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Submission by the Department of Foreign Affairs and Trade and
the Australian Safeguards and Non-Proliferation Office to the
Senate Foreign Affairs, Defence and Trade Legislation Committee
on the Civil Nuclear Transfer to India Bill 2016

Nuclear safeguards

The Civil Nuclear Transfers to India Bill (“the Bill”) is part of the package of measures applying to the supply of uranium by Australia to India.

In 2008 Australia and other members of the Nuclear Suppliers Group (NSG) agreed to a framework for nuclear trade with India, including the application of an India-specific safeguards regime by the IAEA. Under related agreements made with India in 2009, the IAEA applies a robust safeguards regime to India’s civil nuclear fuel cycle, where Australian obligated nuclear material will exclusively remain. The measures in place to prevent the diversion of Australian uranium from the civil part of India’s fuel cycle are at least as strong as those in place for other export destinations. These include explicit commitments by India in a binding bilateral agreement with Australia, and robust inspection and accounting procedures enforced by the IAEA.

In a 2008 decision, the NSG accepted that nuclear trade would be possible with India on the basis of its commitments and actions in support of nuclear non-proliferation, though it is not a state party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). India’s commitments to support international non-proliferation efforts include continuing its moratorium on nuclear testing, separating its civil and military nuclear activities and accepting IAEA safeguards on the former. In the years since 2008, India has met these commitments. India has brought its Additional Protocol with the IAEA into force. India has maintained its moratorium on nuclear testing and it is working with Australia and others to promote negotiations on a Fissile Material Cut-off Treaty. As part of its separation of civil and military activities, India committed to designate 22 civil facilities for the application of safeguards by the IAEA. All 22 are now under safeguards. The United States, Canada, France, Japan, Korea, Russia and Kazakhstan, among others, have established nuclear cooperation with India on the basis of the NSG’s 2008 decision.

Australia decided in 2011-12 to commence negotiations on a civil nuclear cooperation agreement with India. This agreement was concluded in 2014. The National Interest Analysis tabled with that agreement noted that the Government would consider legislation to clarify the legal basis for uranium transfers to India. The Bill is the result of that consideration.

Foreign policy backdrop

Since the mid-2000s, India has been asserting a stronger regional and global role for itself as a large, democratic power in the Indo-Pacific. It has stepped up its security and economic links with the US and Japan, and with Australia which it sees as a partner with a common strategic outlook and a shared commitment to a rules based international order. Normalising its status in the global nuclear non-proliferation

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regime has been a central part of this shift for India. From around 2005, the United States led efforts to bring India into the non-proliferation mainstream.

Australia's relationship with India has changed fundamentally over the past five years. India has become a much more important partner for Australia in security and economic terms. Australia's defence and security ties with India have grown substantially and have considerable room to deepen. It is very much in Australia's interests to encourage greater, collaborative leadership by India in Indian Ocean and broader Indo-Pacific security. Steps taken by both the Australian and Indian Governments to negotiate and implement a bilateral nuclear cooperation agreement now form a centrepiece of Australia's new partnership with India. Australia and India have, for example, established an annual senior officials-level Australia-India Non-Proliferation and Disarmament Dialogue, which focuses on nuclear policy and also discusses broader arms control issues.

Economic potential

India represents a modest market for Australian uranium in the short term, but with huge growth potential. India's Department of Atomic Energy said recently that it is seeking to buy up to 1,500 tonnes of uranium from Australia over the next 5 years. Australia produces around 7000 tonnes of uranium ore concentrates each year. India currently has 22 operable reactors, with five under construction, 20 planned within the next eight to ten years, and a further 44 proposed. As new reactors come online from the early 2020s, Australia could expect to supply a good fraction of the 2000 tonnes that India will require each year.

Timely engagement in the Indian market would maximise the opportunity for Australian companies, as India progresses its ambitious plans to grow nuclear power to 25 percent of its energy by 2050. It will also help to power economic growth and poverty reduction in the world's fastest growing major economy. India's ambitious plans to expand nuclear energy generation are likely to make a valuable contribution to its pledged reduction in carbon emissions intensity.

Australia's treaty commitments

For Australia, both the NPT and the South Pacific Nuclear Free Zone Treaty (SPNFZT) include provisions in relation to the safeguards that should apply to uranium exports and other nuclear transfers. There is the potential for alternative interpretations of the relevant safeguards obligations. The Government wants to ensure through this Bill that there is no uncertainty under Australian law that could hinder uranium exports to India.

An argument has been made by some non-government organisations and individuals that Article 4 of SPNFZT requires that IAEA safeguards must apply to all of India's nuclear activities, as if it were an NPT Party, and one without nuclear weapons. The IAEA cannot apply such comprehensive safeguards in India while it retains nuclear weapons.

Elements of the Bill

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Australia expects to supply uranium to India. The transfer of other nuclear material and of nuclear-related material, equipment and technology is also possible under the terms of the Australia-India Nuclear Cooperation Agreement. The Bill therefore includes transfers of both nuclear material and nuclear-related items within its scope.

Approvals relevant to export of nuclear material and nuclear-related items are considered variously under the *Nuclear Non Proliferation (Safeguards) Act 1987*, the *Customs (Prohibited Exports) Regulations 1958* and the *Defence Trade Controls Act 2012*. To avoid doubt that exports of uranium or other nuclear-related material or items to India will be lawful, the Bill provides, if particular conditions are met, that decisions approving such transfers to India are taken not to be inconsistent with, or that the decision maker is taken to have had due regard to, Australia's treaty obligations relating to the safeguards that should apply in India. The conditions are that the Australia-India Agreement on civil nuclear cooperation and the 2009 India-IAEA agreements are in force, and that a decision maker must be satisfied that any nuclear material or nuclear related item will be subject to safeguards under the India-IAEA agreement, if supplied to a place in India.

These conditions reflect Australia's decision to supply uranium to India on the basis of the NSG decision and the safeguards that India and the IAEA have put in place to implement it, as well as the conditions in the Australia-India agreement on civil nuclear cooperation. The first two conditions can readily be verified by a decision maker. The third condition can be implemented through administrative procedures.

If the India-IAEA safeguards agreement is amended, the Minister must, by notifiable instrument, give notice of the amendment. It is very unlikely that the India-IAEA safeguards agreement would be amended in a way that would undermine the objectives of the Bill.