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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 27 August 2001

Members: Mr Andrew Thomson *(Chair)*, Senator Cooney *(Deputy Chair)*, Senators Bartlett, Coonan, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mr Byrne, Mr Hardgrave, Mr Haase, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Senators Bartlett, Cooney, Ludwig, Mason and Tchen and Mr Bartlett and Mr Haase

Terms of reference for the inquiry:

Treaties tabled on 7 and 21 August 2001.

WITNESSES

Committee met at 10.11 a.m.

BOUWHUIS, Mr Stephen, Principal Legal Officer, Office of International Law, Attorney-General's Department

CARLSON, Mr John Albert, Director General, Australian Safeguards and Non-Proliferation Office

LEASK, Mr Andrew Roger, Assistant Secretary, Australian Safeguards and Non-Proliferation Office

WESTALL, Mr Daniel John, Manager, Policy and Communications, Australian Radiation Protection and Nuclear Safety Agency

von BRANDENSTEIN, Mr Tony, Executive Officer, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

PATERSON, Mr Bill, First Assistant Secretary, International Security Division, Department of Foreign Affairs and Trade

SPILLANE, Ms Shennia Maree, Executive Officer, International Law Section, Department of Foreign Affairs and Trade

SULLIVAN, Mr John, Assistant Secretary, Nuclear Policy Branch, Department of Foreign Affairs and Trade

BRYANT, Mr Robin, General Manager, Energy Minerals Branch, Department of Industry, Science and Resources

HARRIS, Mr Jeffrey Milroy, General Manager, Mineral Access and Rehabilitation Branch, Department of Industry, Science and Resources

IRWIN, Mr Steve, General Manager, Science and Technology Policy Branch, Department of Industry, Science and Resources

McINTOSH, Mr Steven, Government and Public Affairs Division, Australian Nuclear Science and Technology Organisation

ROLLAND, Mr John, Director, Government and Public Affairs, Australian Nuclear Science and Technology Organisation

ACTING CHAIR (Senator Ludwig)—I declare open this meeting of the Joint Standing Committee on Treaties. Today, as part of our ongoing review of Australia's international treaty obligations, the committee will, hopefully in the time available, review seven treaties tabled in parliament on 7 August 2001. Specifically, we will take evidence on, firstly, the agreement with Argentina concerning cooperation in peaceful use of nuclear energy, the agreement with United States on nuclear transfers to Taiwan, and the agreements on nuclear safeguards with Hungary

and the Czech Republic. I welcome the representatives of government agencies and departments, the Sutherland Shire Council and non-government organisations to this hearing.

I call on representatives from the Department of Foreign Affairs and Trade, the Australian Nuclear Science and Technology Organisation, the Australian Radiation Protection and Nuclear Safety Agency, the Department of Industry, Science and Resources and the Australian Safeguards and Non-Proliferation Office to begin our hearing. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House or the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I do not want to limit you but, given the time available, could I ensure that we can at least use the time usefully in an opening statement? Who would like to start?

Mr Paterson—I will commence, with your permission, with a fairly short opening statement addressing all four nuclear agreements, for the sake of brevity.

ACTING CHAIR—Yes, thank you.

Mr Paterson—The committee has before it today four nuclear cooperation safeguards agreements. The agreement with Argentina relates primarily to the contract between the Australian Nuclear Science and Technology Organisation, ANSTO, and an Argentine firm, INVAP SE, to design and construct a replacement research reactor at Lucas Heights. The other three agreements before the committee have been negotiated in order to permit the sale of Australian uranium for use in Taiwan, Hungary and the Czech Republic.

I will explain the purpose and the contents of the agreement with Argentina first and then turn to the other three agreements. The agreement between Australia and the Argentine Republic concerning cooperation in the peaceful uses of nuclear energy follows the conclusion last year of the replacement research reactor contract between ANSTO and INVAP. The contract has established a relationship with Argentina in the field of nuclear science and technology. Argentina is a country with significant expertise and activity in nuclear science and technology and has a prominent role in international nuclear safety and non-proliferation matters. This relationship, which is already growing, entails scientific collaboration, new commercial links and cooperation between regulatory agencies. The agreement aims to facilitate and enhance this new relationship by creating a broad framework for cooperation and to provide an appropriate level of intergovernmental backing to the commercial arrangement between ANSTO and INVAP.

