



## **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.

### **Background<sup>1</sup>**

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.

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<sup>1</sup> 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](http://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.<sup>2</sup>

## 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.

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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.<sup>3</sup>

## 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.<sup>4</sup>

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.<sup>5</sup>

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

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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'.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

Mr Carlson told the Committee:

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

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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.<sup>11</sup>

## 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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

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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.<sup>15</sup>

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

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.<sup>17</sup>

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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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup>

## 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;

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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,<sup>21</sup> 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**

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<sup>21</sup> Mr John Carlson, *Transcript of Evidence*, 1 September 2008, p. 8.