
The Parliament of the Commonwealth of Australia

Report 94

Treaties tabled on 14 May 2008

Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes (Sydney, 7 September 2007)

Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation (Sydney, 5 September 2007)

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Membership of the Committee

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		Senator Glen Sterle (until 1/7/08)
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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and

such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

ACF	Australian Conservation Foundation
AONM	Australian Obligated Nuclear Material
ASNO	Australian Safeguards and Non-Proliferation Office
AUA	Australian Uranium Association
CFE	Convention Forces in Europe Treaty
FOE	Friends of the Earth, Australia
IAEA	International Atomic Energy Agency
ICAN	International Campaign to Abolish Nuclear Weapons
ITAR	International Traffic in Arms Regulations
MAPW	Medical Association for Prevention of War (Australia)
MUF	Material Unaccounted For
NIA	National Interest Analysis
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NWS	Nuclear Weapons State
NNWS	Non Nuclear Weapons State
RIS	Regulation Impact Statement
WILPF	Women's International League for Peace and Freedom



List of recommendations

2 Agreement with the Russian Federation on cooperation in the use of nuclear energy for peaceful purposes

Recommendation 1

The Committee recommends that the Australian Government not proceed with ratification of the *Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes* until:

- (a) Russia's reform process to clearly separate its civilian nuclear and military nuclear facilities is completed and independently verified;
- (b) IAEA inspections are implemented for Russian facilities that will handle Australian Obligated Nuclear Materials;
- (c) The Government is satisfied that the Russian Federation is complying with its obligations under the *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT) noting that this treaty is scheduled for review in 2010;
- (d) The Government is satisfied that Russia will not subsequently abandon this treaty or other nuclear treaties;
- (e) Further consideration is given to the potential ramifications for this agreement of recent political events affecting Russia;
- (f) Further consideration is given to Article IX of the Agreements, 'State Secrets', and the Government is confident that this article will not undermine the intent of this agreement;
- (g) Further consideration is given to the justification for secrecy of 'Material Unaccounted For'; and

- (h) The Australian Government discusses with the United States, United Kingdom, European Union, Canada and Japan, whether the problems of the past in relation to Russian nuclear material being stolen, have now been addressed satisfactorily.

Recommendation 2

The Committee reiterates its earlier recommendation, made in Report 81:

The Committee recommends that the Australian Government lobbies the IAEA and the five declared nuclear weapons states under the NPT to make the safeguarding of all conversion facilities mandatory.

Recommendation 3

The Committee recommends that Australian efforts to strengthen the resourcing of the IAEA be continued.

3 Treaty between Australia and the United States of America Concerning Defense Trade Cooperation

Recommendation 4

The Committee supports the *Treaty between the Government of Australia and the Government of the United States Concerning Defense Trade Cooperation* and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of two treaty actions tabled in Parliament on 14 May 2008.¹ These treaty actions are:
- *Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes (Sydney, 7 September 2007)*
 - *Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation (Sydney, 5 September 2007)*
- 1.2 The Report refers frequently to the National Interest Analysis (NIA) prepared for each proposed treaty action. This document is prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of each NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- www.aph.gov.au/house/committee/jsct/14may2008/tor.htm
- 1.3 Copies of each treaty action and NIA may also be obtained from the Australian Treaties Library maintained on the internet by the

¹ Australia, House of Representatives 2008, *Votes and Proceedings*, No. 17, p. 242, Australia, Senate 2008, *Journal*, No. 12, p. 371.

Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's Review

- 1.4 The reviews contained in this report were advertised in the national press and on the Committee's website.² Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Members of Parliament and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.
- 1.5 The Committee also received evidence at public hearings on 16 June, 28 July, 25 August and 1 September 2008 in Canberra and Melbourne. A list of witnesses who appeared before the public hearings is at Appendix B. Transcripts of evidence from public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- www.aph.gov.au/house/committee/jsct/14may2008/hearings.htm

2 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 28 May 2008. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

Agreement with the Russian Federation on cooperation in the use of nuclear energy for peaceful purposes

Introduction

- 2.1 The *Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes* replaces an existing 1990 agreement with the Government of the Union of Soviet Socialist Republics and will bring the nuclear cooperation relationship between Australia and Russia into line with Australia's other bilateral nuclear agreements with nuclear-weapons states.¹
- 2.2 The key difference between the two agreements is that this agreement will allow the use of Australian uranium in Russian nuclear power plants, whereas the existing agreement only permits Russia to enrich Australian uranium for eligible third states and not its own use. The new agreement also establishes a broad framework for cooperation between Australia and Russia in the peaceful use of nuclear technology.²
- 2.3 Under long-standing Australian Government policy, Australian uranium and nuclear material derived from it (Australian Obligated

1 NIA, para 5.

2 National Interest Analysis (NIA), para 5.

Nuclear Material or AONM) can only be exported to countries with which Australia has concluded a nuclear safeguards agreement. The purpose of Australia's nuclear material safeguards agreements is to provide assurance that AONM is used exclusively for peaceful purposes. These agreements complement the International Atomic Energy Agency's (IAEA) safeguards system, which is aimed at assuring the non-proliferation of nuclear weapons. Australia currently has 22 nuclear safeguard agreements covering 39 countries, including Taiwan.³

- 2.4 Each safeguards agreement also includes confidential Administrative Arrangements, which is a less-than-treaty status agreement, setting out the operational arrangements for the principles committed to by the parties to the treaty level safeguards agreement. The Administrative Arrangements include accounting procedures and reporting required for tracking AONM.⁴
- 2.5 Consultation on this agreement was undertaken within the Commonwealth Government, and with State and Territory Governments, and Australia's major uranium producers. The agreement was also publicly announced in April 2007 with the Government receiving 30 inquiries as at April 2008.⁵

Key Obligations

- 2.6 The key obligation arising from this agreement is that both parties are to ensure that no nuclear material transferred under the agreement is ever used for, or diverted to, any military purpose.⁶ This includes the use of AONM for nuclear weapons, naval propulsion, depleted uranium munitions and production of tritium for weapons use.⁷ Mr John Carlson, Director General of the Australian Safeguards and Non-Proliferation Office (ASNO) summarised the other key aspects of the agreement:

3 Regulation Impact Statement (RIS), p. 1.

4 Australian Safeguards and Non-Proliferation Office, Supplementary Submission 22.1, pp. 8-10.

5 NIA, Consultation attachment; RIS, para 4. The Australian Government agencies involved in consultation were the Attorney-General's Department and the Departments of Prime Minister and Cabinet; Resources, Energy and Tourism; Industry, Innovation, Science and Research; and Defence.

6 NIA, para 14.

7 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 25.

- AONM is to be subject to Russia's safeguards agreement with the International Atomic Energy Agency (IAEA);
 - AONM cannot be transferred to any third party, highly enriched or reprocessed without Australia's prior consent;
 - Fallback safeguards are to apply if for any reason IAEA safeguards cease to apply;
 - Internationally accepted standards of physical protection or security are to apply;
 - Administrative Arrangements are to be concluded between ASNO and its Russian counterpart, Rosatom, in the form of a Memorandum of Understanding setting out detailed procedures for accounting for and reporting on AONM; and
 - In the event of a breach of the agreement, Australia can suspend all nuclear transfer and require the return of material already supplied.⁸
- 2.7 Further, with a limited exception⁹, AONM may only be processed, used or stored within facilities mutually determined by ASNO and Rosatom. These facilities must also be subject to Russia's safeguards agreement with the IAEA.¹⁰
- 2.8 The Committee notes that the Memorandum of Understanding setting out procedures for accounting for and reporting on AONM and determination by ASNO and Rosatom of the list of facilities eligible for AONM are still to be concluded.¹¹
- 2.9 The agreement will remain in force for an initial period of 30 years, although there is provision for either party to terminate the agreement through written notification to the other party. The conditions of the agreement, however, will apply to AONM in Russia

8 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, pp. 25-26. See also NIA, paras 10 and 15 to 24.

9 The Committee was told that depleted uranium tails left from the enrichment of Australian uranium in Europe will not be processed at the international fuel cycle centre at Angarsk, which will be under IAEA safeguards, because of the presence of uranium-236 - a 'complication in terms of energy production'. The tails will go to other enrichment plants not subject to IAEA safeguards in order to avoid introducing traces of uranium-236 into the pipe work of the Angarsk centre. Mr John Carlson, *Transcript of Evidence*, 16 June 2008, pp. 35-36.

10 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 26.

11 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 26.

for as long as that material is in Russia irrespective of the life of the agreement.¹²

Russia's energy demands

- 2.10 Russia is the world's third largest energy consumer and currently has 31 operating nuclear power plants providing about 16 percent of its energy demand. It is projected that overall energy demand will double by 2020. Russia intends to build up to 40 new nuclear power plants to meet this demand, which will more than double current capacity and raise the proportion of electricity supplied by nuclear power to around 23 percent.¹³
- 2.11 By 2030 Russia intends to have almost half its electricity supplied from nuclear energy and hydropower.¹⁴ Although it currently uses domestic uranium supplies for its nuclear power industry, the Committee was informed that Russia is seeking agreements with a number of countries to secure long term external sources of uranium, upon which it will become increasingly dependent into the future.¹⁵

Australia's uranium supply

- 2.12 Australia holds 27 percent of the world's medium cost uranium reserves and is the world's second largest uranium producer after Canada. In 2007, Australia exported approximately 8,600 tonnes of uranium valued at \$660 million. The United States of America, France, Japan and the Republic of Korea are Australia's main uranium customers.¹⁶
- 2.13 The Committee was informed that with around a third of the world's low cost uranium resources, Australia is well placed to provide Russia with a significant proportion of its expanding uranium needs. Further:

12 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 34.

13 NIA, para 13.

14 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 25.

15 RIS, p. 2; Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 25.

16 RIS, p. 3.

[n]ot only do Australia's major uranium producers want to establish themselves in potentially one of the world's largest uranium markets; they also believe the agreement will help open up other mining and development opportunities in Russia.¹⁷

2.14 ASNO estimated that if Australia could capture about a third of the Russian uranium market by 2020, this would equate to about 2,500 tonnes of uranium (about a quarter of Australia's current total exports). Based upon current prices, this would be valued at around \$350 million per year.¹⁸

2.15 This demand could not be met, however, on the basis of the current level of production:

Our current levels of production are fully committed, so we are looking ahead to a period where Australian production will be increasing substantially. Apart from the opening of new mines, the expansion of the Olympic Dam project alone will increase Australia's production by a factor of at least two.¹⁹

2.16 The Australian Uranium Association (AUA) also highlighted the potential economic benefits to Australia from the agreement. Modelling commissioned by the AUA predicted that by 2030 Australia's GDP could be \$14 to \$17 billion higher if the uranium industry was expanded to its potential.²⁰

Reasons for Australia to take treaty action

2.17 In addition to strengthening Australia's bilateral ties with the Russian Federation, the Australian Government considered that the specific benefits arising from this agreement to Australia are that it would:

- enable the transfer of nuclear material subject to nuclear safeguards and controls that are consistent with Australia's long standing policies and international obligations to prevent the proliferation of nuclear weapons;

17 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 25.