I draw the committee's attention to four benefits that the agreement will provide for Australia. Firstly, the agreement creates a framework for cooperation between Australia and Argentina in nuclear science and technology which will embrace scientific research activity, regulatory cooperation and new trade and investment opportunities. The agreement refers to fields in which such cooperation can take place and identifies the Australian and Argentine government agencies which are likely to engage in cooperative endeavours. This will assist important regulatory activities, including compliance with the Australian Radiation Protection and Nuclear Safety Act, and facilitate scientific collaboration with potential commercial spin-offs.

Secondly, Australia's nuclear safeguards policy requires that a document of treaty status be in place with any country to which Australian nuclear material is transferred. Although the construction of the replacement research reactor involves the transfer of technology to Australia, there may also be a need under the contract for spent fuel from the new reactor to be transferred to Argentina for conditioning and subsequent return to Australia in the form of waste.

The government's strategy for the management of spent fuel specifies that spent fuel from the replacement reactor will be reprocessed under existing contractual arrangements with the French firm COGEMA. However, the ANSTO-INVAP contract also contains contingency provisions under which INVAP may be obliged to arrange for the conditioning of spent fuel from the replacement reactor. These provisions could be invoked in certain circumstances where COGEMA's facilities were unavailable. The agreement will ensure that any such transfer of nuclear material between Australia and Argentina would be compliant with Australian safeguards policy and the non-proliferation commitments of both countries.

Thirdly, the agreement provides intergovernmental backing for the spent fuel contingency arrangements contained in the reactor contract. In article 12, the Argentine government undertakes to make appropriate arrangements on the request of the Australian government for the conditioning of spent fuel from the replacement research reactor. The Australian government undertakes to accept the return of all waste and other by-products of conditioning Australian spent fuel in Argentina. The article thus reflects the commitment of both governments to the implementation of the ANSTO-INVAP contract. This element of the agreement parallels arrangements which Australia has in place with France, Britain and the United States. Finally, the agreement will allow Australian producers to export Australian uranium to Argentina if they are able to secure supply contracts there. Although the opportunities for the sales of uranium to Argentina are currently relatively small, at least one Australian producer is interested in bidding for supply contracts there.

I now turn to the other three agreements presently before the committee. Australian uranium producers have been interested in obtaining access to the Taiwanese, Czech and Hungarian uranium markets for some years, and the government is pleased that appropriate arrangements have been reached which will lead to substantial new export earnings. Taiwan's market is one of the largest markets to which Australian producers do not presently have access. The government estimates that Australian producers can obtain up to 20 per cent of the Taiwan market, which is potentially worth about $15 million per annum given recent indications of improvement in uranium prices. The Czech Republic and Hungary also require substantial quantities of imported uranium, and we estimate that Australian producers could win 20 per cent of each market, worth in total around $A15 million per annum.

The government's policy for the export of uranium and other nuclear materials, first outlined by the Fraser government in 1977, provides assurances that exported uranium and its derivatives cannot be diverted to nuclear weapon or other military programs. It does this through a network of bilateral safeguards agreements applied by the Australian Safeguards and Non-Proliferation Office, ASNO, which supplements the International Atomic Energy Agency, IAEA, safeguards.

The agreements with the Czech Republic and Hungary closely resemble our 15 existing safeguards agreements and contain all elements of the government's uranium export policy. The contents of each agreement vary slightly because of the specific legislative and regulatory arrangements which apply in the Czech Republic and Hungary. Both countries are parties to the Treaty on the Non-Proliferation of Nuclear Weapons, the NPT, and are members in good standing of international non-proliferation regimes. Full-scope IAEA safeguards apply to all of their nuclear activities. The IAEA strengthened safeguards measures are already in effect in Hungary, and the Czech Republic has signed the necessary additional protocol with the IAEA and is working towards bringing it into force. As such, the sale of Australian uranium to the Czech Republic and Hungary is consistent with Australia's non-proliferation commitments.

