

Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

Monday 2nd September 2024

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

Thank you for the opportunity to submit to the Joint Standing Committee on Treaties inquiry into 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.

This submission is made on behalf of Nuclear Free WA, a registered charity established in 2023. We have a growing number of supporters and members who are concerned with the implications of the AUKUS agreement in the Perth region along with longstanding concerns on other nuclear issues including nuclear power, radioactive waste management, uranium mining and nuclear weapons.

Many of our newest members are from the Rockingham area, where people are increasingly anxious about the storage, management and transport of radioactive wastes associated with the maintenance of nuclear powered submarines at HMAS Stirling in the ecologically important Derbal Nara. These same Rockingham residents are also concerned about the decommissioning of the nuclear powered submarines and long term plans for managing high level nuclear waste.

We have made submissions at every available opportunity to highlight our concerns with the AUKUS agreement which we strongly believe puts WA at risk and does not meet any public interest test. We absolutely oppose the AUKUS pact and the acquisition of nuclear powered submarines, as well as all the many regulatory, waste management, security, public and workers health, and social licence issues that come with it.

We take this opportunity to highlight significant concerns with the AUKUS agreement, including specific comments on local level issues and concerns.

Nuclear Waste, Nuclear Power and our Environmental Laws

We understand that Article IV Naval Nuclear Propulsion Plants, Related Equipment, and Material Section D requires that Australia *"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."*

There have been many attempts to dispose of nuclear waste in Australia, we have seen this most recently through the South Australian Royal Commission on the nuclear industry and the presence of companies like ARIUS (Formerly Pangea), Azark and Tellus with nuclear waste storage and management ambitions within Australia. Australians have rejected nuclear power over many decades and one of the numerous reasons for opposition to nuclear power is the absence of any long term and proven examples of safe management of radioactive waste. Australia has, for over 40 years, been trying to establish a low level nuclear waste facility to no avail. Globally there is not a single operating high level nuclear waste facility – with only one nearing completion. The US has one trial intermediate level facility, the Waste Isolation Pilot Plant – which has suffered numerous accidents in its very short operational life.

Nuclear waste does not meet basic principles of our environmental laws on intergenerational equity and the precautionary principle. It is irresponsible and dangerous to pursue nuclear powered submarines without first having an end of life decommissioning and waste management plan for both submarines and the waste storage facility. It is our strong view that if there was a requirement to address environmental, social and economic issues related to waste that it would fail to meet environmental standards or receive social licence. It is irresponsible to pursue nuclear power submarines with the knowledge that the radioactive waste management will be a significant issue in the future, for future generations to deal with.

*EPBC Act 1999 Section 3A: The following principles are **principles of ecologically sustainable development**:*

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;*
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;*
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;*
- (e) improved valuation, pricing and incentive mechanisms should be promoted.*

The AUKUS proposal poses the risk of serious and irreversible environmental damage, commits future generations to managing high-level radioactive waste for millennia, thus undermining the health, diversity and productivity of the environment. The proposal also locks in one of the biggest intergenerational public spends ever seen, compromising public funds available for improving social and environmental outcomes for Australians now and over the next 35 years.

The decision-making process to date has been at odds with the principles in our environmental protection laws and out of step with public expectations on transparency and engagement.

Dr Ziggy Switkowski at the 2019 public hearing made the important observation that “No country has yet commissioned and completed a spent fuel or high-level nuclear waste facility. Australia has even struggled to get traction to build a small, low-level facility in Central Australia. The costs of spent fuel storage in reactor decommissioning may be high and may be a potential burden on future generations

extending into the hundreds of years.”¹ This statement is still true 5 years later. The intention to acquire nuclear submarines also means acquiring the legacy of high-level nuclear waste (HLW) which Dr Switkowski points out has no solution so far.

There is no scientific certainty about the management of radioactive waste, with any existing concepts being purely hypothetical. This plan commits Australia to generating this type of waste, a legacy which is both expensive and dangerous for every generation to come.

The removal of any prohibition for nuclear naval propulsion now means that aspects of the project will need to be referred under the EPBC Act. The recent Samuel Review of the EPBC Act made some startling findings which undermines any confidence in assessments through the EPBC Act. The failure of parliament to pass reforms to the EPBC Act means AUKUS will be assessed under a dangerously flawed system. The Samuel review of the EPBC Act found: ***“The EPBC Act does not clearly outline its intended outcomes, and the environment has suffered from two decades of failing to continuously improve the law and its implementation.”²***

The deeply flawed EPBC Act is failing to substantially protect the environment or uphold these critical principles. The AUKUS proposal has become so entrenched into Federal political positioning that we have very little confidence in the independence of any future environmental assessment of nuclear naval propulsion, supporting infrastructure and nuclear waste management.

