

Caring for South Australia

Submission from *Caring for South Australia*

Re: *Submission to the Joint Standing Committee on Treaties concerning the:
Agreement among the Government of Australia, the Government of the
United Kingdom of Great Britain and Northern Ireland, and the Government
of the United States of America for Cooperation Related to Naval Nuclear
Propulsion*

Caring for South Australia is a group of South Australians dedicated to ensuring the wellbeing, health and safety of this state and its citizens. All members of the group have a background in education and involvement in community affairs. Members have lived in far flung areas of SA as well as in cities and towns across the state and a number have been involved with Aboriginal people including those directly affected by the British nuclear tests of the 1950s and 1960s which had generational implications for Anangu – Aboriginal people.

In recent times (c.2017-2023) we have actively opposed the previous federal government's original (now failed) determination to ensure the farming land of Kimba SA became the federal site for Australia's nuclear waste, against the wishes of the Barngarla Traditional Owners, many farmers and residents of Kimba, and indeed many other South Australians.

Naturally we have a grave concern regarding AUKUS plans and in January this year, our group made a submission voicing such concerns regarding *The Australian Naval Nuclear Power Safety Bill 2023 (NNP Bill)*. We will attach this submission as an appendix to this submission.

This submission urges that the Joint Standing Committee on Treaties recommends against the Australian Government signing this Agreement, as we believe that it is *not* in the best interests of the Australian people on a number of grounds. The grounds for our concerns are discussed below

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1. Disposal of Radioactive Nuclear Material.

This Agreement requires Australia to “*be responsible for the management, disposition, storage, and disposal of any spent nuclear fuel and radioactive waste resulting from the operation of Naval Nuclear Propulsion Plants transferred pursuant to this Article, including radioactive waste generated through submarine operations, maintenance,*

decommissioning, and disposal.” (ARTICLE IV Naval Nuclear Propulsion Plants, Related Equipment, and Material, Section D)

Australia has a poor history with existing radioactive waste management; and does not have a waste management facility that can guarantee such disposition, storage and disposal of spent fuel and radioactive waste in a manner that is safe for our population. Such a facility would need to ensure safe storage for thousands of years.

In fact the only necessary deep geological repository in the world, and one yet to be tested, is in Finland. It seems an enormous risk for Australia to take to put the Australian people's health at risk for many, many years. High level radioactive waste remains toxic for 100,000 years.

2. Importation of Radioactive Nuclear Waste.

The Treaty clearly outlines that Special Nuclear Material to be transferred under the agreement, *“shall contain highly enriched uranium and, only with respect to irradiated fuel, may contain plutonium”*, albeit *“only in complete, welded Power Units pursuant to Article IV.B of the Agreement: (ARTICLE VI Conditions and Guarantees, SECTION I – SPECIAL NUCLEAR MATERIAL)”*

This is highly dangerous material, and, given Australia's poor history with existing radioactive waste management and siting (as mentioned above) it is of extreme concern that, despite the potential implications of the Agreement for the Australian people and especially for those living and working in nuclear zones as defined in the Australian Naval Nuclear Power Safety Bill 2023, that no public consultations have occurred.

Furthermore it is of utmost concern to us as a group caring for South Australia and indeed our nation, its lands and peoples including future generations, that our nation is at risk of also becoming the dumping ground for high level waste for the UK and /or US submarine navies. Our group welcomes the very recent announcement by the Defence Minister (August 9th 2024) that Australia will not accept this. However, as Dave Sweeney of the Australian Conservation Foundation rightly points out, the above possibility has been confirmed previously by a Senate Inquiry and also by the Department of Defence. In fact there is legislation now before the Australian parliament which would make it possible. This legislation has not yet been passed. Our members agree strongly that it is up to the Minister ‘to close the loophole,’ by ensuring the legislation, which will make it impossible for us to take foreign nuclear waste products, is passed.

Both the UK and the US have generated decades of high nuclear waste which have yet to be housed satisfactorily. As Dave Sweeney further warns in his interview on August 9th with ABC Channel 24: ‘There is a very real possibility here, a future government would have the right under this law as it is currently drafted to host decades of international radioactive waste. That's a profound and dangerous thing for this country. It's a slippery slope forever and Minister Marles has now the opportunity to amend this legislation – as a majority Senate Committee has requested, as numerous stakeholders have requested and as would be consistent with government assurances. So let's turn a promise into a law.’ (our transcription)

Caring for SA members heartily concur: the Minister if genuine, cannot simply discuss these concerns and refuse to change the legislation. Minister Marles needs to take this opportunity to act by changing the legislation to ensure that Australia will not become a dumping ground for high level international nuclear waste. This is a key requirement of our submission.