18 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 32.

19 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 32.

20 Australian Uranium Association, Submission No. 3, p. 1.

- assist Russia to reduce greenhouse gas emissions and atmospheric pollution through the use of nuclear power; and
- consolidate Australia's position as a reliable supplier of energy resources.²¹

2.18 The Government also considered that this agreement, one of several Russia is concluding on nuclear cooperation, would contribute to engagement between Russia and the international community on non-proliferation, nuclear security and nuclear safety.²²

2.19 Mr John Carlson of ASNO outlined some of the factors considered by the Government in concluding the agreement:

A key factor was Russia's action announced in 2006 to clearly separate its military and civil nuclear programs and to place civil facilities under its safeguards agreement with the IAEA. A further factor was that Russia had ceased production of fissile material for nuclear weapons many years ago and announced this in 1994. Russia has no reason to try to divert imported uranium for military use. As I have already noted, Russia is a major uranium exporter through its extensive program of down-blending ex-military high-enriched uranium, equivalent to thousands of warheads, for use in nuclear power plants.

Another key factor was the major upgrading of nuclear safety, security and safeguards achieved through international collaboration with Russia since the early 1990s. Since that period there have been at least 17 significant multilateral and bilateral international assistance programs aimed at improving safety and security in Russia's nuclear sector, totalling well over US\$10 billion. The focus of these programs has ranged from commitments of tens of millions of dollars for assisting specific nuclear reactors to the multibillion-dollar Nunn-Lugar Cooperative Threat Reduction Program that has over 17 years secured tonnes of weapons-usable nuclear material.

As a consequence of all these programs there has been substantial improvement in the safety and security of nuclear materials and facilities in Russia. Russia is committed to bringing its power sector into line with international

21 NIA, para 6.

22 NIA, para 7.

standards on nuclear regulation, transparency and accountability.²³

- 2.20 ASNO also indicated that Russia is an active participant in international fora on nuclear safety and security. Russia has been engaged in the safety review process of the World Association of Nuclear Operators since its inaugural meeting in 1989. It is also active in peer review processes under the Convention on Nuclear Safety, the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.²⁴
- 2.21 In its submission to the Committee, Paladin Energy argued it was important that Australia, as a major uranium producer, and Russia, as a major nuclear technology provider, conclude an agreement that would enable both countries to cooperate and benefit from expanded peaceful applications of nuclear technology.²⁵ The AUA also supported expansion of Australia's uranium industry and considered the proposed agreement one mechanism by which Australia 'can safely and securely realise the potential available in the comparative advantage we have in uranium'.²⁶
- 2.22 ASNO emphasised to the Committee that this agreement is intended to develop a relationship with the Russian Federation into the long term based upon Russia's intentions to substantially expand its nuclear power program. In ASNO's view, Russia will become a major uranium importer and is likely to retain its remaining fissile material for use in its own power program.²⁷

Non-Proliferation Treaty and IAEA safeguards

- 2.23 The agreement with the Russian Federation has been negotiated within the context of both Australia and Russia's obligations as parties to the *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT).
- 2.24 The purpose of the NPT is to prevent the spread of nuclear weapons while ensuring fair access to peaceful nuclear technology under

23 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 27.

24 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 27.

25 Paladin Energy Ltd, Submission No. 9, p. 2,

26 Australian Uranium Association, Submission No. 3, p. 1 and 3.

27 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 14.

international safeguards (audits and inspections). Parties to the NPT have committed to:

- preventing the proliferation of nuclear weapons;
- pursuing nuclear disarmament; and
- promoting the peaceful uses of nuclear energy.

- 2.25 There are two categories of parties to the treaty: nuclear weapons states (NWS) and non-nuclear weapons states (NNWS). Russia, along with China, France, the United Kingdom and the United States, is a nuclear weapons state. Its obligations under the NPT differ from those of NNWS.²⁸
- 2.26 The IAEA is the agency with responsibility for developing nuclear safety standards and verifying through its inspection system that member States comply with their commitments under the NPT and other non-proliferation agreements. NNWS must accept safeguards, in the form of accounting and auditing procedures²⁹ and on-site monitoring, for all nuclear activities and materials to verify they are not being used for nuclear weapons.
- 2.27 This safeguards regime operates differently for NWS. These states have entered into a Voluntary Offer Agreement with the IAEA, covering some or all of their peaceful nuclear activities.³⁰ Under a Voluntary Offer Agreement, facilities or nuclear materials in facilities notified to the IAEA are offered for the application of safeguards.³¹
- 2.28 States can ratify an Additional Protocol, which gives the IAEA increased access to all aspects of a State's nuclear program. The Additional Protocol allows for the use of improved verification technologies and requires more extensive inspections at declared nuclear sites. A State is also required to provide the IAEA with broader information covering all aspects of its nuclear fuel-cycle related activities, including research and development and uranium

28 www.iaea.org (accessed 3 September 2008).

29 The IAEA uses nuclear material accountancy as its basis measure for safeguarding declared material. The system monitors the quantities of nuclear material present in a nuclear facility and the changes in these quantities that take place over time. In addition, the IAEA analyses all relevant information obtained through verification and from other sources to ensure consistency with State declarations. IAEA, *IAEA Safeguards: Stemming the Spread of Nuclear Weapons*, www.iaea.org (accessed 3 September 2008).

30 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 7.

31 IAEA, *IAEA Safeguards Glossary*, www-pub.iaea.org/MTCDD/publications/PDF/nvs-3-cd/PDF/NVS3_prn.pdf, (accessed 8 September 2008).

mining.³² Russia has ratified an Additional Protocol, which entered into force in October 2007.³³

2.29 Russia's obligations under the NPT and the application of safeguards to it as a NWS are discussed further below.

Opposition to the Agreement

2.30 The Committee received a number of submissions and took evidence at public hearings in Melbourne and Canberra opposing ratification of this agreement. Organisations were opposed to the agreement because of claims that:

- Russia is violating its disarmament obligations under the NPT and is embarking on a process of re-armament;³⁴
- IAEA safeguards are severely limited in their application to nuclear weapons states³⁵ and cannot prevent Australian uranium from being used for nuclear weapons³⁶;
- Nuclear facilities, materials and weapons in Russia have not been fully secured despite major international collaborative efforts over a number of years³⁷ and physical protection (security) standards remain inadequate³⁸;

32 IAEA, *IAEA Safeguards: Stemming the Spread of Nuclear Weapons*, www.iaea.org (accessed 3 September 2008).

33 Australian Safeguards and Non-Proliferation Office, Submission No. 22, p. 3.

34 Medical Association for the Prevention of War (Australia) (MAPW), Submission No. 6, p. 3; International Campaign to Abolish Nuclear Weapons (ICAN), Submission No. 7, p. 2; Friends of the Earth, Australia (FOE), Submission No. 17, pp. 5-10; The Wilderness Society, Submission No. 15, p. 2; Australian Conservation Foundation (ACF), Submission No. 8, p. 6.

35 ICAN, Submission No. 7, p. 4; ACF, Submission No. 8, p. 3; FOE, Submission No. 17, pp. 19-20.

36 MAPW, Submission No. 6, p. 4.

37 ICAN, Submission No. 7, p. 4; ACF, Submission No. 8, p. 3; Women's International League for Peace and Freedom (WILPF), Submission No. 14, p. 2; FOE, Submission No. 17, p. 11.

38 FOE, Submission No. 17, p. 11.

- There is considerable risk of accident, theft, smuggling, terrorist attack or other misadventure,³⁹ with Russia remaining the source of most stolen and smuggled nuclear materials⁴⁰;
 - The 'state secrets' provision of the agreement could allow Russia to withhold information relating to AONM or Russia's nuclear weapons program without violating the agreement;⁴¹
 - It is not possible to guarantee that AONM will not be used for military purposes due to substitution and the principle of equivalence;⁴²
 - Russia's civil nuclear industry is still inextricably linked with the military;⁴³ and
 - The level of resources available to the IAEA to implement the safeguards regime is inadequate.⁴⁴
- 2.31 Concern was also expressed that the Administrative Arrangements that support the agreement will be kept confidential and therefore unavailable for independent review and assessment.⁴⁵ Similarly, the secrecy surrounding 'Material Unaccounted For' (MUF) was considered unjustified.⁴⁶
- 2.32 The key environmental and social issues raised by submitters were:
- Russia's track record with nuclear safety and environmental responsibility is poor;⁴⁷
 - Human rights in Russia have been degraded⁴⁸ and there is little or no protection for whistleblowers⁴⁹;

39 ICAN, Submission No. 7, p. 3; FOE, Submission No. 17, p. 11.

40 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 3; Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 4; Dr Jim Green, *Transcript of Evidence*, 28 July 2008, p. 26.

41 MAPW, Submission No. 6, p. 5; Professor Richard Broinowski, Submission No. 2, p. 2.

42 Mr David Noonan, *Transcript of Evidence*, 28 July 2008, p. 13.

43 ACF, Submission No. 8, p. 3.

44 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 10; Mr David Noonan, *Transcript of Evidence*, 28 July 2008, p. 14; Friends of the Earth, Australia, Supplementary Submission No. 17.2, p. 10.

45 Mr David Noonan, *Transcript of Evidence*, 28 July 2008, p. 17; ACF, Submission No. 8, p. 12; FOE, Submission No. 17, p. 24.

46 Dr Jim Green, *Transcript of Evidence*, 28 July 2008, p. 23.

47 ACF, Submission No. 8, p. 3; WILPF, Submission No. 14, p. 2.

48 MAPW, Submission No. 6, p. 5; ACF, Submission No. 8, p. 3; WILPF, Submission No. 14, p. 2.

49 MAPW, Submission No. 6, p. 5; FOE, Submission No. 17, p. 26;

- The rule of law and democracy are not being observed;⁵⁰
- The nuclear waste disposal options are inadequate;⁵¹ and
- Nuclear power is slow, costly, non-renewable and far from greenhouse-neutral.⁵²

Disarmament and nuclear weapons proliferation

2.33 In its evidence to the Committee, ASNO stated that it considered Russia was meeting its disarmament obligations:

Russia is committed to going down to a total of between 1,700 and 2,200 by 2012 ...⁵³

2.34 However, a number of participants argued that this agreement should not be ratified because Russia is undermining the NPT by failing to meet its disarmament obligations and investing in new nuclear weapons.⁵⁴ Dr Sue Wareham of the Medical Association for the Prevention of War (Australia) argued that the continuing claims of Russia:

... that they are complying with article 6 by reducing their number of weapons, even though [they] have affirmed their refusal to get rid of these weapons, is a dishonest and hypocritical abuse of this fundamentally important treaty.⁵⁵

2.35 Similar concerns were expressed by Associate Professor Tilman Ruff of the International Campaign to Abolish Nuclear Weapons:

... we are seeing not just a lack of progress in that direction but direction in the reverse: new nuclear weapons development, new roles for nuclear weapons, reduction in the threshold of nuclear weapons use and explicit threats to use

50 ACF, Submission No. 8, p. 3; WILPF, Submission No. 14, p. 3; FOE, Submission No. 17, p. 26.

51 MAPW, Submission No. 6, p. 6; ICAN, Submission No. 7, p. 3; ACF, Submission No. 8, p. 3; The Wilderness Society, Submission No. 15, p. 4.