Our existing radiation safety regulations are not fit for purpose

In a 2019 submission to the Inquiry into the “prerequisites for nuclear energy in Australia” the “Australian Radiation Protection and Nuclear Safety Agency” (ARPANSA) made a submission. The submission advocates for a single national policy and a national regulator, increased resources, rethinking of nuclear waste laws and transport safety along with emergency preparedness across each state and territory with involvement from the national regulator. ARPANSA highlights that our legal obligations under conventions which govern the compensation arrangements for peoples impacted by nuclear accidents should also be considered.

The Naval Nuclear Propulsion Bill which seeks to make a caveat in the EPBC and ARPANSA Acts to allow naval nuclear propulsion is the tip of the iceberg of the regulatory reform required to operate nuclear submarines – and without those reforms it is impossible to accurately judge whether or not there are sufficient regulations, contingencies, and safety plans in place to operate nuclear submarines.

As it stands, allowing nuclear naval propulsion without public debate and without adequate regulations - or even a regulatory review to understand what regulations are needed to mitigate the worst risks of operating, maintaining and decommissioning nuclear submarines - is dangerously deficient. Again it is our strong view that Australia should not pursue nuclear powered submarines.

Local Context and Environmental concerns

Part of the AUKUS Agreement and the Force Posture Agreement have meant major developments at HMAS Stirling on Meeandip (Garden Island) in Derbal Nara (Cockburn Sound). Meandip and Derbal Nara

¹ ibid

² EPBC Act Review – 2020 Final Report <https://epbcactreview.environment.gov.au/resources/final-report>

are sensitive ecosystems which are made up of critically endangered ecological communities, highly endemic plant species, migratory species, priority fauna species and diverse and significant marine species. Meeandip is also in close proximity to the Shoalwater Islands Marine Park with many of the same or similar ecological values.

We note that many of our supporters who live in the region and frequent the area speak highly of the ecological values and the pristine environment at the island, describing the incredible experiences they have there with their families and children exploring nature. These values are precious and despite ongoing assurances in community consultation forums that recreational access will be maintained, many of our supporters are already reporting changes to their accessibility because of activities and exclusions around the island.

There are recreation and commercial values of the area which are threatened by the presence of nuclear powered submarines and foreign defence forces. The presence of nuclear waste and nuclear powered submarines dramatically changes the security needs of the area and we anticipate this proposal will see a build up of security led by foreign defence needs and security protocols.

We have also heard from local people who work on the island about the existing positive culture on the island with regard to the protection of the little penguin population and the natural environment. There are concerns about those values with the presence of 700 foreign defence force personnel who may not have the same regard for environmental protection as the existing workforce does. It is important to consider the impact on the little penguin population, we understand there are nests in the rocks around the shores and where the proposed waste storage facility is proposed and submarine activity is set to be located. We also understand that the little penguin population on Meeandip is genetically different from the little penguins on other islands, likely making this population endemic and threatened.

The buildup of activities at HMAS Stirling on Meeandip will dramatically impact the natural environment, those who use Derbal Nara and Meandip for recreation, and residents of Rockingham and surrounds. It is unclear at what point in the process these considerations about the location of the nuclear waste storage, and porting and maintenance of nuclear submarines will occur and be open for public comment. We are concerned about the existing ARPANSA licensing for siting of a facility which is planned to store Low Level Waste (LLW). LLW should not be handled in a sensitive environment or stored near one of Western Australia's most intensive recreation areas, or in such close proximity to a built up suburban area.

Proposed dredging in Derbal Nara to facilitate shipping to the proposed West Port terminal and to facilitate submarines entering the Sound pose significant health risks. There are heavy metals and other toxins which will be disturbed and are likely to increase uptake in marine and bioaccumulate. There is significant recreational fishing that occurs and so uptake of heavy metals in marine life also poses a public health risk. We are also concerned about the operation of an existing desalination plant and consequences of heavy metals becoming disturbed and mobile in water that is treated in the desalination plant - this also could pose a significant health risk.

We are also aware that there are significant cultural stories connected to the island and advocate for the strongest possible standards of heritage protection and working with First Nations communities in meaningful and participatory decision making regarding the cultural heritage values.

