THE HON JULIE BISHOP MP

Minister for Foreign Affairs

The Hon Stuart Robert MP
Chair of the Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Mr Robert

Thank you for your Committee's consideration of the *Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy.*

Please find attached a copy of the Government Response to Report 167 of the Joint Standing Committee on Treaties: *Nuclear Cooperation – Ukraine.*

I plan to table this document in Parliament in the next week.

Yours sincerely

Julie Bishop

30 MAY 2017

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Australian Government

Australian Government response to the Joint Standing Committee on Treaties report:

Report 167

Nuclear Cooperation - Ukraine

[May 2017]

Government Response to
Report 167 of the Joint Standing Committee on Treaties:
Nuclear Cooperation - Ukraine

The Government thanks the Committee for its consideration of the *Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy*, done at Washington DC on 31 March 2016 ("the Agreement"), which was tabled on 12 September 2016. The Government provides the following response to the Committee's recommendation.

Recommendation 1

The Committee supports the Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy and recommends that binding treaty action be taken providing the Australian Government undertakes a proper assessment of risks, and develops and maintains a suitable contingency plan for the removal of Australian nuclear material if the material is at risk of a loss of regulatory control.

The Government welcomes the support of the Committee for binding treaty action and will take such action at an early opportunity.

Risk assessment

The Government agrees with the Committee on the importance of the matters raised in this recommendation. The Government has already carried out a thorough risk assessment as part of the process leading to negotiating and signing the Agreement. This included a comprehensive assessment of the security risks faced by Ukraine. The Government will continue to re-evaluate risks, including security risks, throughout the life of the Agreement. Various government agencies monitor the security risks faced by Ukraine and regularly update the Prime Minister, Foreign Minister and other national security ministers with assessments.

In response to the security situation, the Government negotiated explicit provisions in the Agreement designed to ensure high standards of nuclear security and to minimise any security concerns involving Australian obligated nuclear material (AONM) transferred to Ukraine. In addition to including assurances (common in all of Australia's nuclear cooperation agreements) that internationally approved standards of physical protection will apply (Article VI), the Agreement also allows Australia to review physical protection measures (Article VI.3) and the right to approve the facilities where AONM can be processed, used or stored in Ukraine (Article VIII, commonly referred to as a 'facility list'). Facility lists are an uncommon feature in Australia's nuclear cooperation agreements with non-nuclear weapons states; when included in an agreement a facility list provides added control over where AONM can be transferred and used. The combination of Articles VI.3 and VIII provides stronger mechanisms for reviewing security and limiting facilities than most of Australia's other nuclear cooperation agreements.

Contingency plan for the removal of AONM material

While the likelihood of a situation where AONM falls outside of regulatory control is considered low, contingency planning regarding the associated risks is an ongoing activity.

In the short term, any AONM in Ukraine will likely be provided in the form of Low Enriched Uranium (LEU) fuel assemblies. That means that AONM would be processed, enriched and fabricated into fuel assemblies in a range of other countries before being transferred to and used in Ukraine. Therefore any AONM in Ukraine affected by a loss of regulatory control would also likely carry multiple obligations from the country or countries in which processing, enriching and fabrication occurred, such as the United States, or the member states of Euratom. Australia would need to coordinate with these countries when determining how to respond to a loss of regulatory control.

The type of responses Australia, other countries involved in supplying nuclear fuel to Ukraine, and the wider international community would deploy in response to a loss of regulatory control would need to be both appropriate to the situation and proportionate to the risks being posed. There are a wide range of situation specific considerations to be taken into account. A loss of regulatory control due to internal Ukrainian Government failures is quite different to a security incident occurring near a nuclear plant due to the acts of other state or non-state actors. Each different situation has a different suite of mitigating activities that could be implemented by Australia and the international community when responding. Possible mitigations range from providing additional assistance and training – to prevent a loss of regulatory control – through to the removal of nuclear material.

The Australian Government negotiated a range of mitigation options into the Agreement designed to provide scope to resolve any incidents that pose unacceptable security risks:

- where unacceptable security risks also constitute material non-compliance with the Agreement, Article XVI of the Agreement provides the Australian Government with a range of responses, including negotiated corrective steps, suspension or cancellation of supply, and the right to have AONM returned; or
- where unacceptable security risks do not otherwise constitute material non-compliance with the Agreement, the Australian Government can use the facility list to limit the use of AONM to facilities where it is confident of Ukrainian Government control. The Agreement does not oblige Australia to provide nuclear material to Ukraine, and does not preclude the removal of AONM from a facility should a facility be removed from the facility list.

In recognition of the current situation, and to guard against some of the possible risks posed by a future loss of regulatory control due to a loss of physical control over the material, the international community has been working with Ukraine in an ongoing program to upgrade physical protection and security measures. Ukraine reports they have been directing significant efforts at strengthening physical protection, defence and practical training focused on anti-terrorism and anti-sabotage measures at its nuclear power plants. In particular the United States has been providing assistance under the auspices of the G-7 "Global Partnership against the spread of weapons and materials of mass destruction".

In the event of a security incident near a facility holding nuclear material, prudent security practices would dictate Ukraine take further steps to increase the level of physical protection and control. Additional assistance from the international community in the form of training, nuclear-related identification and surveillance equipment and transport logistics would also be amongst the possible responses should this occur.

In the unlikely event of another state taking effective control of a nuclear reactor on the facility list, the Government expects that state would likely want to account for, control and secure any nuclear material over which it has assumed control, in an attempt to not jeopardise its own nuclear industry.

In the unlikely event it became necessary to exercise the right to remove AONM from Ukraine, Australia would work closely with other countries involved in the supply of nuclear fuel to Ukraine to find a suitable destination for removing nuclear material. In exercising a contingency plan for removal, Australia would also consider:

- the status and form of the material (e.g. un-irradiated fuel, fresh spent fuel, cooled spent fuel);
    - noting the movement to any jurisdiction of fuel that has recently been in the reactor core would be very difficult; however, the fuel would have a high degree of "self-protection" against theft or sabotage due to high radiation levels;
- the practicalities and risks of transferring the material compared to the risks posed by securing the material in its current location;
- any third party obligations which require consent for removal from that third party;
- the country to which the AONM will be removed, which could be any one of several suppliers;
- if the AONM returned to Australia, any permissions required pursuant to relevant Australian laws.

Government Response to Additional Comments – Australian Greens

Recommendation 1
No binding treaty action be taken regarding the Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy.

The Government does not accept this recommendation. The Agreement includes the essential elements of Australia's policy for the control of nuclear materials, including stringent nuclear safeguards, safety, security, and accountability conditions. The Government considers that the Agreement will provide a number of benefits to Australia and is firmly in the national interest.