3. Lack of Consultation.

The nuclear weapons grade fuel and nuclear reactors pose a significant threat to the health of the Australian people who live or work within the nuclear zones associated with the storage of the imported nuclear fuel, the sites for construction of nuclear submarines and the designated facilities for disposal of nuclear waste produced by these activities.

Independent Environment Campaigner David Noonan has pointed out that the existing US military nuclear reactors in second-hand N-Subs that Australia intend to buy will be “up to 10-12 years old, loaded with intractable US origin High-Level nuclear wastes” and that Australia intends to buy “weapons usage fissile materials – and remain as Bomb Fuel long after decommissioning.”ⁱ

In addition, the nuclear zones associated with the docking of foreign nuclear submarines pose a significant threat to the health of the Australian people.

Furthermore, the ‘National Interest Analysis [2024] ATNIA 14 with attachment on consultation’, acknowledges that “*There has been no public consultation*”, with paragraph 55 stating that “*No public consultation has been undertaken, given the classified scope of consultations between the Parties on the Agreement, including matters relating to national security and operational capability.*”

In our own state of South Australia we note that it has been left up to concerned local bodies to organise nuclear experts to inform local citizens of the very real on-ground risks of the project. Our members applaud the work that independent long time nuclear campaigner David Noonan has been doing in responding to requests to address independently convened public meetings called by concerned locals living in the vicinity of the site at the Osborne Naval Shipyard in Adelaide where it is proposed that nuclear submarines be built. This is in the absence of any public consultation or statement of risk by federal or state governments which seem to resort only to media opportunities of ‘good news’ re jobs in the far distant future. We see it as a grave violation of governmental ‘duty of care’ to merely quote national security as an excuse for such inaction. This situation obviously needs to change.

4. Breach of Nuclear Non-Proliferation Treaty

ARTICLE VI, Section H states the following:

The United States and the United Kingdom shall have the right to cease further cooperation under this Agreement, including suspension or termination of transfers of Material and Equipment, and to require the return of any Material or Equipment transferred pursuant to 8 this Agreement, and any Special Nuclear Material produced

through the use of any Material or Equipment transferred pursuant to this Agreement, if Australia: materially breaches its obligations under the NPT, the Australia-IAEA Safeguards Agreements, or the Article 14 Arrangement; terminates, abrogates, or otherwise withdraws from any of the foregoing agreements or arrangements; or detonates a nuclear weapon or other nuclear explosive device.

It is of the utmost concern that that one of the potential breaches described is that Australia is not able to *detonate “a nuclear weapon or other nuclear explosive device.”* – *as it suggests that it is possible for a nuclear weapon to be present on Australian shores.* We are extremely concerned that it is even necessary to list this as a potential breach. How could it even be possible for a nuclear weapon to make its way into Australia? This it would be a clear breach of the highest order of the Nuclear Non-Proliferation Treaty (NPT) because as a signatory to the NPT, Australia is not allowed to manufacture or otherwise acquire nuclear weapons.

5. Lack of Guarantees.

It is intriguing that the ‘Agreement’ does not guarantee the cooperation of the UK or USA in fulfilling the objectives of the Agreement, if in doing so that would “constitute an unreasonable risk to its (own) defence and security (Article I).”

Despite Australia paying both US shipyards and UK shipyards billions of dollars, it appears there are no watertight arrangements in place to ensure that Australia obtains the nuclear fuel and nuclear reactors outlined in the agreement nor ensuring that Australia will be able to construct nuclear-propelled submarines.

It should be of concern to all Australians that our Government is expending such vast sums of money without guarantees in place.

6. Question of Responsibilities of USA and UK.

According to Article IV E. Australia shall indemnify, subject to paragraph F of this Article, the United States and the United Kingdom against any liability, loss, costs, damage or injury (including third-party claims) arising out of, related to, or resulting from Nuclear Risks connected with the design, manufacture, assembly, transfer, or utilization of any Material or Equipment, including Naval Nuclear Propulsion Plants and component parts and spare parts thereof, transferred or to be transferred pursuant to this Article.

It is a concern that the agreement appears to be very one sided in terms of responsibility and the question must be asked whether this is in Australia’s best interests.