52 ICAN, Submission No. 7, p. 3; WILPF, Submission No. 14, pp. 5-6; The Wilderness Society, Submission No. 15, p. 2 and 5.

53 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 30.

54 ICAN, Submission No. 7, p. 2; The Wilderness Society, Submission No. 15, p. 2; MAPW, Submission No. 6, p. 3; FOE, Submission No. 17, pp. 5-9; ICAN, Submission No. 7, p. 2; Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 4; Dr Jim Green, *Transcript of Evidence*, 28 July 2008, p. 20.

55 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 3.

nuclear weapons against non-nuclear threats including pre-emptively.⁵⁶

2.36 The Committee notes that the 2000 NPT Review Conference adopted 13 practical steps towards nuclear disarmament and specifically the implementation of article VI of the NPT and paragraphs 3 and 4 of the 1995 Decisions on 'Principles and Objectives for Nuclear Non-proliferation and Disarmament'.⁵⁷ The 13 steps included specific action to be taken in relation to nuclear testing, the reduction of existing weapons-related stocks, verification and transparency, and the role of nuclear weapons in national security policy.⁵⁸ The Australian Conservation Foundation described these steps to the Committee as a 'reinforcement of the NPT principle of good faith'.⁵⁹

2.37 In his evidence, Associate Professor Tilman Ruff argued that:

[n]one of the 13 practical steps that all of the signatories to the NPT signed onto in 2000, that is eight years ago, have been implemented.⁶⁰

2.38 The Prime Minister's announcement of 9 June 2008 of an International Commission on Nuclear Non-Proliferation and Disarmament was welcomed by participants in the inquiry.⁶¹ It was considered that the Commission:

... offers the possibility of real progress towards nuclear weapons abolition.⁶²

2.39 Participants believed, however, that this Commission would be undermined by Australia entering into the proposed agreement.⁶³ Associate Professor Tilman Ruff told the Committee:

I think countries like Australia really need to now apply the pressure to indicate that there is a serious expectation that the

56 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 5.

57 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, Volume 1, New York, 2000, pp. 14-15.

58 United Nations Background Release DC/2826, www.iaea.org/NewsCenter/News/PDF/prep_com_conf.pdf (accessed 14 September 2008; 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, Volume 1, New York, 2000, pp. 14-15.

59 ACF, Submission No. 8, p. 2.

60 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 5.

61 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 2.

62 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 2;

63 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 2; ACF, Submission No. 8, p. 15; Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 4.

nuclear weapon states will come good on the obligations to
disarm ...⁶⁴

- 2.40 The Committee notes the view that '[n]uclear weapons proliferation is the single most immediate threat hanging over the world today'⁶⁵ and considers it essential that Russia demonstrates real progress in meeting its disarmament obligations. As noted by the Director General of the IAEA in 2007, while the nuclear weapons states continue to fail to disarm, the risk of horizontal proliferation (the acquisition of nuclear weapons by non-weapons state) becomes all the more real.⁶⁶

IAEA safeguards and inspections

- 2.41 It was suggested to the Committee that it is not possible to have confidence in this agreement because of the absence of IAEA inspections in Russia.⁶⁷ Further, the level of safeguards that apply in Russia, as a nuclear weapons state, do not provide assurance that uranium could not end up in nuclear weapons.

- 2.42 MAPW highlighted the vastly different IAEA inspection regimes for nuclear weapons states under the NPT as outlined in a statement from the IAEA:

We do not inspect weapons states the same way we do other NPT states. Their military sites are off limits and only some of their civilian sites are placed on what is called a voluntary offer list.⁶⁸

- 2.43 In response to the issue of IAEA inspections, ASNO informed the Committee:

... it is the case that the IAEA has not conducted safeguards inspections [in Russia] since 2001. During this period, IAEA safeguards activities in Russia have been limited to the evaluation of accounting reports on the export and import of

64 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 4.

65 Hon Paul Keating cited by Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 2.

66 Dr Mohamed El Baradei, cited in FOE, Submission No. 17, p. 10.

67 Dr Jim Green, *Transcript of Evidence*, 28 July 2008, pp. 20-21; FOE, Supplementary Submission No. 17.1, pp. 3-4.

68 IAEA communication cited by Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, pp. 2-3.

nuclear material, since the IAEA has not selected any facility for inspection from Russia's list of eligible facilities.⁶⁹

2.44 ASNO went on to state:

Russia therefore has limited experience with IAEA inspections of its nuclear facilities as, until recently, it had not sought to source uranium from countries (such as Australia) that required supplied nuclear material be used in facilities subject to IAEA safeguards. However, Russia is completing a major reform of its nuclear industry to clearly separate its civil and military sectors, and to place civil facilities under its IAEA safeguards agreement. Given the requirement that Australian Obligated Nuclear Material (AONM) can only be used in facilities subject to IAEA safeguards, once supply begins it is expected that the number of facilities eligible for IAEA inspections in Russia will increase.⁷⁰

2.45 ASNO also informed the Committee that Russia intends to meet the highest international standards. In the case of the Angarsk international enrichment centre, where it is expected AONM will be enriched, this facility is on Russia's eligible facility list and 'Russia is insisting that the agency inspect it and is prepared to pay the agency to do that'.⁷¹

2.46 Further:

I would not want you to have the impression that, if there are no inspections, there is a kind of vacuum. Russia places facilities on what is called an eligible facility list. That means those facilities can be selected for inspection if the agency chooses to do so. In order to be on the list, the facility operators have to keep IAEA-standard nuclear material accounting. They have to have the systems in place where they can account for nuclear material and maintain the records in such a way that an inspector could go there at any time and find everything is in order. The fact that inspection may not be carried out does not mean that Russian authorities do not have to maintain those records; on the contrary, they

69 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 3.

70 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, pp 3-4.

71 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 4; Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 3 and 9.

do, and the IAEA, along with other governments, has been assisting Russian efforts to introduce the necessary systems.⁷²

2.47 Finally:

... we are entering a new era where Russia is committed to establishing a commercial power sector of international standards and they are looking for respectability. They want their system to match what is done in other countries.⁷³

2.48 In response to the issue of diversion to nuclear weapons, ASNO highlighted that Russia has a massive surplus of fissile material that is so large that it is down-blending fissile material to supply nuclear power reactors elsewhere in the world. It cited the example of the Megatons to Megawatts program through which Russia is meeting the needs of up to 50 per cent of the United States power reactors through the down-blending of high-enriched uranium into low-enriched uranium to use as reactor fuel.⁷⁴ Mr Carlson told the Committee:

... there is absolutely no reason why Russia would contemplate diverted Australian uranium. It simply does not need to.⁷⁵

2.49 While the Committee notes ASNO's assurances, the Committee also notes that in the past, IAEA safeguards failed to discover the efforts of Iraq and Libya to develop nuclear weapons. The IAEA also did not discover the failure of Iran to comply with its safeguards obligations.

2.50 The Committee considers it is important to recognise that the material and capacity to produce nuclear power intrinsically involves the capacity to produce fissile material usable for nuclear weapons.⁷⁶

2.51 The Committee considers therefore that the highest possible standards of safeguards need to be applied to AONM. It is essential that actual physical inspection by the IAEA occurs at any Russian sites that may handle AONM. Further, the supply of uranium to Russia should be contingent upon such inspections being carried out.

72 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 9.

73 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 10.

74 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 4.

75 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 4.

76 ICAN, Supplementary Submission No. 7.1, p. 2.

Russia's compliance with treaty obligations

- 2.52 The Committee notes that in 2007 President Putin signalled Russian readiness to suspend its adherence to the 1990 Conventional Forces Treaty in Europe Treaty (CFE), which limits the deployment of military forces and hardware across Europe. In November, the Duma voted unanimously to suspend Russian compliance with the treaty.
- 2.53 In February 2007, General Yuri Baluyevsky, Chief of Staff of the Russian Armed Forces stated that Russia might abandon the 1988 Intermediate Nuclear Forces (INF) Treaty, which eliminated missiles with a range of 500 to 5,500 kms.
- 2.54 Russia has also recently issued the threat of a nuclear weapons strike against Poland, a non-nuclear weapons state.
- 2.55 Dr Wareham argued that:
- The very recent war in Georgia is a further reminder of just how easily tensions can erupt into warfare and the ease with which the world could slip back into Cold War style escalation.⁷⁷
- 2.56 The Committee questioned representatives of the Department of Foreign Affairs and Trade about Russia's actions and whether the Government considered that this indicated a lack of commitment on Russia's part to its treaty obligations. Mr Richard Maude, of the Department of Foreign Affairs and Trade told the Committee:
- ... you are quite correct that Russia did walk away from the CFE treaty in 2007. This was part of what you might call a more assertive approach to foreign policy. It was designed to make a particular point and done in a particular context in Europe.⁷⁸
- 2.57 However, in relation to this agreement, Mr Maude went on to say:
- I would endorse Mr Carlson's point that this is a different sort of agreement. Russia has strong national interests in the agreement and were it to walk away then trade under the agreement would cease.
- 2.58 While it notes the importance that the Government considers Russia will place upon the proposed agreement, the Committee considers ratification of this treaty should not proceed until the Australian

77 Dr Sue Wareham, *Transcript of Evidence*, 1 September 2008, p. 4.

78 Mr Richard Maude, *Transcript of Evidence*, 1 September 2008, p. 3.

Government is satisfied that there is no risk that Russia will subsequently abandon this treaty or other nuclear treaties.

Nuclear security

- 2.59 A number of submitters cited comments made by the Director General of the IAEA that only about half of the fissile material located at many sites across the former Soviet Union has been adequately secured, despite many billions of dollars of external support from the United States and the European Union, as well as Russia's own efforts.⁷⁹ Many considered that the security risks were unacceptable and pointed to the number of documented incidences of nuclear smuggling attributed to Russia and the former Soviet Union states.⁸⁰
- 2.60 ASNO's response was that the Director General's comment referred to the progress of fully completed security upgrades in 2005 and that:
- Former US Senator Nunn made it clear at the time that this **did not** mean there was **no security** on some Russian material.⁸¹
- 2.61 ASNO also outlined the action that has been taken over the past two decades to secure Russia's nuclear material, including:
- At least 17 significant multilateral and bilateral assistance programs aimed at improving safety and security, totalling well over US\$10 billion; and
 - The multi billion dollar Nunn-Lugar Cooperative Threat Reduction Program that has, over 17 years, secured tons of weapons-usable nuclear material.⁸²
- 2.62 ASNO noted that in April 2008, the US National Security Administration reported that it had completed security upgrades at more than 85 percent of Russian nuclear weapons sites of concern,

79 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 2; MAPW, Submission No. 3, p. 4; ICAN, Submission No. 7, p. 4.

80 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 10. ICAN, Submission No. 7, p. 4; Dr Jim Green, *Transcript of Evidence*, 28 July 2008, p. 26; FOE, Submission No. 17, pp. 11-19; FOE, Supplementary Submission No. 17.2, pp. 2-6.

