

## **Submission to the Joint Standing Committee on Treaties**

### **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**

#### **From Stop AUKUS WA**

**Stop AUKUS WA** is a collective of representatives from six organisations and several hundred individual community members. We campaign for a peaceful and nuclear free Indo Pacific and oppose the drive to war on China.

We oppose the very concept of this Agreement for the following main reasons:

- Acquisition of fast-attack nuclear powered submarines is not the appropriate way to ensure Australia's security in the Indo Pacific – they are meant for deployment far removed from Australia's shores for intimidatory purposes, in this case aimed at China.
- Should conflict break out, HMAS Stirling Naval Base, located in the Perth Southern Metropolitan Area, would become a prime target, being the main southern hemisphere base for US nuclear submarines.
- There are public health, worker safety and environmental concerns about the impact of a potential radiation breach on the urban areas adjacent to this naval base (and prospective facilities) which have not yet been adequately addressed.
- The public funds committed to AUKUS would inevitably detract from funding available for other components of the Australian economy, including funds and resources to combat our greatest security threat, climate change.
- Australia's sovereignty in international affairs would be jeopardised by the conditions implicit in the acquisition of US nuclear-powered submarines.
- The original AUKUS agreement with the US and UK was conceived without public nor parliamentary debate, has been shrouded in secrecy and is without social licence. This agreement appears to perpetuate these same concerns.
- Similarly, the agreed AUKUS Optimal Pathway has led to the green light on the storage of low-level nuclear waste from the SRF-West foreign submarines, on Garden Island – without free, prior and informed consent of First Nations and in breach of the UN Declaration on the Rights of Indigenous Peoples Articles 29.2 and 30.1. This updated AUKUS agreement takes the same approach which is unacceptable.
- No permanent storage site for nuclear waste in Australia has yet been determined. To agree to the storage of nuclear waste – even the LLW from the SRF Rotations at HMAS Stirling – under these circumstances is irresponsible. In the event of a radiation incident, the Australian government could perhaps be found to be negligent and liable.
- As predicted by various defence experts, given the advances in AUKUS Pillar 2 technologies the submarines will likely be rendered obsolete prior to Australia even commencing to build the SSN AUKUS in Osborne and perhaps

even before the acquisition of the planned US Virginia Class submarines in the 2030's.

We believe this "understanding" requires full disclosure to the Australian people before any consideration should be given to endorsing this Agreement.

- Parallel to this Agreement, US President Joe Biden in his [letter to Congress](#) <sup>i</sup> on 7 August 2024 claimed AUKUS partners had also reached a "non-legally binding understanding...which reflects the governments' intended approach to certain articles of the agreement and provides additional related political commitments. The Understanding would become operative on the date on which the Agreement enters into force.

This Agreement on "Cooperation related to Naval Nuclear Propulsion" particularly raises concerns about the loss of Australia's sovereignty resulting from the intended acquisition of these submarines. The Agreement is clearly drafted to the advantage of the USA, and resultant disadvantage to Australia; and it would appear, drafted by the USA.

Our main concerns pertaining to the specific content of the Agreement are as follows:

- I. Some statements in the Introduction (pp 1-2) are incorrect:
  - a. "unmatched safety records". At least nine nuclear-powered submarines have sunk; decommissioned submarines are not dismantled due to absence of permanent storage facilities for their reactor fuel; a total of 789 nuclear safety events <sup>ii</sup> were recorded at HM Naval Base Clyde at Faslane and nearby Royal Naval Armaments Depot Coulport; UK has ceased public reporting of nuclear accidents since 2017.
  - b. "common defense and security will be advanced". The presence of a major US-dominated nuclear submarine base in Australia will make that base and surrounds a target in the event of conflict.
  - c. "without unreasonable risk to each Party's common defense and security," Makes Australia more vulnerable to involvement in war, elsewhere in Asia and on home soil.
- II. The Agreement provides opt-out clauses for the US and UK with one year notice (Article VIII B), if:
  - a. the Originating Party determines that such cooperation will not promote and will constitute an unreasonable risk to its defense and security (Article I). The US backlog <sup>iii</sup> in its nuclear submarine building program, and thus the ability to supply Australia with nuclear submarines as so far envisaged, provides one such opt-out option.
  - b. an Originating Party considers Australia to have breached any of the many conditions that this Agreement places on it (Article VI H).