Since Taiwan is not recognised by Australia as a state, it is not possible to conclude a safeguards agreement with Taiwan like those for the Czech Republic and Hungary. Instead, the government has made arrangements which replicate those which apply in other countries to which Australian uranium is exported. Australian uranium destined for Taiwan will be exported to the United States for enrichment before being transferred to Taiwan. In this way, Australian uranium will be covered by the safeguards agreement between Australia and the United States and agreements between the United States, Taiwan and the IAEA. Canada entered into similar arrangements in 1993. ASNO will track the movement of all Australian obligated nuclear material in Taiwan just as it does elsewhere.

As a party to the Treaty on the Non-Proliferation of Nuclear Weapons and the South Pacific Nuclear Free Zone Treaty, SPNFZ, Australia is obliged to supply nuclear material only to states in which full-scope IAEA safeguards apply. All nuclear activities in Taiwan are subject to IAEA safeguards, and Taiwan was quick to make arrangements with the IAEA to put in place strengthened safeguards measures. Although Taiwan cannot be a party to the NPT, it has given strong and clear commitments to nuclear non-proliferation and has declared its intention not to own, manufacture or use nuclear weapons. The government considers that Taiwan's non-proliferation commitments and the coverage of all of its nuclear activities by IAEA safeguards means that the agreement is consistent with Australia's treaty obligations. It is also important to recall that the proposed agreement concerning Taiwan is fully consistent with the terms of Australia's recognition of the People's Republic of China in 1972.

To conclude, I would say that the agreement with Argentina will facilitate the implementation of the ANSTO-INVAP contract and contribute towards the growth of the relationship between our countries in nuclear science and technology. It will confirm that all of these activities are fully consistent with Australia's nuclear non-proliferation policies and international commitments. The agreements concerning Taiwan, the Czech Republic and Hungary will allow Australian uranium producers to compete for new contracts. These three agreements are likely to result in new exports which could be in the order of $A30 million per annum. My colleagues and I would be happy to answer the committee's questions about all four agreements.

ACTING CHAIR—Senator Cooney has arrived, so I will hand over to him.

ACTING CHAIR (Senator Cooney)—Thank you, Senator Ludwig, and thank you for looking after the affairs of the committee. I apologise to the committee and to the witnesses for being late. The first formal thing we have got to do is put to the committee a request by Channel

9 to bring in their cameras and film the public hearing. Indeed, does anybody have any objection to that? There being no objection, we will comply with their request.

Senator LUDWIG—One of the matters that concerns me most is the process that is gone through in arriving at any treaty. I understand that you have undertaken a consultative process. There are two parts to that consultative process. Firstly, there is consultation with the organisations that you ordinarily consult with in proposing these types of treaties, and I understand that is through the JSCOT process. Secondly, there is wider consultation and, given the nature of these treaties, particularly the one with Argentina, some might say that they are viewed as part of Lucas Heights. I am not making that connection, but others might. How widely did you consult in relation to that treaty? If you prefer, someone else can answer that.

Mr Paterson—Thank you. I will call on my colleague, Mr John Sullivan, to outline that in detail. I just remind the committee that we have fully participated in the parliamentary inquiries into the Argentine reactor contract, so we have given testimony and answered questions to the parliament before on this issue. But that is only one element of that, and I will pass over to Mr Sullivan.

Mr Sullivan—I could say that there has been some public interest, particularly in the Argentine agreement, arising from its connection with the replacement reactor. We had a number of inquiries from public groups, and one or two groups did in fact discuss it with us in general terms in the last couple of months. We have, as a matter of routine, discussions with groups such as Greenpeace over non-proliferation issues, and the agreement with Argentina came up in one of those discussions.