81 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 2.

82 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 2.

and confirmed that similar nuclear security upgrades on the balance of Russian sites are on schedule for completion at the end of 2008.⁸³

- 2.63 The Committee questions, however, how one can be sure that the nuclear smuggling problem is under control if there have been no actual IAEA inspections in Russia since 2001. Further, in the absence of inspections, the Committee also asks how the Government can guarantee that the treaty level commitment to use AONM only in facilities that will be covered by Russia's safeguards agreement with the IAEA will be honoured.

State secrets

- 2.64 Article IX of the Agreement states that information classified as 'state secret' by Russia will not be exchanged. It was argued by participants in the inquiry that this effectively means that anything relating to Russia's nuclear weapons program can be withheld from the Australian Government without violating the Agreement.⁸⁴ The MAPW questioned whether this clause renders the treaty meaningless as a guarantee of Australia's uranium not being used for nuclear weapons.⁸⁵

'Material Unaccounted For'

- 2.65 ASNO informed the Committee that 'Material Unaccounted For' (MUF) is used in safeguards to indicate differences between operator records and the verified physical inventory and that differences are common due to measurement processes. These differences do not indicate material is missing, as MUF frequently shows a gain in material.⁸⁶ ASNO further indicated that any MUF reported to ASNO is investigated if it is outside normal limits for the processes involved.⁸⁷
- 2.66 The secrecy of MUF was considered by ASNO to be justified because nuclear material inventories and transfers involve commercial nuclear fuel cycle facilities and are thus considered commercially sensitive.⁸⁸

83 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 2.

84 MAPW, Submission No. 6, p. 5.

85 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 5.

86 ASNO, Supplementary Submission No. 22.1, p. 4.

87 ASNO, Supplementary Submission No. 22.1, p. 4.

88 ASNO, Supplementary Submission No. 22.1, p. 4.

The Committee considers, however, that assurances of safety must override commercial interests and believes that the commercial-in-confidence clause should be reviewed.

Reprocessing

2.67 Reprocessing was a significant concern for many participants in the inquiry and it was considered that this agreement should expressly prohibit reprocessing.⁸⁹ Dr Sue Wareham of the Medical Association for the Prevention of War (Australia) told the Committee:

Reprocessing leads to stockpiles of plutonium, which are a highly dangerous proliferation risk. Of all nuclear facilities, reprocessing plants are the most sensitive as far as diversion of weapons-usable material goes.⁹⁰

2.68 ASNO highlighted in response to this issue that:

[t]he Australia-Russia agreement requires Australian consent before any Australian nuclear material is reprocessed. Russia has not sought consent and we have not given it, so at this point the possibility of Australian uranium being reprocessed in Russia does not arise.⁹¹

Uranium enrichment

2.69 In addition to reprocessing, ICAN identified uranium enrichment as one of the most proliferation sensitive parts of the nuclear fuel chain.⁹² Both ICAN and MAPW argued that uranium enrichment should be under international control.⁹³

2.70 In response, ASNO told the Committee that the Angarsk facility, which would be used for Australian uranium, 'is in fact the most international in the world' as countries taking enriched uranium from that facility can become partners.⁹⁴

89 Mr David Noonan, *Transcript of Evidence*, 28 July 2008, p. 17; The Wilderness Society, Submission No. 15, p. 4; FOE, Submission No. 17, p. 23; Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 4.

90 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 4.

91 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 12.

92 ICAN, Supplementary Submission No. 7.1, p. 3.

93 ICAN, Supplementary Submission No. 7.1, p. 3; MAPW, Submission No. 6, p. 1.

94 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 12.

Substitution and equivalence

- 2.71 The Australian Conservation Foundation argued that the principles of substitution and equivalence means that there is no proper accounting of what is actually Australian material and therefore it is not possible to have confidence as to where Australian uranium 'actually ends up'.⁹⁵
- 2.72 ASNO explained that substitution and equivalence is based on the premise that:
- Uranium is a "fungible" material, that is, any uranium of specific form and composition is identical, and interchangeable, with any other uranium of the same form and composition. This is known as the "equivalence" principle and is universal safeguards practice. Once uranium enters a process where it is mixed with uranium from other origins, the principles of equivalence and proportionality apply. A proportion of the output of the process, corresponding to the input attributed to Australia, will be designated as Australian obligated nuclear material.⁹⁶
- 2.73 ASNO told the Committee that all countries involved with nuclear activities have adopted the view that it is impossible to track individual atoms of uranium and 'pointless trying to'.⁹⁷
- 2.74 The Committee notes that the principle of equivalence does not allow for lower quality material to be designated as the material subject to the agreement. For example, enriched uranium derived from AONM could not be replaced by natural or depleted uranium.⁹⁸

Strengthening the IAEA safeguards regime

- 2.75 The overall adequacy of the IAEA regime, and particularly the level of resources available to the IAEA, was of concern to a number of participants in the inquiry, who broadly agreed that greater

95 Mr David Noonan, *Transcript of Evidence*, 28 July 2008, p. 13 and 16.

96 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 7.

97 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 13.

98 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 9.

resourcing is required to overcome the limitations of the safeguards regime.⁹⁹ Associate Professor Tilman Ruff told the Committee:

I certainly would argue that the most effective thing that Australia can do to strengthen safeguards internationally is to provide strong support and resourcing – fiscal, technical and human – to the International Atomic Energy Agency.¹⁰⁰

2.76 In response, Mr Carlson told the Committee:

I would agree that the IAEA's budget is constrained; this is a matter that is looked at by the IAEA board. The funding for safeguards has been increased significantly in recent years. No doubt there are areas where further funding is required and this is being looked by the board now.¹⁰¹

2.77 Mr Carlson also said that Australia has been very active in increasing efficiency within the IAEA, principally through assisting in redesigning the safeguards system to make the agency more efficient.¹⁰²

2.78 The Committee is of the view that Australian efforts to strengthen the resourcing of the IAEA should be supported.

2.79 On a related matter, the Committee notes its predecessor's recommendation in relation to the mandatory safeguarding of conversion facilities (Report 81) and reiterates this recommendation.

Human rights and rule of law

2.80 A number of submitters considered that Russia has not complied with its international human rights obligations.¹⁰³ The ACF argued:

Key checks and balances that may be present on the nuclear industry in democratic states – independent regulators, independent and rigorous media, free environment and community groups, free labour organisations and proper

99 Mr David Noonan, *Transcript of Evidence*, 28 July 2008, p. 14; FOE, Submission No. 17, pp. 19-20; FOE, Supplementary Submission No. 17.2, p. 10.

100 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 10.

101 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 8.

102 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 8.

103 WILPF, Submission No. 14, p.2; FOE, Supplementary Submission No. 17.1, p.7.

protection for whistleblowers – do not effectively exist in Russia.¹⁰⁴

- 2.81 MAPW pointed to Human Rights Watch World Report 2007, which described a number of human rights issues in Russia.¹⁰⁵ MAPW also highlighted a number of instances where whistleblowers had been persecuted and argued that, given the important role whistleblowers play in the detection of illicit nuclear activities, they should be assured protection.¹⁰⁶

Environmental and waste management

- 2.82 In terms of environmental and waste management, Associate Professor Tilman Ruff commented:

... it is very clear that in Russia, standards of health and environmental protection that have applied both in relation to nuclear weapons production and on the civilian side in terms of power production ... has been certainly the worst that we know about in terms of any of the nuclear weapons states ... for Russia it is both the level of wilful neglect as well as the scale of the enterprise that is simply unparalleled.¹⁰⁷

- 2.83 The MAPW described Russia's record in relation to environmental and waste management as 'little short of appalling'.¹⁰⁸ It also pointed to a lack of transparency from the Russian Government's perspective, arguing that most of the information that is available has come from non-government sources, such as Greenpeace Russia.¹⁰⁹
- 2.84 Greenpeace Russia, in its submission to this inquiry, raised a number of concerns about Russia's management of nuclear waste.¹¹⁰ Both the Wilderness Society and the ACF also argued that Russia has not resolved its nuclear waste management.¹¹¹ Submitters considered that

104 ACF, Submission No. 8, p. 13.

105 MAPW Supplementary Submission No. 6.2, pp. 1-2.

106 MAPW Supplementary Submission No. 6.2, pp. 3-4; MAPW, Submission No. 6, p. 5.

107 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 3. See also ICAN, Supplementary Submission 7.1, pp. 6-12.

108 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 4.

109 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 6.

110 Greenpeace Russia, Submission No. 13.

111 ACF, Submission No. 8, p. 3; The Wilderness Society, Submission No. 15, p. 4.

selling Australian uranium to Russia would add to its enormous nuclear waste, safety and environmental problems.¹¹²

- 2.85 The Committee notes not only the progress that has been made in countries such as Finland, Sweden and the United States, who have demonstrated the greatest progress towards adequate long term management of nuclear waste, but also the immense amount of work that remains to be done.¹¹³

Nuclear power as a greenhouse friendly option

- 2.86 The Committee notes that this treaty is considered, in part, to be in Australia's national interest as it would allow Russia to reduce greenhouse gas emissions and atmospheric pollution. The AUA argued that nuclear power is a clean source of electricity that emits no greenhouse gases and that nuclear power is very competitive with renewables on a life cycle basis.¹¹⁴ Research commissioned by the AUA into expanded uranium production found that:

... under the conservative scenario, Australia would export enough uranium for nuclear power generation plants to avoid between 11 billion and 15 billion tonnes of carbon dioxide to 2030, compared to coal fired power stations using existing technology. At a minimum, the exports of uranium to 2030 alone could avoid 10 times the emissions abatement required to meet Australia's Kyoto target.¹¹⁵

- 2.87 Further, the AUA highlighted that if Russia used 2,500 tonnes of uranium exports to generate electricity in 2020 rather than coal fired power stations, it would avoid approximately 100 million tonnes of greenhouse gas emissions in that year compared with coal technology.¹¹⁶
- 2.88 However, other participants in the inquiry argued against the role of nuclear power in addressing climate change on the basis that:

112 MAPW, Submission No. 6, p. 6; ICAN, Supplementary Submission No. 7.1.

113 Australian Uranium Association, 'Nuclear waste management: a stewardship issue' in *Australian Uranium*, 2008, Issue 4. Exhibit No. 14.

114 Mr Michael Angwin, *Transcript of Evidence*, 28 July 2008, p. 30.

115 Mr Michael Angwin, *Transcript of Evidence*, 28 July 2008, p. 30.

116 Mr Michael Angwin, *Transcript of Evidence*, 28 July 2008, p. 31.

- nuclear power is not a sustainable energy source and has only survived financially where it has been heavily subsidized;¹¹⁷
- the associated proliferation, safety and environmental protection risks and waste management issues are of such a level of seriousness that the nuclear industry does not present a sustainable option for Australia to address climate change issues;¹¹⁸
- nuclear power's role in reducing greenhouse gas emissions is limited – even if nuclear power was doubled by 2050, it would still only reduce greenhouse gas emissions by 5 per cent;¹¹⁹ and
- nuclear energy will be unable to effect action within the next decade, the crucial time frame in which to reduce climate change.¹²⁰

2.89 A number of submitters advocated a greater emphasis upon use of alternative energy options.¹²¹ For example, the Medical Association for Prevention of War (Australia) stated 'uranium exports and nuclear power should be phased out while real solutions to climate change are implemented'.¹²² The Women's International League for Peace and Freedom and the Wilderness Society argued that energy efficiency and renewable energy are the real solution to climate change.¹²³

2.90 The Committee notes that despite explicit claims of environmental benefit in both the NIA and the RIS, consultation on this agreement (see paragraph 2.5) did not include the Department of the Environment, Water, Heritage and the Arts or the Department of Climate Change.