We note that there were significant submissions made to the recent ARPANSA licensing consultation in regard to heritage values and we highly recommend that this committee view those submissions to understand the cultural significance of Meandip and Derbal Nara. We note recent comments by the UN Committee on the Elimination of Racial Discrimination which condemned the WA Aboriginal Heritage laws and repealed 2023 laws. Given the recent history and issues arising following Juukan Gorge, issues of Aboriginal Heritage must not be sidelined.

We have significant concerns about the environmental, groundwater and climate change impacts; as well as impacts on the amenity, social and cultural values of the region. In the case of accidents, leaks or spills, the consequences in such an ecologically sensitive and populated area would be significant and lasting. This is not a suitable location for the storage and handling of low level nuclear waste or the ongoing presence of nuclear powered submarines, nor is it appropriate to conduct any dredging in Derbal Nara because of environmental and public health risks.

Security - making us a target

The permanent presence of US and UK nuclear submarines and nuclear waste storage inherently makes HMAS Stirling, a nuclear waste storage facility and the nuclear submarines a military target. If attacked the radiation risks threaten Derbal Nara, Shoalwater Bay Marine Reserve and the communities facing Derbal Nara, Rockingham, Kwinana, Cockburn and Fremantle. There is yet to be any clear articulation of this risk to the public or any proposal on how those risks will be mitigated and any emergency responses to different scenarios.

Joe Siracusa, Curtin University Dean of Global Futures, has cautioned that AUKUS makes Perth Australia's #1 military target. Other political and diplomatic voices have cautioned that by allowing such a significant military presence by the USA who is an aggressor in the region, increasingly makes us a military target.

There is no indication of actions that will protect the public or the environment in case of a nuclear accident or military attack on any part of the nuclear facility or docking infrastructure.

Nuclear Safety and Australia's track record

Last year in WA, a caesium capsule from a mine site went missing south of Newman causing chaos and confusion. Fortunately, this occurred in a remote part of Western Australia and the capsule was eventually found (with a huge allocation of resources). HMAS Stirling is not remote, it is in the most densely populated area of Western Australia.

There are many things that can go wrong with the operation, maintenance, and decommissioning of nuclear submarines. Australia is involved in the nuclear cycle through the production of uranium. The 2003 ECITA Senate Inquiry into the adequacy of federal regulation of Jabiluka, Ranger, Beverley and Honeyymoon uranium mines **found a pattern of underperformance and non-compliance** in the sector.³

In September 2011 following the multiple nuclear reactor meltdowns at Fukushima, the UN Secretary-General called on Australia and all uranium producing nations to conduct "*an in depth*

³ 2003 Inquiry into Environmental Regulation of Uranium Mining
Senate Environment, Communications, Information Technology and the Arts References Committee
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Completed_inquiries/2002-04/uranium/index

assessment of the net cost impact of the impacts of mining fissionable material on local communities and ecosystems". A month later Dr Robert Floyd, director-general of the Australian Safeguards and Non-Proliferation Office of the Department of Foreign Affairs and Trade confirmed *"that Australian obligated nuclear material was at the Fukushima Daiichi site and in each of the reactors."*

Australia continued to sell uranium to TEPCO, the operator of the Fukushima reactors, despite known incidents of falsifying safety records which came to light in 2003 and again in 2006. In 2007, there was a major leak of radioactive fuel following an earthquake in the region.⁴

Australia sent its first shipment of uranium to Ukraine in 2021 despite warnings through the JSCOT committee inquiry that securing Australian uranium in Ukraine in the case of conflict is not possible. Less than a year after that shipment, Russia invaded Ukraine and took control of the Zaporizhzhia nuclear reactor. We don't know if Australian uranium is in that reactor – but the point remains that despite the many treaties and regulations and obligations we cannot guarantee Australian uranium is not the source of pollution and contamination overseas.

There has been no review of the compliance and safety of uranium mines in the last 20 years – instead there have been leaks, spills, accidents and serious security issues involving Australian uranium overseas. Before changing protections and prohibitions in our National Environmental laws there should be a serious review of how our regulations are enacted and the safety of operations involving nuclear material across Australia.

We understand a new safety regulator will be established,⁵ which may supersede some of the existing plans and measures. There is very little information available, and the arrangements and delineation of powers and responsibility are convoluted and unclear. We advocate that any regulation of nuclear issues should be retained within the Department of Environment and additional resources and capacity be built up through the Environmental regulators to ensure the highest standards of environmental protection against the impacts of radiation.