Senator LUDWIG—Can I put it in the negative? You did not then consult peak environmental groups such as Greenpeace and others specifically in relation to, say, the Argentine, the Czech, the Hungary or the Taiwan treaties?

Mr Sullivan—No, we responded when we had inquiries from particular groups.

Senator LUDWIG—Why not?

Mr Sullivan—In accordance with the treaty making process that is laid down, it was notified, of course, to the standing committee and there were no requests when this information was notified. We have not taken consultations on a wider scale, I suppose, simply because, as Mr Paterson mentioned, we already had an extensive consultative process, particularly on the Argentine agreement.

Mr Paterson—Could I just expand on that to say that in the case of the other three agreements, in effect, we are simply expanding the number of countries to which Australian uranium producers can bid for uranium supply contracts, with the exception of the Taiwanese agreement, for which particular arrangements have to be made because we do not recognise Taiwan as a state. Nevertheless, all three agreements, aside from the Argentine one, were put in place with, in effect, the same provisions as our existing bilateral safeguards agreements, many of which are now long established, have been in operation for around 20 years, have been, I think, very effective and are no longer issues of widespread public contention in Australia.

Senator LUDWIG—Are all of our issues concerning peaceful operations and the use of nuclear energy in treaties such as these four in the same style or template, or are there arrangements outside of that which are not subject to a treaty?

Mr Paterson—Can I seek clarification on that? Are you specifically talking about arrangements for the supply of uranium?

Senator LUDWIG—Yes.

Mr Paterson—All Australian uranium is exported under bilateral safeguards agreements; none is not covered by such agreements.

Senator LUDWIG—Thank you.

Senator TCHEN—Mr Paterson, paragraph 11 of the NIA for the Argentina treaty says:

The Government's nuclear safeguards policy requires that Australia has in place a document of treaty-status with any country to which nuclear materials will be transferred.

Can you enlarge on that? What exactly are the safeguards?

Mr Paterson—I will call on my colleague the Director General of the Australian Safeguards and Non-Proliferation Office, Mr John Carlson, to give you a precise answer.

Senator TCHEN—I am more interested in the meaning of a 'document of treaty-status'.

Mr Paterson—I suspect he can outline that too.

Mr Carlson—Document of treaty status means an agreement which is binding in international law which establishes the conditions which apply to what we call Australian obligated nuclear material, nuclear material that is exported by Australia and nuclear material that is produced from the exported material. All of this is covered by a series of conditions which are given effect through treaty level agreements between Australia and any country that is supplied with Australian exported material.

Senator TCHEN—What is the difference between a treaty level document and a treaty?

Mr Carlson—There is no difference. In drafting this we were simply seeking to emphasise that this is a treaty. Some people are confused by what the word 'agreement' means, and we were simply trying to emphasise that we are talking here about a treaty which is binding in international law.

Senator TCHEN—So the safeguard policy actually specifies treaties.

Mr Carlson—Yes.

Senator TCHEN—Or does it specify a document of treaty status?

Mr Carlson—No. It specifies a 'legally binding agreement'; that is the language that is used.

Senator TCHEN—A government-to-government agreement?

Mr Carlson—Yes.

Senator TCHEN—I see. I just noticed that the next paragraph says:

At present, Australia has 15 bilateral safeguards agreements in place, covering 25 countries.

Why are there not 25 agreements, rather than 15 agreements, to cover 25 countries?

Mr Carlson—The difference in the numbers there reflects the fact that the European Union is a party to a single agreement. In the case of the 15 member states of the European Union, we have separate agreements with the United Kingdom and with France because of their nuclear weapons status, then we have an additional agreement with the European Atomic Energy Community—the entity that is known as EURATOM—which covers all 15 EU member states.

Senator TCHEN—One of the major concerns that a number of the witnesses who will appear later brought up in their written submissions is the question of the Lucas Heights replacement reactor and the treatment of the waste materials. Can you enlarge a bit on the spent fuel management aspects, Mr Paterson?