117 Associate Professor Tilman Ruff, *Transcript of Evidence*, 28 July 2008, p. 7; WILPF, Submission No. 14, p. 5.

118 Mr David Noonan, *Transcript of Evidence*, 28 July 2008, p. 16; WILPF, Submission No. 14, p. 5.

119 The Wilderness Society, Submission No. 15, p. 5.

120 WILPF, Submission No. 14, p. 5.

121 WILPF, Submission No. 14, p. 4; The Wilderness Society, Submission No. 15, p. 5; Mr David Noonan, *Transcript of Evidence*, 28 July 2008, p. 16.

122 MAPW, Submission No. 6, p. 1.

123 The Wilderness Society, Submission No. 15, p. 5; WILPF, Submission No. 14, p. 5.

Committee comment and recommendations

- 2.91 The Committee received evidence from Australian Government representatives that this agreement is in Australia's national interest for a number of reasons and the Committee can have confidence that:
- Russia is committed to its disarmament and non-proliferation obligations;
 - Russia will comply with its treaty obligations under this and other nuclear treaties;
 - IAEA safeguards will be adequate; and
 - Standards of security and safety are greatly improved compared with the situation in the former Soviet Union.
- 2.92 A number of concerned organisations, however, raised doubts about all these points to the Committee. Many considered that the proliferation and terrorism risks make uranium export too dangerous. Other concerns with the agreement included environmental, waste management and human rights issues. The Committee shares many of these concerns.
- 2.93 The Committee is concerned about the ramifications of recent world events in which Russia has been involved. In this respect, the Committee notes that the Government has indicated it will consider the broader political situation concerning Russia in any decision about ratification of this treaty.¹²⁴ The Committee also notes that the United States has formally withdrawn an agreement for civilian nuclear cooperation with Russia since these events took place. The Committee considers broader political factors are inevitably part of the decision making process for ratification of this treaty.
- 2.94 Garry Kasparov, one of Russia's prominent opposition political figures has stated:
- Should Australian uranium end up in the wrong hands – and it's not too far-fetched to suggest that Russia under Putin is already in the wrong hands – Australia will not be able to act innocent or to claim ignorance.¹²⁵

124 House of Representatives 2008, *Votes and Proceedings Hansard*, 1 September 2008, p. 31.

125 Garry Kasparov, cited in Medical Association for the Prevention of War (Australia), Submission No. 6, p. 5.

- 2.95 Like a number of participants in this inquiry, the Committee is concerned about the speed of disarmament, potential future nuclear threats and suggestions the NPT is under great pressure. The Committee welcomes the announcement of the International Commission on Nuclear Non-Proliferation and Disarmament, which will have the objective of reinvigorating international efforts on nuclear non-proliferation and disarmament. The Committee considers, however, that the focus of international efforts must be not only upon non-proliferation but also disarmament and that the Australian Government should continue to use its influence to press for greater progress towards disarmament in the nuclear weapons states, and particularly Russia.
- 2.96 The 2010 NPT Review Conference presents an opportunity for states to demonstrate progress in their commitment to disarmament and the non-proliferation regime. Participants in this inquiry indicated the importance of the 2010 NPT Review Conference, particularly given the lack of progress at the previous review conference in 2005. Given, as noted by ASNO's Director General, that this agreement is looking to the long term and that Australia's current production levels of uranium are fully committed, the Committee considers that there is no imperative to push for early ratification.
- 2.97 The adequacy of safeguards is an issue of particular importance to the Committee. The Committee notes that Russia is moving towards a more effective safeguards regime. It also received assurances from ASNO that Australian uranium is safeguarded through various mechanisms from military use. The Committee considers ratification of the treaty should be delayed until reform of Russia's nuclear industry is more complete. In particular, the separation of Russia's military and civil sites should be completed and verified. IAEA inspections should be implemented at any sites that will handle AONM.
- 2.98 During the inquiry, the Committee asked the question: given the number of nuclear weapons already held by Russia, and the capacity it has to destroy the world several times over, what difference does it make if we sell some uranium for nuclear energy?
- 2.99 The response was:
- It depends on whether we want to be regarded as a reputable nation that supports global nuclear disarmament, as Mr Rudd has stated we want to be, with the new commission. I guess one could argue too that there is so much heroin in the world,

so why don't we get into the heroin market? In fact, heroin would probably bring us a lot more income than uranium actually does. It is a matter of whether we want to stand up and be a good international citizen and set standards.¹²⁶

- 2.100 Australia has responsibilities as an international citizen to global nuclear disarmament and non-proliferation. The Committee also notes the comments of previous world leaders who have emphasised the link between the capacity to produce nuclear power and nuclear weapons. It is therefore essential that the highest possible standards and safeguards be applied in the supply of Australian uranium for nuclear purposes.
- 2.101 The Committee therefore does not support ratification of this treaty until the conditions outlined in the recommendation below are fulfilled.

126 Dr Sue Wareham, *Transcript of Evidence*, 25 August 2008, p. 9.

Recommendation 1

The Committee recommends that the Australian Government not proceed with ratification of the *Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes* until:

- (a) Russia's reform process to clearly separate its civilian nuclear and military nuclear facilities is completed and independently verified;
- (b) IAEA inspections are implemented for Russian facilities that will handle Australian Obligated Nuclear Materials;
- (c) The Government is satisfied that the Russian Federation is complying with its obligations under the *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT) noting that this treaty is scheduled for review in 2010;
- (d) The Government is satisfied that Russia will not subsequently abandon this treaty or other nuclear treaties;
- (e) Further consideration is given to the potential ramifications for this agreement of recent political events affecting Russia;
- (f) Further consideration is given to Article IX of the Agreements, 'State Secrets', and the Government is confident that this article will not undermine the intent of this agreement;
- (g) Further consideration is given to the justification for secrecy of 'Material Unaccounted For'; and
- (h) The Australian Government discusses with the United States, United Kingdom, European Union, Canada and Japan, whether the problems of the past in relation to Russian nuclear material being stolen, have now been addressed satisfactorily.

Recommendation 2

The Committee reiterates its earlier recommendation, made in Report 81:

The Committee recommends that the Australian Government lobbies the IAEA and the five declared nuclear weapons states under the NPT to make the safeguarding of all conversion facilities mandatory.

Recommendation 3

The Committee recommends that Australian efforts to strengthen the resourcing of the IAEA be continued.

Treaty between Australia and the United States of America Concerning Defense Trade Cooperation

Introduction

- 3.1 The proposed action is to bring into force through an exchange of notes the Treaty between the Government of Australia and the Government of the United States of America Concerning Cooperation in Defense Trade (the Treaty).¹
- 3.2 The Treaty was signed by the former Prime Minister of Australia, and the President of the United States on 5 September 2007 at the time of the 19th APEC Ministerial Meeting in Sydney. The purpose of the Treaty is to enable greater access and sharing of defence equipment, technology, information and services between Australia and the USA. It is a significant step forward in our long-standing defence cooperation relationship with the United States. The only other country that the United States has a similar agreement with is the United Kingdom.²
- 3.3 Article 20 of the Treaty provides that it shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic requirements to bring the Treaty into force.

1 National Interest Analysis (NIA), para 1.

2 NIA, para 3.

Before Australia can exchange notes, the Commonwealth must enact legislation to incorporate Australia's rights and obligations under the Treaty into the domestic legal system. The United States Senate must pass the Treaty with a two-thirds majority before the United States can exchange notes.³

- 3.4 When the Treaty enters into force, a non-binding 'Implementing Arrangement' agreed by the parties to facilitate the implementation of the Treaty, will also come into effect.⁴

Background

- 3.5 The Treaty establishes a bilateral framework to reduce barriers (including requirements for licences or other written authorisations) to the exchange and trade of classified and unclassified but 'controlled' defence goods, services and technology between certain pre-approved US and Australian government facilities and private companies. Those 'controlled' items are regulated in the USA under its International Traffic in Arms Regulations and in Australia under Regulation 13E of the *Customs (Prohibited Exports) Regulations 1958* (Cth).⁵
- 3.6 The Treaty will apply to "Defence Articles" required for combined military or counter-terrorism operations; cooperative security and defence research, development, production and support programs; mutually determined specific security programs where the Australian Government is the end-user; and US Government end-use.⁶ Article 1(c) of the Treaty defines "Defence Articles" to mean "articles, services and related technical data, including software, in an intangible form, listed on the United States Munitions List" (as further defined in Article (n)).⁷

3 NIA, paras 1 - 3.

4 NIA, para 1.

5 NIA, para 14.

6 NIA, para 4.

7 NIA, Article 1.

Obligations

- 3.7 The NIA states that the purpose of the Treaty, set out in Article 2, is to provide a framework which will allow the export and transfer of Defence Articles pursuant to the Treaty without a licence or other written authorisation.⁸

Approved Community

- 3.8 Under articles 4 and 5 respectively, Australia and the USA agree to establish, maintain and monitor an Approved Community of government facilities and non-government companies. Only members of the Approved Community will be able to operate within the transfer and export system established by the Treaty.⁹

Security Procedures

- 3.9 Articles 6, 8 and 11 require each Party to establish procedures to ensure that all Defence Articles are clearly marked or identified as being traded pursuant to the Treaty at various points of their movement. These procedures are intended to ensure that security measures for handling such sensitive items are followed during their movement. Article 11 provides that each Party must respect its obligations under the *Security Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Protection of Classified Information (2002)* in marking, identifying, transmitting, storing and handling the Defence Articles.

Recordkeeping and Notification

- 3.10 Article 12 provides that each Party must require that entities within its Community maintain detailed records of their movement of Defence Articles. Further, each Party agrees to make such records available to the other Party upon request.

Approved Community Exports and Transfers, Re-transfers and Re-exports

- 3.11 Under article 8, Australia agrees to ensure that members of the Approved Community shall be permitted to export Defence Articles within the Approved Community without seeking a licence or authorisation for each export. Under article 6, the US Approved

8 NIA, Article 2.

9 NIA, para 13.

Community may export and transfer Defence Articles to Australia pursuant to the Treaty, without prior licenses or authorisations by the US Government.