We are deeply concerned at moves to limit regulation of nuclear powered submarines to the Department of Defence, an agency which lacks transparency and is often mission focused. It is critical that the regulatory agencies whose objectives are to protect the environment and public health have oversight of the assessment, monitoring and compliance of any nuclear technology and materials to ensure that both the environment and public health are protected. The Department of Defence does not have these objectives.

Weapons Grade Material

We understand that one of the intentions of the AUKUS proposal is for Australia to own and operate nuclear powered submarines and that the proposal is for Australia to acquire second-hand US nuclear powered submarines. The High Level Nuclear waste generated from these reactors have the potential to be weapons grade fissile material.

⁴ <https://timshorrock.com/2011/03/14/tepcos-shady-history/>

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<https://www.minister.defence.gov.au/media-releases/2023-05-06/new-agency-and-new-regulator-deliver-australias-nuclear-powered-submarine-program>

We are opposed, at the highest level, to Australia in any form acquiring weapons grade material and the responsible agency for that waste being the Department of Defence. This is both dangerous and irresponsible and has the potential to escalate tensions with our neighbours, undermine the Non-Proliferation Treaty and set us on a path to establishing a nuclear weapons program.

It is important to be clear that while the current government may not have nuclear weapons ambitions, a future government might. We note that at the WA Liberal Party conference earlier in 2024 there were members of the party, including former Liberal candidates, who were actively pushing for a nuclear weapons⁶ policy within the party. If this vocal support for nuclear weapons exists it is not un-imaginable that there is a much stronger and quieter push within parts of government for this.

The current government made a commitment to sign the Treaty on the Prohibition of Nuclear Weapons ahead of the 2021 election but has made no moves to sign the Treaty in Government. Instead we have seen the government pursue the AUKUS treaty and the acquisition of nuclear technology and materials through the Department of Defence.

We urge the JSCT to review and consider the implications of the AUKUS pact on the NPT, the TPNW and the Rarotonga Treaty and consider the far reaching consequences of AUKUS under a range of future political and international diplomatic scenarios. We strongly advocate that the regulation of nuclear aspects of the AUKUS Agreement be retained by ARPANSA and the DCCEW.

There is no social licence

While there has been no broad inquiry on nuclear submarines, there have been several inquiries into nuclear power, most of which pre-date the AUKUS proposal. There have also been many inquiries and committee hearings into different aspects of AUKUS. On nuclear power specifically there are very recent expressions of public opposition through joint statements and submissions to inquiries. One of the strongest demonstrations of this opposition was through a joint statement in 2019,⁷ which over 50 organisations representing millions of Australians signed on to, including peak unions; environment organisations; and health, faith and First Nations groups.

Since Peter Dutton announced a nuclear power energy policy in 2024, more and more institutions, experts and organisations are speaking out against nuclear power. There is no social licence for nuclear power in Australia. We have not been able to have the same public and rational conversation about nuclear powered submarines as both major political parties have locked in behind the plan. We are of the view that there is broad and growing public opposition to AUKUS as well.

Nuclear submarines are at the military end of the nuclear chain which is where most opposition to the nuclear industry stems. The military applications of nuclear materials are broadly opposed, because whether it is an atomic bomb or depleted uranium weapons or a nuclear submarine which becomes a military target, they all pose unacceptable and long-term risks to the environment and public health. These risks are of the highest order – they are described by the UN and architects of the Treaty on The Prohibition of Nuclear War as having catastrophic humanitarian consequences. This proposal risks escalation of nuclear tensions.

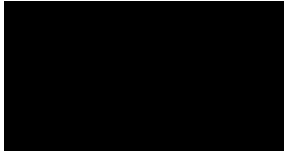
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<https://www.watoday.com.au/politics/western-australia/senior-wa-liberal-calls-for-australia-to-become-nuclear-weapons-power-20240308-p5fazr.html>

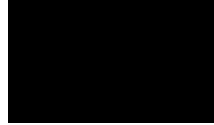
⁷ Don't Nuke the Climate Australia – website: <https://dont-nuke-the-climate.org.au/joint-statement/>

It's our strong view that Australians do not want nuclear submarines. We have seen no evidence that there is any social licence for acquiring or hosting nuclear submarines or committing such a huge amount of public funds towards this proposal.

Yours Sincerely,



Mia Pepper
Co-Convenor
Nuclear Free WA



Liam Lilly
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Nuclear Free WA