Mr Paterson—I will call on my colleague Mr John Rolland, the Director of the Government and Public Affairs Division in the Australian Nuclear Science and Technology Organisation, to respond on that point.

Mr Rolland—The spent fuel management strategy for the replacement reactor has been summarised in the licence application which ANSTO has lodged with ARPANSA to construct the replacement reactor. That licence application is a public document which is available on the ARPANSA web site. In essence, the spent fuel management strategy is in terms of a contract which ANSTO presently has with the French reprocessing company COGEMA for the reprocessing of non-United States origin spent fuel from HIFAR, the current research reactor. Those arrangements cover all of the non-US origin spent fuel arising from HIFAR until it ceases operation in 2005-06.

The contract does have provision also for the reprocessing of fuel from the replacement reactor, and that would be the way the fuel from the replacement reactor would be managed. In addition, in the contract between ANSTO and INVAP there are fall back arrangements such that, on the request of ANSTO, INVAP is required to arrange for the processing of spent fuel from the replacement reactor. That is written into the contract between ANSTO and INVAP, and those arrangements with INVAP for the processing of spent fuel from the replacement reactor are required to be carried out in accordance with Australian policy for the management of radioactive waste. In particular, the contract provides that any waste returned to Australia will be intermediate level waste and that there will be no processing or reprocessing of spent fuel in Australia. It also provides that there will be no long-term storage of spent fuel in Australia. In combination, these arrangements provide a comprehensive strategy for the management of the

spent fuel from the replacement reactor. If you wish to ask more detailed questions, I would be happy to respond. But those are the broad policy and procedures which are in place.

Senator TCHEN—Thank you, Mr Rolland. That does satisfy me. Mr Paterson, I would like to turn to the Taiwan treaty. This appears to be the first and only tripartite agreement of this nature. I understand from your initial presentation that because Australia does not recognise Taiwan as a state it is not possible to form a negotiated bilateral treaty, but I understand Australia does have government-to-government agreements in existence, both multilateral and bilateral, with Taiwan. Is that true?

Mr Paterson—That is correct. We have a range of arrangements with Taiwan of less than treaty status. They cannot be treaty status, because we do not recognise Taiwan as a state.

Senator TCHEN—That is exactly the point I raised earlier. What exactly is an agreement which is less than treaty status? What is treaty status?

Mr Paterson—Perhaps I could ask my colleague, Ms Shennia Spillane, to explain the precise legal difference between the two.

Ms Spillane—The basic difference is that a treaty or a document of treaty status, be it a traditional looking treaty or an exchange of notes at treaty level, is binding at international law where both parties consider themselves to be bound under the terms of international law. A document of less than treaty status is something like what we often refer to as memoranda of understanding or MOUs. They are other types of arrangements which are not binding at international law but which the parties have agreed will be morally and politically binding between the parties. That is the status of the arrangements that have been made, not at a government-to-government level between Australia and Taiwan but between the Australian Commerce and Industry Office and the Taiwan Economic and Cultural Office, so it is at an agency-to-agency level. Those types of less than treaty status arrangements, like MOUs, are not just made in the Taiwan context by any means; we make some at agency-to-agency level and some at government-to-government level with a whole range of other countries on issues which do not warrant or do not require a document that is binding at international law.

Mr Paterson—I will just add to that. You will appreciate, however, that any Australian obligated nuclear material that is exported to Taiwan will be covered under the United States-Australia bilateral safeguards agreement, which is of treaty level status.

Senator TCHEN—I take it that, between Taiwan and the United States, there will be treaty level documents covering that as well.

Mr Paterson—That is correct.

Senator TCHEN—Why is it that America can form treaty level agreements with Taiwan and Australia cannot?

Mr Bouwhuis—The United States entered into that agreement prior to their change of policy with regard to China and, in effect, they continued those treaty arrangements even post their change of policy with regard to China in 1979.

Senator TCHEN—Is it a matter of the United States domestic laws rather than international agreements?