- 3.12 Under article 9, Australia agrees that all 're-transfers' and 're-exports' of Defence Articles shall require the approval of both the Australian and United States Governments. The Treaty allows for certain mutually determined exceptions, such as where the Defence Article is destined for operational use in direct support of Australian Defence Force (ADF) personnel. This provision will streamline the provision of US-origin articles to ADF units on operations outside Australia and the maintenance of such articles.
- 3.13 Article 1 defines 'Re-transfer' to mean the movement of Defence Articles, that have been exported from the US to Australia, to a location within the territory of Australia. Article 1 also defines 'Re-export' to mean the movement of Defence Articles, that had been exported from the US to Australia, to a location outside the territory of Australia.

Compliance and Enforcement

- 3.14 Under article 13, each Party agrees to investigate promptly all suspected violations and reports of alleged violations of the Treaty. Additionally, each Party agrees to cooperate with the other Party on investigations of suspected violations of the Treaty, and to keep each other informed of the progress of prosecutions and any civil or administrative actions taken in relation to the Treaty. The Parties may also conduct post-shipment verifications and end-use or end-user monitoring of exports and transfers of the Defence Articles.¹⁰

Implementing Arrangement

- 3.15 Pursuant to article 14 of the Treaty, Australia and the USA have concluded an Implementing Arrangement that details the way in which the Treaty will be implemented in both countries. The Implementing Arrangement was signed on 14 March 2008 and will come into effect on the date of entry into force of the Treaty. The Implementing Arrangement supplements the provisions of the Treaty by prescribing detailed procedures and standards to be adopted by the Parties. It is not, however, an instrument of treaty status. The

10 NIA, para 20.

Implementing Agreement is a public document and has been provided to the Committee for information.¹¹

- 3.16 Amongst other things, the Implementing Arrangement provides that both parties may exempt certain Defence Articles from the scope of the Treaty. The national lists of such items will constitute a combined list of items exempt from the treaty that will be published periodically.
- 3.17 The Arrangement sets out the arrangements for the inclusion of non-governmental Australian Approved Community entities including the requirement that each entity or facility be assessed with regard to approval for handling classified information; foreign ownership, control or influence; violations of United States or Australian export controls; United States export licensing history; and national security risks (see Section 4 of the Arrangement).
- 3.18 Where an Australian entity applies for inclusion in the Australian Approved Community, the Australian Department of Defence will conduct an initial eligibility review and the Department and the US Department of State will then *mutually determine* the inclusion of that entity in the Australian community (Section 5 of the Arrangement). There are arrangements for consultation in relation to the removal of entities or facilities from the Australian community, however, it is not clear whether these administrative decisions will be subject to any review process (i.e. Administrative Appeals Tribunal or Federal Court).

Consultations

- 3.19 Under article 17, Australia and the United States agree that consultations at a senior level to review the operation of the Treaty will be carried out at least annually.

Legislation

- 3.20 It is proposed that the Commonwealth implement legislation to give the Treaty effect in domestic law. New legislation is required to create a framework for licence-free trade in Defence Articles with the United States and to ensure compliance and enforcement with the terms of the Treaty. It is proposed to introduce legislation in Parliament in late 2008 or early 2009.¹²
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11 NIA, para 21.

12 NIA, para 23.

- 3.21 The Australian agency authorised to implement the Treaty, under article 15, is the Department of Defence.

Reasons for Australia to take treaty action

- 3.22 The Treaty will improve the interoperability of the Australian and United States armed forces by facilitating the movement and maintenance of Defence Articles in support of mutually agreed activities and operations, while maintaining and ensuring proper safeguards against the unauthorised release of defence technology and equipment.¹³
- 3.23 According to the Department of Defence the benefits of the Treaty will extend to the Australian Defence industry by opening new avenues for industrial cooperation and allowing for effective partnering and technology sharing. The Treaty will permit the transfer of equipment to members of the 'Approved Community.' This will facilitate the involvement of Australian companies in support work for the ADF and for United States defence programs. A particular benefit will be timely access to American technology and the ability to share technical data without the need for a licence, which will reduce lead times in discussing potential business opportunities and improve the prospects for Australian companies seeking to participate in US defence programs.
- 3.24 Australian members of the Approved Community that support ADF equipment will save time through licence-free movement of Defence Articles and related intangible data within the Approved Community. The US Department of State has advised that it approved 2,361 licences and 312 technical data agreements for Australia in 2006. The Treaty will eliminate the requirement for a number of these approvals, each of which can take three months or more. Transfers and exports of Defence Articles outside the Approved Community will still require normal US and Australian export licences.¹⁴
- 3.25 Without implementation of this Treaty, the ADF and Australian defence industry would have to continue to abide by the time consuming licensing requirements of both Australia and the United States for trade in defence technology, equipment and services. It

13 NIA, para 6.

14 NIA, para 8.

could potentially mean that the ADF could experience delay in obtaining support of and maintenance for its US-sourced equipment.

- 3.26 Australia has a long-standing alliance with the USA, which is the foundation for our extensive cooperation in defence and security matters. Australia's close relationship with the USA enhances our ability to protect our interests by providing access to leading-edge defence hardware and technologies, access to training courses and combined exercises, and to significant intelligence capabilities.¹⁵

Entry into force and withdrawal

- 3.27 Under article 21(1), the Treaty is of unlimited duration, unless either party withdraws in accordance with article 21(2). Article 21(2) provides that each Party has the right to withdraw from the Treaty if it decides that extraordinary events related to the Treaty have jeopardised its national interests. In such event, the Party must give notice of its intention to withdraw to the other Party. Such notice of intention to withdraw must include a statement of the extraordinary events the notifying Party regards as having jeopardised its national interests. The Parties must then consult with the aim of allowing the continuation of the Treaty. If, after such consultation, the notifying Party still wishes to withdraw, such withdrawal will take effect upon the expiry of six months from the provision of the notice of intention to withdraw. In the event of withdrawal, the procedures for protection of Defence Articles will continue until such time as appropriate defence export licences or other authorisations are in place.

- 3.28 Withdrawal from the Treaty by Australia would be subject to Australia's treaty process, including tabling in Parliament and consideration by this Committee.¹⁶

15 NIA, para 10.

16 NIA, para 31.

Costs

- 3.29 Entry into force of the Treaty will result in costs to the Australian Government. These costs would be associated with the establishment and maintenance of the Approved Community, including security assessments for applicants, and providing resources for the administration and enforcement of the Treaty. Costs have been estimated at \$26.8m for the first year, and \$26.7m for each year after that. These costs will be met from within the Department of Defence's budget:
- We have a cost of around \$84 million over the forward estimates being invested in this area in defence, both in the Defence Security Authority and in the Strategic Policy Division that currently manages the policy oversight and licensing arrangements in the department. Those costs have been received through the budget, and those processes will be set up over that period of time.¹⁷
- 3.30 The Committee notes concerns that have been expressed about the number of security assessments that will be required, and the associated time and costs that will be involved in the process.¹⁸ The Committee emphasises that security assessment processes need to be adequately resourced to minimise delays and costs for industry.
- 3.31 Entry into force of the Treaty will not result in mandatory costs for industry, since operating within the framework of the Treaty is voluntary. Companies that are involved in defence projects for Australian or US Government end-use are eligible to apply for membership of the approved community should they wish.
- 3.32 Companies are under no obligation to apply for approved community membership. If a company applies for membership, it will have to undergo an eligibility assessment, which will involve Australian Government checks to ensure satisfactory standards of physical, information and personnel security are in place and can be maintained. Therefore, costs for companies of developing and maintaining security standards will differ depending on what already is in place.¹⁹

17 Ms R. Skinner, *Transcript of Evidence*, 16 June 2008, p. 12.

18 Dr Simon Rice, Supplementary Submission No. 11.1, p. 4.

19 NIA, paras 25-26.

Other matters

- 3.33 The Committee received a number of submissions which expressed concerns in relation to certain aspects of Australia's participation in this treaty.

Membership of the Approved Community

- 3.34 CEA Technologies Pty Limited (CEA) raised concerns as to the extent to which it will be optional for a company to choose to be a member of the approved community and whether or not there is 'a real choice for Australian companies in a commercial sense.'²⁰
- 3.35 The Department of Defence confirmed that membership of the approved community is voluntary. However, it is clear from the evidence that those companies who are not a part of the approved community will be at a competitive disadvantage. Nonetheless, membership will provide significant advantages to Australian companies, particularly in reducing the burden of multiple licensing requirements.²¹
- 3.36 The Victorian Government also raised concerns relating to the approved community concept. While recognising the advantages of the Treaty, membership of the approved community will place additional administrative costs on business. The Victorian Government expressed concerns that:
- the cost of these additional security arrangements and the vetting process may act as a barrier for [small to medium enterprises] to enter the US export market and place them at a disadvantage to the primes and the US companies.²²
- 3.37 The Committee shares concerns about the administrative cost burden placed on small to medium sized enterprises to join the approved community. The Department of Defence assured the Committee that they are continuing to look at this issue through the consultation process.²³

20 CEA Technologies Pty Ltd, Submission No. 12, p. 1-2.

21 Mr K. Clarke, Department of Defence, *Transcript of Evidence*, 16 June 2008, p. 12.

22 Victorian Government, Submission No. 19, p. 1.

23 Mr K. Clarke, Department of Defence, *Transcript of Evidence*, 16 June 2008, p. 16.

- 3.38 The Committee also notes that the Treaty is expected to reduce ongoing costs through the reduction of licence fees and delays due to licensing requirements.

Race discrimination

- 3.39 Associate Professor Simon Rice from the Australian National University College of Law raised concerns that the Treaty would require employers to breach local race discrimination laws by selecting applicants based on nationality. He stated:

The thinking behind the ITAR is that the country you are born is the country you are allied to, and that if that country is not Australia or the USA then you pose a security threat to the USA. Clearly there are ways of addressing security concerns other than this crude approach.²⁴

- 3.40 In response, the Department of Defence informed the Committee that there is no requirement for exemption from any anti-discrimination laws for industries operation pursuant to the Treaty. Rather, employees are required to obtain security clearance which assesses 'significant ties' to countries other than Australia or the USA:

The individual employee applies for a security clearance not the employer, and, therefore, there is no need for the employer to ask for nationality details, only that the employee have the ability to obtain the RESTRICTED clearance (or higher as required)...

Under the Defence Cooperation Treaty, all employees with access to licence-free US defence technology will be required to have a minimum RESTRICTED security clearance. In addition to the standard checks conducted as part of a RESTRICTED security clearance, the individual will undergo a check for indicators of 'significant ties.' Where indicators of significant ties to countries proscribed under ITAR Section 126.1 are revealed, the Australian Government will conduct a dedicated assessment as for a SECRET clearance.²⁵

- 3.41 The Committee is satisfied that the security clearance process for projects under the Treaty is adequate given the nature of employment and this process does not inherently require employers to act in a discriminatory manner.
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24 Mr Simon Rice, Submission No. 11, p.1.