- III. The Originating Party will set the price for any Special Nuclear Material sold to Australia, as there is no commercial market for this (Article IV C).
- IV. Article IV H legitimizes open ended transfer of funds from Australia to support the nuclear submarine industrial facilities of the US and UK. Already approximately \$AUS 4.7 billion has been committed to each. No scope for refund is indicated if the intended sale of submarines or Special Nuclear Materials to Australia does not eventuate. These are grants rather than loans or down payments on actual transfer of Materials and Equipment.
- V. Australia must indemnify the US and UK against any liability for defects, damage, injury resulting from the Materials or Equipment supplied. That is, if there is some fault in the Material supplied, or accident attributable to it, Australia alone would need to pay any resultant costs (Article IV E).
- VI. The Originating Parties “do not provide any indemnity, do not warrant the accuracy or completeness of such information, and do not warrant the suitability or completeness of such information” (Article V). If information about the Material or Equipment supplied to Australia is incomplete, such as for security reasons, then Australia cannot seek redress.
- VII. If the Agreement ceases, Australia would be required to return to the US or UK Material and equipment supplied by them, without any compensation for what has already been paid for.
- VIII. Although it is specified that Australia is responsible for the disposal of spent fuel and radioactive waste resulting from transfer of submarines to it (Article IV D), the concurrent handling of radioactive waste from UK and US submarines, with whom Australian submarines share base facilities, is not ruled out. It unequivocally should be.
- IX. The Originating Parties control the level of security required to be observed by the Recipient Party (Article VII). Thus the submarines would not be under Australian sovereign control. Further, Annex A II.C indicates that the US effectively determines security arrangements, even for UK-Australia interactions.
- X. If Australia is not to breach the Nuclear Non-proliferation Treaty (NPT) then the sealed nuclear reactors provided by the US or UK cannot be transferred to Australian sovereignty. Thus the nuclear-powered submarines acquired by Australia can never be entirely under sovereign Australian control as the reactor component of them would remain under US or UK sovereign control.
- XI. Although the Agreement specifies regulations against Australia acquiring nuclear weapons, it does not preclude US and UK nuclear submarines visiting Australia from carrying nuclear weapons. Australia maintains a “don’t ask, don’t tell” understanding<sup>iv</sup> with the US regarding visits to, or stationing in, Australia of nuclear weapons capable US military assets. If these assets did carry nuclear weapons Australia would be in breach of the NPT and South Pacific Nuclear

Free Zone Treaty. It is not credible to maintain a policy of pleading ignorance.

- XII. Under Article VII F, it is unclear as to the meaning of “classified information”. Surely Australia would need to report to the IAEA the radioisotopes it is dealing with and thus their identity and quantity should not be “classified information”. If clearance from the US or UK is needed in reporting to the IAEA then this sanctions foreign interference with Australia’s relations with the IAEA. Such information also needs to be made public for safety reasons.

X111. Article IV D makes no mention of the land on which the proposed activities are to occur, which is unceded First Nations country. To our knowledge there is no “free prior and informed consent” from First Nations Custodians of any projected activity sites covered under this Agreement. This is in contravention of Articles 29 and 30 of the [UN Declaration on the Rights of Indigenous Peoples](#)<sup>v</sup>.

## Recommendation

The overall recommendation of Stop AUKUS WA is that AUKUS, as so far framed, should not proceed. However, if it is to proceed then any Agreement such as the one proposed would need considerable revision, to remove unfair provisions applied to Australia. These include opt-out clauses only applicable to the Originating Parties, financial transfers, indemnities required, loss of Australian sovereignty over submarine use and disregard of First Nations ownership of the land on which the proposed activities are to be conducted. It must also elaborate on some points of omission, like to what extent Australia would be responsible for radioactive waste emanating from visiting US and UK submarines and disclose the mysterious “understanding” between AUKUS partners agreed upon in signing of this Agreement.

Dr Chris Johansen

**Stop AUKUS WA**

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<sup>i</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/08/07/letter-to-the-speaker-of-the-house-and-president-of-the-senate-on-the-agreement-among-the-government-of-the-united-states-of-america-the-government-of-australia-and-the-government-of-the-united-king/>

<sup>ii</sup> <https://www.bbc.com/news/uk-scotland-glasgow-west-46863064>

<sup>iii</sup> <https://johnmenadue.com/the-potential-us-withdrawal-from-aukus-must-be-an-election-issue/>

<sup>iv</sup> <https://www.abc.net.au/news/2023-02-15/defence-wont-confirm-if-us-bombers-carry-nuclear-weapons/101978596>

<sup>v</sup> <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-people>