



## Friends of the Earth Adelaide

c/- Conservation Council of SA, 111 Franklin St, Adelaide SA 5000

adelaidefoe.org | facebook.com/foe.adelaide | e: [adelaide.office@foe.org.au](mailto:adelaide.office@foe.org.au)

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### JSCOT Inquiry into “Agreement ... for Cooperation related to Naval Nuclear Propulsion”

#### Responses to Senator Dorinda Cox’s Questions on Notice

**1) In Friends of the Earth’s submission, you talk about UNDRIP and the disposal of waste. What are your concerns regarding First Nations land, nuclear waste, and free prior and informed consent?**

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by an overwhelming majority in the United Nations General Assembly on 14 September 2007. At the time, Australia was one of only four countries to vote against it. Each of those four countries subsequently reversed their opposition, with Australia endorsing UNDRIP in 2009.

We have great respect for the decades of work by indigenous people and their supporters throughout the world that formed the basis of UNDRIP. Unfortunately, the Australian Government has not followed through on its commitment by taking steps to implement UNDRIP into law, policy and practice. It is therefore still necessary to draw the Parliament’s attention to the principles of ‘free, prior and informed consent’ enshrined in the Declaration.

There have been repeated attempts to foist both international and national nuclear waste dumps on the lands of Australia’s indigenous people, without seeking their ‘free, prior and informed consent’. In each case the Traditional Owners have successfully opposed the proposals. UN Special Rapporteur on Toxics and Human Rights, Marcos A. Orellana, in his End of Mission Statement after his 28 August to 8 September 2023 visit to Australia, commented on the most recent case, in which the Barngarla people in South Australia mounted legal resistance to the siting of radioactive wastes in their lands. He applauded the decision of the Federal Government to not appeal the Federal Court’s judgment that found apprehension of bias in the decision-making process. One lesson from this case that he noted was ‘the need to align all regulations and practices with the standards of the UN Declaration on the Rights of Indigenous Peoples, including the right to free, prior and informed consent’.<sup>1</sup>

Indigenous people bring an indispensable perspective to the problem of nuclear waste. Aboriginal people have lived in Australia for around 65,000 years. That’s nearly three times the half-life of plutonium 239, one of the most significant long-lived radioactive isotopes in

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<sup>1</sup> End of Mission Statement by the UN Special Rapporteur on Toxics and Human Rights, Marcos A. Orellana, on his visit to Australia, 28 August to 8 September 2023  
[https://www.un.org/sites/un2.un.org/files/eom\\_-\\_08\\_sep\\_2023\\_-\\_final\\_.pdf](https://www.un.org/sites/un2.un.org/files/eom_-_08_sep_2023_-_final_.pdf)

spent nuclear fuel. It will take a lot longer than that for the plutonium to decay to the point where it is no longer dangerous, but the timeframe is at least comparable to the time that Aboriginal Australians have been caring for Country. In contrast, European Australians have caused massive environmental damage in the couple of hundred brief years that they have been here.

We should respect the wisdom that comes from the enduring relationship between Aboriginal Australians and their land. An important first step is to uphold their right to free, prior and informed consent in any decisions relating to the disposal of nuclear waste, which remains toxic for tens of thousands of years.

## **2) Have Friends of the Earth had contact with Pacific Island governments or organisations regarding their views on AUKUS and its implications?**

Friends of the Earth Adelaide has not contacted Pacific Island governments or organisations directly. Larger groups, such as the Australian Conservation Foundation and the International Campaign to Abolish Nuclear Weapons, have probably done so.<sup>2</sup>

## **3) If yes, are we going to end up at odds with our neighbours?**

AUKUS will put Australia at odds with the Treaty of Rarotonga (South Pacific Nuclear Free Zone Treaty) to which Australia is a signatory. Nations of the Pacific are concerned about this.<sup>3</sup>

According to Article 5, “Each Party undertakes to prevent in its territory the stationing of any nuclear explosive device,” where the word ‘stationing’ is defined as “emplantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment”. Article 5 also states, “Each Party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters.”

Two questions arise in relation to the issue of whether or not AUKUS and related military cooperation between the AUKUS partners breach Article 5 of the Treaty of Rarotonga:

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<sup>2</sup> See, for example, ICAN report, *Troubled Waters: Nuclear submarines, AUKUS and the NPT*, July 2022 <https://icanw.org.au/wp-content/uploads/Troubled-Waters-nuclear-submarines-AUKUS-NPT-July-2022-final.pdf>

<sup>3</sup> (a) Daniel Hurst, ‘A four-decade-old Pacific treaty was meant to preserve the ‘peaceful region’. Now experts say it’s being exploited’, *The Guardian*, 19 November 2023 <https://www.theguardian.com/world/2023/nov/19/a-40-year-old-pacific-treaty-was-meant-to-maintain-the-peaceful-region-now-experts-say-its-being-exploited>

(b) ‘AUKUS is ‘going against’ Pacific nuclear free treaty - Cook Islands leader’, *Radio New Zealand*, 28 March 2023 <https://www.rnz.co.nz/international/pacific-news/486868/aukus-is-going-against-pacific-nuclear-free-treaty-cook-islands-leader>

- (1) Will nuclear weapons actually be brought into Australia?
- (2) If so, will they be 'stationed' in Australia according to the above definition?