25 Department of Defence, Submission No. 23, p. 2.

- 3.42 However, the Committee notes that there will still be instances where industry must comply with existing requirements under the International Traffic in Arms Regulations (ITAR) for Defence technology that is not within the scope of the Treaty. It also appears that there is some ambiguity around whether there will only be a two tier system, with employees assessed for clearance entirely by government for treaty related projects and assessment by employer under ITAR for others, or whether there may be circumstances where government assessment under the treaties provisions could also cover some or all requirements for non-treaty projects.
- 3.43 It is clear that this treaty does not remove all of the burdens faced by industry under existing ITAR arrangements, especially as it relates to anti-discriminatory provisions. As noted by Associate Professor Simon Rice:

Whether industry is better off depends on the amount of defence technology that is not within the scope of the Treaty, for which parallel ITAR compliance systems must continue to operate ... and whether industry will in fact carry any of the burden and cost of the security clearance process.²⁶

Conclusion and recommendations

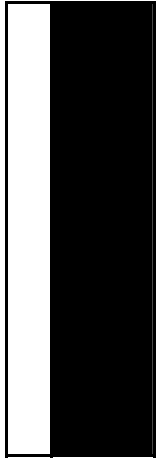
- 3.44 The Committee notes the concerns of submissions and in particular that the Treaty may increase both costs and the administrative burden on small and medium sized business through the necessity to gain security clearances for staff. However, the Committee also notes that the Treaty will significantly lessen the costs and administrative burden on all businesses in the long term by lessening the need for individual licences for defence articles.
- 3.45 As such, the Committee considers that the Treaty with the United States on defence trade cooperation will be in Australia's national interest and recommends that binding treaty action be taken.

26 Dr Simon Rice, Supplementary Submission No. 11.1, p. 2.

Recommendation 4

The Committee supports the *Treaty between the Government of Australia and the Government of the United States Concerning Defense Trade Cooperation* and recommends that binding treaty action be taken.

Kelvin Thomson MP
Chair



Dissenting Report — Senator Julian McGauran (Deputy Chair), Senator Simon Birmingham, Senator Michaelia Cash, Mr John Forrest MP, Mr Luke Simpkins MP

Recommendation 1 of the majority report

Coalition Senators and Members recommend that the Australian Government proceed with ratification of the Agreement between the Government of Australia and the Russian Federation on the use of nuclear energy for peaceful purposes.

Background¹

In 2006, Australia's major uranium producers expressed an interest in being able to export uranium to Russia for use in its civil nuclear industry. In parallel, the Russian Government approached the Australian Government seeking an amendment to the agreement to provide for such use. Also, Russia requested provision for technical nuclear cooperation be included in a new agreement. Upon entry into force of the new agreement, Australia and Russia's nuclear cooperation relationship would be brought into line with Australia's other bilateral nuclear agreements.

The new nuclear cooperation agreement was signed by the then Minister for Foreign Affairs, the Hon Alexander Downer MP, and the Head of the Russian Federal Atomic Energy Agency, Mr Sergey Kiriyyenko, on 7 September 2007.

¹ Information in this section is sourced from the *Regulation Impact Statement* for the Agreement dated 9 April 2008, as prepared by the Department of Foreign Affairs and Trade and available on the Committee's website at www.aph.gov.au/house/committee/jsct/14may2008/treaties/russia_ris.pdf.

Under long standing Australian government policy, Australian uranium and nuclear material derived from it (termed Australian Obligated Nuclear Material) can only be exported to countries with which Australia has concluded a nuclear safeguards agreement. These agreements establish strict safeguards and control measures to ensure that exported uranium, nuclear equipment, or technology, are used solely for peaceful, non-military purposes. Currently Australia has 22 nuclear safeguards agreements in force covering 39 countries, including Taiwan.

A mandate to negotiate a nuclear safeguards agreement with Russia was approved by the Australian Government in April 2007.

As required, the lead agency, the Australian Safeguards and Non-Proliferation Office (ASNO), completed an analysis of the business cost and compliance cost to the Australian uranium producers and found these costs to be negligible.

The regulatory impact statement was assessed by the Office of Best Practice Regulation as having “an adequate level of analysis and [is] suitable for the entry into negotiations stage” (RIS ID 9011). Formal negotiations were held between Australian and Russian officials in April and May 2007.

The primary objective of the proposed new Australia-Russia nuclear safeguards agreement is to allow Australian uranium producers to supply Russia’s nuclear power industry under strict safeguards conditions. These conditions are designed to ensure that any nuclear material transferred between Australia and Russia will be used solely for peaceful, non military purposes. Providing for such exports is consistent with the expanding trade relationship between Australia and Russia and has the benefit of consolidating Australia’s position as a secure energy supplier.

The benefit to Australia of concluding a new nuclear safeguards agreement with Russia is expanding the market for Australia’s uranium exports (in 2007 worth \$660m) while also consolidating Australia’s position as a secure supplier of energy resources. This is consistent with the expanding trade relationship between Australia and Russia and could assist in the development of a broader energy export sector with Russia. Further, Australian uranium exports will contribute to Russia’s diversification from fossil fuels with associated environmental benefits.

Reasons for Australia to take treaty action

ASNO undertook a considered analysis of the proposed Agreement.

The Coalition Senators and Members rely heavily upon the expertise, experience and reputation of ASNO to substantiate why the Coalition Senators and Members support the ratification of the Agreement.

In his evidence to the Committee, Mr John Carlson of ASNO outlined some of the factors considered by the Government in concluding the agreement:

A key factor was Russia's action announced in 2006 to clearly separate its military and civil nuclear programs and to place civil facilities under its safeguards agreement with the IAEA. A further factor was that Russia had ceased production of fissile material for nuclear weapons many years ago and announced this in 1994. Russia has no reason to try to divert imported uranium for military use. As I have already noted, Russia is a major uranium exporter through its extensive program of down-blending ex-military high-enriched uranium, equivalent to thousands of warheads, for use in nuclear power plants.

Another key factor was the major upgrading of nuclear safety, security and safeguards achieved through international collaboration with Russia since the early 1990s. Since that period there have been at least 17 significant multilateral and bilateral international assistance programs aimed at improving safety and security in Russia's nuclear sector, totalling well over US\$10 billion. The focus of these programs has ranged from commitments of tens of millions of dollars for assisting specific nuclear reactors to the multibillion-dollar Nunn-Lugar Cooperative Threat Reduction Program that has over 17 years secured tonnes of weapons-usable nuclear material.

As a consequence of all these programs there has been substantial improvement in the safety and security of nuclear materials and facilities in Russia. Russia is committed to bringing its power sector into line with international standards on nuclear regulation, transparency and accountability.²

Disarmament and nuclear weapons proliferation

A concern of the majority in the Committee Report was in relation to Disarmament and nuclear weapons proliferation.

The Coalition Senators and Members do not agree with this concern.

The Coalition Senators and Members are satisfied with the evidence given by ASNO in relation to this issue as set out below.

² Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 27.

In its evidence to the Committee, ASNO stated that it considered Russia was meeting its disarmament obligations:

Russia is committed to going down to a total of between 1,700 and 2,200 [strategic warheads] by 2012.³

IAEA safeguards and inspections

An objection to ratification of the Treaty by the majority in the Committee Report, was in relation to the ability of the IAEA to undertake satisfactory inspections of Russian nuclear facilities.

The Coalition Senators and Members are persuaded by the evidence given by ASNO in relation to this objection as set out below.

In response to the issue of IAEA inspections, ASNO informed the Committee:

... it is the case that the IAEA has not conducted safeguards inspections [in Russia] since 2001. During this period, IAEA safeguards activities in Russia have been limited to the evaluation of accounting reports on the export and import of nuclear material, since the IAEA has not selected any facility for inspection from Russia's list of eligible facilities.⁴

ASNO went on to state:

Russia therefore has limited experience with IAEA inspections of its nuclear facilities as, until recently, it had not sought to source uranium from countries (such as Australia) that required supplied nuclear material be used in facilities subject to IAEA safeguards. However, Russia is completing a major reform of its nuclear industry to clearly separate its civil and military sectors, and to place civil facilities under its IAEA safeguards agreement. Given the requirement that Australian Obligated Nuclear Material (AONM) can only be used in facilities subject to IAEA safeguards, once supply begins it is expected that the number of facilities eligible for IAEA inspections in Russia will increase.⁵

ASNO also informed the Committee that Russia intends to meet the highest international standards. In the case of the Angarsk international enrichment centre, where it is expected AONM will be enriched, this facility is on Russia's

3 Mr John Carlson, *Transcript of Evidence*, 16 June 2008, p. 30.

4 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 3.

5 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, pp 3-4.

eligible facility list and 'Russia is insisting that the agency inspect it and is prepared to pay the agency to do that'.⁶

Further:

I would not want you to have the impression that, if there are no inspections, there is a kind of vacuum. Russia places facilities on what is called an eligible facility list. That means those facilities can be selected for inspection if the agency chooses to do so. In order to be on the list, the facility operators have to keep IAEA-standard nuclear material accounting. They have to have the systems in place where they can account for nuclear material and maintain the records in such a way that an inspector could go there at any time and find everything is in order. The fact that inspection may not be carried out does not mean that Russian authorities do not have to maintain those records; on the contrary, they do, and the IAEA, along with other governments, has been assisting Russian efforts to introduce the necessary systems.⁷

Finally:

... we are entering a new era where Russia is committed to establishing a commercial power sector of international standards and they are looking for respectability. They want their system to match what is done in other countries.⁸

In response to the issue of diversion to nuclear weapons, ASNO highlighted that Russia has a massive surplus of fissile material that is so large that it is down-blending fissile material to supply nuclear power reactors elsewhere in the world. It cited the example of the Megatons to Megawatts program through which Russia is meeting the needs of up to 50 per cent of the United States power reactors through the down-blending of high-enriched uranium into low-enriched uranium to use as reactor fuel.⁹

Mr Carlson told the Committee:

... there is absolutely no reason why Russia would contemplate diverted Australian uranium. It simply does not need to.¹⁰

6 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 4; Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 3 and 9.

7 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 9.

8 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 10.

9 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 4.

10 Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 4.

Russia's compliance with treaty obligations

The majority in the Committee Report cites Russia's potential non-compliance with its Treaty obligations as a reason not to ratify the Treaty.

The evidence presented to the Committee was compelling. Non-compliance, or subsequent abandonment of this treaty, is demonstratively not in Russia's National Interest.

In relation to this agreement, Mr Maude of the Department of Foreign Affairs and Trade said:

I would endorse Mr Carlson's [ASNO] point that this is a different sort of agreement. Russia has strong national interests in the agreement and were it to walk away then trade under the agreement would cease.¹¹

Nuclear security

The majority Committee questioned whether the Russian Safeguards and Security measures ensured that the nuclear smuggling problem is under control.

This was also addressed by ASNO at the Committee Hearings.

ASNO noted that in April 2008, the US National Security Administration reported that it had completed security upgrades at more than 85 per cent of Russian nuclear weapons sites of concern, and confirmed that similar nuclear security upgrades on the balance of Russian sites are on schedule for completion at the end of 2008.¹²

ASNO's response was that the Director General's comment referred to the progress of fully completed security upgrades in 2005 and that:

Former US Senator Nunn made it clear at the time that this **did not** mean there was **no security** on some Russian material.¹³

ASNO also outlined the action that has been taken over the past two decades to secure Russia's nuclear material, including:

- At least 17 significant multilateral and bilateral assistance programs aimed at improving safety and security, totalling well over US\$10 billion; and
- The multi billion dollar Nunn-Lugar Cooperative Threat Reduction Program that has, over 17 years, secured tons of weapons-usable nuclear material.¹⁴

11 Mr Richard Maude, *Transcript of Evidence*, 1 September 2008, p. 3.

12 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 2.

