approving the Agreement would indicate that Australia does not take international treaties seriously, or our own safeguards, laws and regulatory bodies; and that Australia is willing to put relations with one country above nuclear non-proliferation. The NPT has already been systematically weakened by other agreements that are stronger than this Agreement. In its current form, this Agreement would further erode the effectiveness of nuclear non-proliferation efforts to the detriment of global security.

Nuclear safety in India

Selling uranium to India not only fuels the risk of nuclear weapons proliferation but also fuels an industry described by independent Indian analysts as substandard. The Australian Greens share the Committee's view that "the Australian Government cannot overlook such clear warnings about the quality of India's nuclear regulatory framework."

Australian uranium was sold to Tokyo Electric Power Company (TEPCO) and fuelled the continuing Fukushima Dai-ichi nuclear crisis. The fact that this happened in what the Committee describes as the "apparently robust environment" of Japan bodes poorly for the far less regulated Indian sector.

In 2012 the Indian Auditor General released a report warning against a disaster at an Indian reactor. The report identified that more than 60% of inspections of operating or existing nuclear reactors are up to five months late or do not occur at all. The report said India's Atomic Energy Regulatory Board is ineffective, mired in bureaucracy and negligent in monitoring safety. There have been numerous reports of workers' exposure to radiation through leaks and contaminated water. Other reports include incidents of uranium being stolen and unaccounted for.

Senator Peter Whish-Wilson