7. Cost of the Project

Finally, it seems to us that the cost of the whole project, calculated to be as much as an extraordinary A\$368 billion is well in excess of what we should be spending on the defence of our country. This is especially the case when it is recognised that, because of the rising cost of living, large numbers of Australian families are falling into poverty. Too many Australian children are going to bed hungry. At the same time there is an acute

housing shortage with record numbers of people homeless and charitable organisations that support the impoverished and homeless are stretched beyond capacity. Therefore, we decry the enormous expenditure as a reflection of misguided priorities and doubtful realisations.

It is for each of these reasons that we strongly oppose the signing of the Agreement.

We thank you for receiving our submission on this extremely important matter. We trust that serious consideration will be given to the matters that we have raised for the protection of our nation, its lands, waters, peoples and future generations.

Robyn Jenkin and Michele Madigan
Caring for South Australia

2nd September 2024

Appendix: Submission re *The Australian Naval Nuclear Power Safety Bill 2023 (NNP Bill)*

Re: *The Australian Naval Nuclear Power Safety Bill 2023 (NNP Bill)* : Bill for an Act to regulate activities relating to conventionally-armed, nuclear-powered submarines to ensure the nuclear safety of those activities, and for related purposes.

Caring for South Australia is a group of South Australians dedicated to ensuring the wellbeing, health and safety of this state and its citizens. All members of the group have a background in education and involvement in community affairs. Members have lived in far flung areas of SA as well as in cities and towns across the state and a number have been involved with Aboriginal people including those directly affected by the British nuclear tests of the 1950s and 1960s which had generational implications for those people.

As such, the purpose of this submission is to object to the *Australian Naval Power Safety Act 2023*.

This Bill is titled: *A Bill for an Act to regulate activities relating to conventionally-armed, nuclear-powered submarines to ensure the nuclear safety of those activities, and for related purposes*, the key words being “nuclear” and “safety”. It seems to us that these two terms are incompatible. It is accepted scientific knowledge that there is no level of radiation exposure below which there is no risk of fatal cancer.

This commitment by successive Australian governments to the nuclear submarines project is a monumental decision for which executive government so far continues to make no apology; or even recognise the significant policy shift and resulting dangers brought to our Australian citizens, including First Nations peoples, together with our lands and waters.

This is the first time in the history of the nation that governments (immediate preceding and present) of Australia *of their own initiative* have introduced into the nation the existence of the highest-level radioactive waste that the *Australian Naval Nuclear Safety Bill 2023* continues to legitimise. High Level Waste (HLW) has an incredible, undisputed toxicity of 100,000 years, which the present executive government, has, with absolutely no

citizen consultation, agreed to take responsibility for. This will apparently even include HLW of US (and UK) origin with the purchase of US built submarines as part of the agreement.

Human Rights

According to the *Bills Digest*, the Government has declared each Bill compatible with human rights. We quote from the previous Bill: *35. Human Rights This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

We believe that simply declaring that the Bill is compatible with human rights does not make it so. The whole project with its extraordinary price tag, contributes to the removal of the human rights of many Australian citizens including Australian children living in poverty.

For First Nations Traditional Owners another looming threat this project threatens is to the well being of lands and seas and for future generations. At no time to date, has there been any genuine effort to comply with the United Nations standard: 'free, prior and informed consent of Traditional Owners. (*UN Declaration on the Rights of Indigenous People: Article*)

Furthermore, there was no opportunity given for Australian citizens, or indeed the Parliament to be consulted prior to ramping up an already controversial and secretive agreement with other countries --an agreement which will affect every Australian generation to come.

Recommendation 1: Compliance with the UN Declaration is essential .

Radiation dangers

- (a) the Stirling designated zone; [HMAS *Stirling* Garden Island WA]
- (b) the Osborne designated zone; [Osborne Naval Shipyards SA]
- (c) any other area in Australia that is prescribed by the regulations to be a designated zone.

The *NNP Bill* exposes Australian citizens, particularly those living in the chosen Port area of the nuclear powered submarines and HMAS *Stirling* on Garden Island to increased risk of radiation including any accident (which cannot be discounted in the usual way by confident declarations by proponents that such an event 'will not happen.'). And prior to this, the purchased, previously owned US nuclear powered submarines will be based on the east coast, possibly Port Kembla. In addition there is the Osborne region during the time of the proposed building of the Australian made submarines -- each of these areas will be 'home' to the weapons grade nuclear material which powers the submarines in question.