13 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 2.

State secrets

Article IX of the Agreement states that information classified as ‘state secret’ by Russia will not be exchanged.

Coalition Senators and Members note that there is nothing unusual about such a clause, and believe that objections to the Agreement on this basis are specious. Article IX of the Agreement equally – and properly – provides that information bearing an Australian national security classification shall similarly not be exchanged.

All countries are entitled, in the interests of national security, to classify sensitive information and withhold that information from other countries. In the unlikely event that Russia was to use this as a mechanism to evade the stated objectives of the Agreement, this would soon become apparent. It would then be open to the Australian Government to conclude that the Agreement was no longer operating in Australia’s National Interest, and to withdraw from the Agreement under the mechanisms provided therein.

‘Material Unaccounted For’

The Coalition Senators and Members do not support the majority concern that the Treaty not be ratified until “further consideration is given to the justification for secrecy of ‘Material Unaccounted For’”.

This was addressed by ASNO.

ASNO informed the Committee that ‘Material Unaccounted For’ (MUF) is used in safeguards to indicate differences between operator records and the verified physical inventory and that differences are common due to measurement processes. These differences do not indicate material is missing, as MUF frequently shows a gain in material.¹⁵

ASNO further indicated that any MUF reported to ASNO is investigated if it is outside normal limits for the processes involved.¹⁶

The secrecy of MUF was considered by ASNO to be justified because nuclear material inventories and transfers involve commercial nuclear fuel cycle facilities and are thus considered commercially sensitive. The Committee considers, however, that assurances of safety must override commercial interests and believes that the commercial-in-confidence clause should be reviewed.¹⁷

14 Australian Safeguards and Non-Proliferation Office, Supplementary Submission No. 22.1, p. 2.

15 ASNO, Supplementary Submission No. 22.1, p. 4.

16 ASNO, Supplementary Submission No. 22.1, p. 4.

17 ASNO, Supplementary Submission No. 22.1, p. 4.

Reasons to support ratification

Nuclear energy as a greenhouse friendly option

The Coalition Senators and Members note that Australian uranium exports will contribute to Russia's diversification from fossil fuels with associated environmental benefits.

The Coalition Senators and Members note that this treaty is considered, in part, to be in Australia's national interest as it would allow Russia to reduce greenhouse gas emissions and atmospheric pollution.

The Australian Uranium Association (AUA) argued that nuclear power is a clean source of electricity that emits no greenhouse gases and that nuclear power is very competitive with renewables on a life cycle basis.¹⁸

Research commissioned by the AUA into expanded uranium production found that:

... under the conservative scenario, Australia would export enough uranium for nuclear power generation plants to avoid between 11 billion and 15 billion tonnes of carbon dioxide to 2030, compared to coal fired power stations using existing technology. At a minimum, the exports of uranium to 2030 alone could avoid 10 times the emissions abatement required to meet Australia's Kyoto target.¹⁹

Further, the AUA highlighted that if Russia used 2,500 tonnes of uranium exports to generate electricity in 2020 rather than coal fired power stations, it would avoid approximately 100 million tonnes of greenhouse gas emissions in that year compared with coal technology.²⁰

Conclusion

Coalition Senators and Members recommend that the Australian Government proceed with ratification of the Agreement between the Government of Australia and the Russian Federation on the use of nuclear energy for peaceful purposes.

Coalition Senators and Members challenged and questioned ASNO rigorously in regard to the concerns raised in relation to ratification of this agreement and conclude that:

- Russia has demonstrated a commitment to its disarmament and non-proliferation obligations;

18 Mr Michael Angwin, *Transcript of Evidence*, 28 July 2008, p. 30.

19 Mr Michael Angwin, *Transcript of Evidence*, 28 July 2008, p. 30.

20 Mr Michael Angwin, *Transcript of Evidence*, 28 July 2008, p. 30.

- There are compelling 'National Interest' reasons for Russia to comply with its treaty obligations under this Treaty;
- IAEA safeguards are the internationally accepted standard and are adequate; and
- Standards of security and safety have greatly improved compared with the situation in the former Soviet Union.

Coalition Senators and Members have made conclusions focussing on the text and practicalities of the Treaty so as to promote Australia's National Interest and protect its reputation as a responsible international citizen.

In this regard, the Coalition Senators and Members are satisfied that the benefits to Australia in ratifying the Treaty and the evidence presented to the Committee in support of the ratification, outweigh any concerns raised in submissions against the ratification.

However, the Coalition Senators and Members accept that the Government of the day, in determining whether or not to ratify or continue to be a party to any Treaty, may take into account the broader national interest, current international events and foreign policy.

The Coalition Senators and Members accept that the Government of the day may be privy to factual information that Committee Members are not privy to when considering a particular Treaty.

Therefore the Government of the day may be in a position to make a more informed judgment as to whether or not to ratify a particular Treaty.

In this regard we note that the United States of America have negotiated a similar Treaty to that referred to in this Report but, due to the considerations in regard to the situation in Georgia and North Ossetia have withdrawn the Treaty from Congressional considerations for the time being.

Recommendation 2 of the majority report

Recommendation 2 of the majority report restates a recommendation from this Committee's December 2006 *Report 81*, to the effect that the Australian Government should "...[lobby] the IAEA and the five declared nuclear weapons states under the NPT to make the safeguarding of all conversion facilities mandatory".

While Coalition Senators and Members are not strongly opposed to the recommendation, we believe it is unnecessary in this context. As noted in the majority report, Russia has voluntarily ratified an Additional Protocol to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), giving the IAEA

increased access to all aspects of its nuclear program. We believe that the Recommendation would only add value in circumstances where a Nuclear Weapons State was hindering scrutiny by the IAEA, which is plainly not the case in this instance.

Recommendation 3 of the majority report

Coalition Senators and Members wish to record their strong support for Recommendation 3 of the majority report, which calls for Australian efforts to strengthen the resourcing of the IAEA to be continued. While we welcome the fact that funding for safeguards has been increased significantly in recent years,²¹ greater resourcing would enhance confidence in the overall adequacy of IAEA monitoring.

Senator Julian McGauran
Deputy Chair

Senator Simon Birmingham

Senator Michaelia Cash

Mr John Forrest MP

Mr Luke Simpkins MP

²¹ Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 8.



Appendix A – Submissions

Treaties tabled 14 May 2008

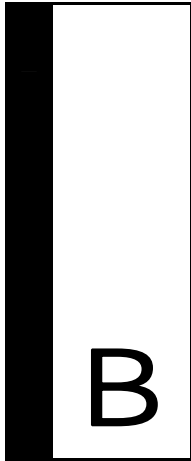
Agreement with the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes

- 1 Australian Patriot Movement
- 1.3 Australian Patriot Movement
- 2 Professor Richard Broinowski
- 3 Australian Uranium Association
- 3.1 Australian Uranium Association
- 4 Ms Rosalind Byass
- 5 Department of the Premier and Cabinet
- 6 Medical Association for Prevention of War (Australia)
- 6.1 Medical Association for Prevention of War (Australia)
- 6.2 Medical Association for Prevention of War (Australia)
- 7 International Campaign to Abolish Nuclear Weapons
- 7.1 International Campaign to Abolish Nuclear Weapons
- 8 Australian Conservation Foundation
- 9 Paladin Resources Limited
- 10 NSW Government

- 13 Greenpeace Russia
- 14 Women's International League for Peace and Freedom (Australian Section) Inc
- 15 The Wilderness Society Inc
- 16 Ms Mary Cusack
- 17 Friends of the Earth, Australia
- 17.1 Friends of the Earth, Australia
- 17.2 Friends of the Earth, Australia
- 17.3 Friends of the Earth, Australia
- 18 Professor Richard Broinowski
- 20 Mr Egor Sofronov
- 21 Queensland Government
- 22 Department of Foreign Affairs and Trade
- 22.1 Department of Foreign Affairs and Trade
- 22.2 Department of Foreign Affairs and Trade

Treaty between the Government of Australia and the Government of the United States of America Concerning Defense Trade Cooperation

- 11 Dr Simon Rice, Director of Law Reform and Social Justice, ANU College of Law
- 11.1 Dr Simon Rice, Director of Law Reform and Social Justice, ANU College of Law
- 12 CEA Technologies Pty Ltd
- 19 Department of Premier and Cabinet
- 23 Department of Defence



Appendix B - Witnesses

Monday, 16 June 2008 – Canberra

Attorney-General's Department

Mr Stephen Bouwhuis, Principal Legal Officer, Office of International Law

Ms Kerin Leonard, Principal Legal Officer, Office of International Law

Department of Defence

Mr Kerry Clarke, Head of Industry Division

Mr Murray Perks, Acting Head, Strategic Policy

Mr Tim Scully, Assistant Secretary, Security Operations

Ms Rebecca Skinner, Head Strategic Policy

Department of Foreign Affairs and Trade

Mr Ian Biggs, Assistant Secretary, Arms Control and Counter Proliferation Branch

Mr John Carlson, Director General, Australian Safeguards and Non-Proliferation Office

Mr Craig Everton, Safeguards Officer, Australian Safeguards & Non-Proliferation Office

Ms Katy Lin, Desk Officer, International Law Section, International Legal Branch

Mr David Mason, Executive Director, Treaties Secretariat,
International Legal Branch

Ms Juliana Nam, Executive Officer, International Law and
Transnational Crime Section, International Legal Branch

Ms Marina Tsirbas, Director, Sea Law, Environment Law and
Antarctic Policy Section, International Organisations and Legal
Division

Mr Glenn White, Director, Southern Europe Section, Europe Division

Monday, 28 July 2008 – Melbourne

Australian Conservation Foundation

Mr David Noonan, Nuclear Free Campaigner

Australian Uranium Association

Mr Michael Angwin, Executive Director

Friends of the Earth, Australia

Dr Jim Green, National Nuclear Campaigner

International Campaign to Abolish Nuclear Weapons

Associate Professor Tilman Ruff, National President

Monday, 25 August 2008 – Canberra

Medical Association for Prevention of War (Australia)

Dr Sue Wareham OAM, President

Monday, 1 September 2008 – Canberra

Australian Nuclear Science & Technology Organisation

Mr Steven McIntosh, Senior Adviser, Government Liaison

Department of Foreign Affairs and Trade

Ms Annabel Anderson, Assistant Secretary, Northern, Southern and
Eastern Europe Branch

Mr John Carlson, Director General, Australian Safeguards and Non-Proliferation Office

Mr Craig Everton, Safeguards Officer, Australian Safeguards and Non-Proliferation Office

Mr Richard Maude, First Assistant Secretary, Europe Division

Mr David Mason, Executive Director, Treaties Secretariat, International Legal Branch

Dr Geoffrey Shaw, Assistant Secretary, Australian Safeguards and Non-Proliferation Office