Given that the US has a policy of neither confirming nor denying the presence or absence of nuclear weapons on its submarines, ships and aircraft, the answer to (1) is probably, "The Australian government will never know, let alone the Australian public." We take the view that if the government is unable to provide assurances that nuclear weapons are not being brought into Australia, we must, for the purpose of the Treaty of Rarotonga, assume that nuclear weapons are on board any nuclear weapons capable platforms that enter our territory (e.g. Virginia class submarines in Stirling WA and B-52s in Tindal NT). 'Strategic ambiguity' provides no defence under the Treaty of Rarotonga.

In regard to question (2), AUKUS proponents claim that the pact does not contravene the Treaty of Rarotonga because, even if nuclear weapons enter Australia, they will not be 'stationed' here. We take a contrary view: namely, that the definition in Article 5 is broad enough to conclude that, under the expanded rotation and basing proposed under AUKUS and related military cooperation arrangements, nuclear weapons brought into Australia could potentially be 'stationed' in Australia. To deny this possibility on the grounds of negative responses to the above two questions is to engage in specious reasoning.

Unless the matter is resolved in a court of law, or perhaps by the Consultative Committee established under Annex 3 of the Treaty, no doubt the status of AUKUS under the Treaty of Rarotonga will continue to be debated. However, even if a court, or the Consultative Committee, determined that AUKUS does not breach the letter of the Treaty, we would still contend that it breaches the spirit of the Treaty.<sup>4</sup>

Besides their concerns about the implications of AUKUS for nuclear disarmament and the Treaty of Rarotonga, some Pacific nations have also expressed concerns that "intensifying competition between larger countries created real risks for smaller Pacific nations."<sup>5</sup>

**4) In the Summary of Treaty and Associated National Interest Analysis document, it says that, "No public consultation has been undertaken due to the Agreement's relation to national security and operational capability". Do you feel that this is sufficient reason, or**

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<sup>4</sup> It would be interesting to see the response of the Australian government if a formal complaint under Annex 4 of the Treaty of Rarotonga were lodged by a State Party in regard to the alleged stationing of nuclear weapons in Australian territory. What would the Australian government do if the Consultative Committee ordered a special inspection of Stirling naval base or Tindal air base? What would the United States government do, even though they are not a party to the Treaty and it is not their territory? It boggles the mind, but it would be a perfectly reasonable response from the other Parties to the Treaty.

<sup>5</sup> (1) Stephen Dziedzic, 'Samoan prime minister says she understands Australia's push to obtain nuclear-powered submarines at Lowy Institute', *ABC*, 21 March 2023

<https://www.abc.net.au/news/2023-03-21/samoan-prime-minister-speaking-to-the-lowy-institute/102120860>

(2) 'AUKUS is 'going against' Pacific nuclear free treaty - Cook Islands leader', *Radio New Zealand*, 28 March 2023

<https://www.rnz.co.nz/international/pacific-news/486868/aukus-is-going-against-pacific-nuclear-free-treaty-cook-islands-leader>

## **an appropriate reason, to not conduct public consultation regarding the AUKUS work in Adelaide?**

Clearly it is not a sufficient or appropriate reason for not conducting any public consultation at all. We are particularly concerned about the lack of consultation on the implications for the safety of the people of South Australia, about the government's intentions regarding radioactive waste, and about the impact of AUKUS on the security of Australians. Consultations on these issues can and should be conducted in a manner that does not compromise military security.

During our presentation at the JSCOT hearing in Adelaide (18 October 2024), we demanded consultations along the following lines:

- We requested that public consultations be held specifically focusing on the safety risks facing South Australians due to the nuclear submarine project.
- We called for an independent inquiry into Australia's national security priorities, where security is defined broadly to include not just military security, but also human security – that is, including matters such as health, housing, climate change, environmental degradation, etc.. The inquiry should assess the impact of AUKUS on the security of Australians in the broadest sense.

In addition to consultations on these matters, public consultations should be held on the question of what will be done with the radioactive waste, including but not limited to spent nuclear fuel. These consultations should be conducted before the government commits us to an international agreement that will unavoidably produce such waste.

## **5) Do you think Australia's participation in AUKUS is consistent with our participation in the Non-Proliferation and Disarmament Initiative (NPT) that we signed up to in 2010?**

It is inconsistent in that AUKUS has the effect of weakening the NPT / IAEA safeguards regime. (Refer our written submission and oral responses to questions during the JSCOT hearing in Adelaide.)

## **6) If not, why do you feel it is incompatible?**

NPTI was established to support the Treaty on the Non-Proliferation of Nuclear Weapons' (NPT) review process. It sees itself as a 'bridge builder'.

The NPT has an in-built contradiction: namely, the distinction between the rights and obligations of the nuclear weapon states and the rights and obligations of the non-nuclear weapon states. The nuclear weapons states, in particular, have failed to uphold their end of the bargain. Nevertheless, with its near universal membership, the NPT is regarded as the cornerstone of the global nuclear non-proliferation regime.

The NPDI is made up of diverse nations, pursuing nuclear disarmament with varying degrees of sincerity, in support of a flawed treaty, which despite its flaws is a central component of the nuclear non-proliferation regime. AUKUS adds another layer of contradiction. To the extent that it weakens the NPT / IAEA safeguards regime, it is inconsistent with Australia's official posture of supporting the NPT. Of course, Australia's support of the NPT was already compromised by our reliance on the US nuclear umbrella.

If Australia really wanted to set an example for nuclear disarmament, it would cancel AUKUS, sign and ratify the Treaty on the Prohibition of Nuclear Weapons, and shift to a security posture that does not rely on the US nuclear umbrella.

Philip White  
For Friends of the Earth Adelaide  
28 October 2024