The Medical Association for the Prevention of War (MAPW) is a recognised, neutral body, whose aim is to promote peace and disarmament. They point out that, since 1963, there have been a number of accidents involving nuclear-powered vessels, including six submarines that have been sunk. Furthermore, since 2015, this kind of information has not been available to the general public, due to secrecy provisions. The result of nuclear accidents include the loss of radioactive material. So, if an accident involving a nuclear-

powered submarine docked at Port Adelaide were to occur, the entire surrounding area would be in danger as a result of the escape of radioactive material. What measures have been put in place to avoid this danger? What measures have been established to ensure that local communities have been informed about the risks incurred by hosting nuclear submarines? Have local medical services been provided with information that will enable them to respond in the event of a nuclear accident?

For decades (1990s to present) when dealing with the challenge of locating a national radioactive waste dump, governments of either persuasion have been careful to note that Australia 'has no high level nuclear waste.' The proposed Bill announces a totally radical change to this previous, oft repeated government assurance.

The toxicity of low-level radioactive waste may last 300 years; the toxicity of intermediate level radioactive waste lasts an unimaginable 10,000 years. No wonder the government has yet to find an undisputed site for both, undisputed in particular by Traditional Owners.

It has been suggested that defence land at Woomera could be used to store such radioactive material. Have the local indigenous land owners been consulted? Four different Aboriginal groups hold native title over areas in the Woomera Prohibited Area. Given the success of the Barngarla people in overthrowing the establishment of a radio-active waste facility at Napandee in South Australia, it is highly likely that the traditional owners of the land around Woomera will not approve of a dump on their land. And what happens when a nuclear-powered submarine is decommissioned? This waste will be high-level radio-active waste with a shelf-life of at least 100,000 years. What plans have been established to dispose of this waste?

What an extraordinary burden to inflict on future generations of Australian citizens particularly those eventually subjected to housing the waste and those along transport corridors.

The concept of transport corridors is not mentioned in this Bill No matter how firmly State government leaders (currently Victoria, Queensland, Western Australia) resist being host to a High Level Nuclear Waste dump, and how 'remote' is the final site eventually decided upon, the highly dangerous material must be transported across this vast country, leaving further openings for accidents and opportunities for terrorist attacks.

Recommendation 2: In order to safeguard Australian citizens against the dangers of nuclear radiation, all AUKUS sites would need to be approved by the Parliament.

Regarding other schemes

We quote the Minister: "The new framework will be harmonised with other schemes, including those relating to work health and safety, nuclear nonproliferation and civilian nuclear safety." Richard Marles , (Second Reading Speech, Australian Naval Nuclear Power Safety Bill 2023)

A. RE work health and safety:

Unsurprisingly the people who work in or who will be called upon to attend to any such calamities like the CFMMEU – (the Construction, Forestry, Maritime, Mining and Energy Union) and those who work the technicalities of the industry (ETU – Electrical Trades Union) are strongly opposed.

Recommendation 3: Compliance with the UN Declaration is essential

B. RE Nuclear nonproliferation

A serious implication of the nuclear powered submarines is the extremely high percentage of radioactivity – nuclear weapons strength. What assurance does the Australian public have that the possession of such material will not lead to the manufacture of nuclear weapons?

There are potential difficulties for the Region in which we live.

There seems to be some cognitive dissidence in the following comment within the previous Bill by the Defence Minister ... *'These interests demand we deploy all elements of our national power in statecraft seeking to shape a region that is open, stable and prosperous: a predictable region, operating by agreed rules, standards and laws, where sovereignty is respected.'*

The Labor nuclear submarine deal was certainly not 'open' nor 'predictable' at least to the Australian voter and indeed an extraordinary ramping up of involvement in nuclear matters and uses may well risk destabilising rather than 'stabilising' the region. Our neighbours including Indonesia and Malaysia would be well aware that the nuclear enrichment strength to enable the propulsion of the submarines is nuclear weapons grade.

The action in fact, leaves Australia open to suspicion that we will indeed proceed along the nuclear path, perhaps even to nuclear weapons.

The project may well set a precedent amongst the countries of the region that if Australia can move a step closer in nuclear possession in this case nuclear powered submarines, other countries in the region can become thus encouraged to step out along escalating their own nuclear path.

Improved diplomatic skills of word and manner, which has undoubtedly occurred under the Labor administration, are undermined by this proposed action.