Mr Bouwhuis—Other international agreements, but for the purposes of—

Senator TCHEN—No, I mean the United States ability to form treaties and agreements with Taiwan. Is it due to the United States domestic laws rather than other factors?

Mr Bouwhuis—There are domestic laws in effect giving those treaty level status. I think it is the Taiwan Relations Act—I can cite you the relevant provisions, if you like.

Senator TCHEN—Does this agency-to-agency agreement allow for the official exchange of emissaries?

Mr Paterson—Do you mean the posting of emissaries to particular countries or visits by emissaries?

Senator TCHEN—Visits and postings of official status.

Mr Paterson—Again, I will take advice from my colleague Ms Spillane on that. In the course of our normal trade relations and the following up of other arrangements we have with Taiwan, Australian officials do travel to Taiwan but not in their official capacities. I think that is how this is described, but perhaps I will ask Ms Spillane to comment on that.

Ms Spillane—Senator, can I just clarify this: are you talking in general about the other agency-to-agency arrangements that we make with Taiwan?

Senator TCHEN—And in this case in particular.

Ms Spillane—In this case in particular—

Senator TCHEN—No, generally as well. Lead on from the general.

Ms Spillane—In general terms, yes. If we have a less than treaty status arrangement on some matter with Taiwan that does allow for the exchange of officials and for cooperation between agencies, there is nothing to prevent that happening. It does not cover aspects such as posting or diplomatic status, if you like, of officials and it does not afford that to officials. The agreement, of course, is between us and the United States, and it is a treaty level agreement which creates obligations between us and the United States. Under that agreement, it requires that there will be an agency-to-agency level administrative arrangement, which is normal under all of our nuclear safeguards agreements. So between the Australian Commerce and Industry Office and the Taiwan Economic and Cultural Office there will be an agency-to-agency administrative arrangement for the implementation of the arrangements that that sets up. Mr John Carlson from ANSO is probably better qualified than I to talk about what would be in the detail of that administrative arrangement. It has not been concluded yet.

Mr Carlson—If I could expand on that: under our agreements there is a less than treaty level working document called an 'administrative arrangement' concluded between what are called the 'implementing agencies', the agencies that are responsible for implementing the agreement. In this particular case, there would be an administrative arrangement concluded between the Australian Commerce and Industry Office and the Taiwan Economic and Cultural Office, and that arrangement would designate my office, the Australian Safeguards and Non-Proliferation Office, and the Taiwan Atomic Energy Council, as the implementing agencies. The practical effect would be that my office and the Atomic Energy Council would exchange information and we would have the ability to visit Taiwan as necessary in pursuance of the operation of the overall arrangements.

Senator TCHEN—I see. So basically, your officers will be visiting Taiwan in their official capacity but as guests of the Taiwanese nuclear energy controlling agencies?

Mr Carlson—Yes. In a legal sense we would be acting as agents for the Australian Commerce and Industry Office because we cannot have direct government-to-government relations in a formal legal sense, but the practical effect would be a normal working relationship.

Senator TCHEN—I understand. I am not concerned about the actual working out of the carrying out of your task. It just seems an extraordinary contortion that an Australian government organisation and government need to go through to achieve this very simple commercial transaction with Taiwan, whereas the United States seem to be free of that through their domestic legislation arrangement. Is that a fair comment?

Mr Carlson—I think, as was explained before, the United States particular position has come about through the fact that their change of recognition of which is the government of China occurred some time after ours and, in the intervening period, various treaties were concluded, and these are given legal effect in the US through the Taiwan Relations Act. We do not have an equivalent to that.

I might say, too, that the process by which Australia has nuclear material in a third country covered by another agreement is not unique. The Australian policy allows that under particular circumstances—as does Canadian policy and United States policy. In our case, for instance, we have had in the 1980s Australian uranium enriched in Russia covered by the Australia-Sweden agreement and the Australia-Finland agreement. It was uranium enriched on behalf of utilities in those two countries, and the arrangement allowed Australian uranium to go into Russia under the cover of those other agreements on the basis that the material came out again. So this is quite similar in some ways.