In 2022 the Labor government made some progress in this ultimately serious matter for the nation and planet, peoples and environment by abstaining from voting against the Nuclear Weapons Ban Treaty. Thus: for the safety and well-being of both internal Australian and external Pacific and other neighbourhood nations we suggest the following recommendation:

Recommendation 4: Australia to sign the Treaty on the Prohibition of Nuclear Weapons (TPNW).

This would send the clearest signal possible to the citizens of Australia and the Pacific Island and other Neighbourhood nations that Australia has no plans to acquire nuclear weapons. Also, it would demonstrate by firm and independent action that we in Australian are indeed 'a sovereign nation.'

The latest figures from ICAN Aust March 2022:(Ipsos) indicate that 76% of Australians are in favour of Australia joining the Treaty.

B. Re 'civilian nuclear safety'

The questions below asked by the Medical Association for the Prevention of War are extremely relevant and clearly need to be answered as the Bill progresses.

Will communities be consulted on accident response plans?

What is the existing radiation emergency capability in current and proposed nuclear sub port sites?

Will local health and medical services be consulted?

How will communities be properly informed about the risks of naval nuclear reactors?

How will safety issues be monitored and communicated?

How will the public interest in safety issues be protected?

When will accident scenarios for nuclear subs at base be modelled and made public?

How can the public verify the quality of emergency management plans and systems?

How can authorities demonstrate their capacity to respond to radiation emergencies, and other accident scenarios? ([MAPW](#) Safety Brief 2023)

Recommendation 5: These crucial, practical questions, extremely relevant to Australian citizens, need to be addressed by the Inquiry.

Lack of independence of the proposed new Regulator and increased proposed powers to the Minister

This Bill seeks to transfer responsibility to the newly established Regulator, the Australian Naval Nuclear Power Safety Regulator from the current independent Regulator ARPANSA. Our members see this as a crucial flaw in the proposed legislation. The current long term Regulator ARPANSA (Australian Radiation Protection and Nuclear Safety Agency) has a track record which gives some evidence of independence. (eg during the previous federal government initiatives to establish a federal nuclear waste facility ARPANSA maintained the ANSTO facility had room to store its own Intermediate and Low level waste 'for decades' ie opposing ANSTO's own claims of urgent insufficient space). Our members question the actual independence of the proposed Australian Naval Nuclear Power Safety Regulator. A cause for genuine concern of lack of independence is that it is proposed that the new Regulator be situated *within* the government Defence Department.

We further note with concern that the current Bill provides for the Minister to give the Regulator directions in some circumstances. This is not independence and is a serious flaw in the proposed legislation in a democratic country.

In addition, the Bill gives the Minister of Defence extraordinary powers *including that of regulating the regulator*. While we note that the Minister is required to table in each House of Parliament a statement that such direction was given to the Regulator, we note again with concern that this is merely an information exercise after the event and in no way inhibits this power of the Minister *before* he acts.

Recommendation 6: The powers of the Regulator should lie outside government departments and should be independent of the Minister.

The Role of the Environmental Protection Biodiversity Conservation Act 1999 (EPBC).

We were surprised that the NNP Bill does not mention the role of the EPBC Act. It is our view that the role of the Act is relevant to this issue and that notice should be taken of its advice in all matters relating to the nuclear industry. It is suggested that the environmental portfolio be strengthened. Minister Tanya Plibersek, whose Environment portfolio encompasses heritage protection, has stated that reforms are coming. She said that heritage protection is currently considered ‘at the last minute’ but ‘that’s exactly the wrong approach’. Cultural heritage impacts must be identified ‘from the very beginning’.

Recommendation 7: The implications of the updated EPBC Act need to be considered.

Undemocratic overriding of States’ powers and legislation

The South Australian Government already has legislation in place to prohibit the federal government from dumping nuclear waste in our state. (*Nuclear Waste Storage (Prohibition) Act 2000*). As South Australians, we are concerned that we are facing a future where high-level radiation exposure will be an ever-present danger.

Recommendation 8: States’ powers which protect their citizens should not be overridden.

We thank you for receiving our submission on this extremely important matter. We trust that serious consideration will be given to the matters that we have raised for the protection of our nation, its lands, waters, peoples and future generations.

Robyn Jenkin and Michele Madigan
Caring for South Australia

31 January 2024

ⁱ Civil Society faces imposition of an AUKUS military High Level nuclear waste dump, Updated Briefing by David Noonan, Independent Environment Campaigner 22 August 2024