Senator TCHEN—Mr Carlson, let me reassure you again: I am not concerned about the security of the nuclear material under this arrangement. I am just wondering aloud about the necessity for Australia to go through this contortion to achieve this fairly simple commercial transaction, whereas the United States, through their domestic law arrangement, are capable of doing it in a much simpler way. Mr Paterson, with respect to the 1972 recognition agreement with the PRC, my understanding is that all treaties provide for some way of review, initiated by one party or both. Is there no such provision in that 1972 agreement?

Mr Paterson—I would have to say that I am not an expert. We are talking about a completely different agreement—that is, the agreement between Australia and China providing for the establishment of diplomatic relations in 1972. I will ask my colleague if she can add anything to that. I would simply say that I think that agreement requires both parties to be willing to amend it. I think that would be highly unlikely to happen. I think that both major parties in the Australian parliament accept the 1972 agreement as a binding one on both sides. It provides for a one China policy.

Insofar as we are talking about the arrangements covering, as you put it, the rather contorted arrangements enabling us potentially to export uranium to Taiwan, I point out that we are not the only country in this situation. Canada, which has a very similar one China policy to our own, has an arrangement in place with Taiwan and has had for some years now, and it is very similar to what we are proposing in this case, and it works.

Senator TCHEN—I have one last question. Mr Paterson, going through the national interest analysis, I noticed that existing government policy is usually taken as given. Does the department ever undertake analyses of national interest in which the existing policy may be the subject of analysis to see whether it is still in Australia's national interest to follow the existing policy in the precise fashion or whether the policy needs to be made more flexible?

Mr Paterson—I think it is the job of officials always to advise their ministers on whether there are any changes they can foresee, or whether any changes in the international environment might necessitate changes in the existing government policy. Of course, we do that as officials. We see no reason at this point to seek a change. Probably you are getting back to the 1972 agreement, and I do not think any of us here are qualified to comment on that. But if you take the 1972 agreement on the establishment of diplomatic relations with the People's Republic of China as a given, then I think we consider the existing arrangements are a perfectly normal and sensible expression of policy there which would open the way to safeguarded exports of uranium to Taiwan.

Senator TCHEN—Yes, I understand that, Mr Paterson. I am also talking from the historical point of view that nothing is ever given.

ACTING CHAIR—We are getting a bit short of time, but would you be able to tell me what actual agreements are in existence between businesses in the various countries? We have been told about the contract to build the nuclear reactor in the Sutherland Shire—that is with a company from Argentina. What about Taiwan, Hungary or the Czech Republic—do we know whether there are any commercial agreements?

Mr Paterson—To the best of my knowledge there are no commercial agreements in place in the nuclear area between Australian companies and their counterparts in any of these three countries. Once these agreements are set in place, it would be open for Australian companies to enter into commercial negotiations with their counterparts in these countries with a view to concluding a uranium supply contract. To the best of my knowledge there are no such arrangements in place. There may well be contacts between those companies because, I imagine, they already have been out there exploring the market and probably have been for some time.

ACTING CHAIR—Can somebody tell me if there is a difference between, say, the contract written between the Argentine firm and the Australian Nuclear Science and Technology Organisation? If there is a difference between that agreement and the agreement between Australia and the Argentine republic, what happens? If Argentina wants to sue or the Australian company wants to sue, what happens?

Mr Bouwhuis—Are you asking about the difference between the domestic contract or the contract between the agencies and the treaty?

ACTING CHAIR—Yes.

Mr Paterson—Mr Rolland, do you wish to expand on that?

Mr Rolland—I will add a couple of comments and then I will ask my colleague Mr McIntosh to add to it. For instance, earlier Senator Tchen asked a question about the spent fuel management policies surrounding the replacement research reactor and I answered that question in terms of the commercial contract between ANSTO and the Argentine company INVAP SE. For instance, if you look at the agreement that is before us between Australia and Argentina, article 12(1)(a) provides the formal intergovernmental backup and reinforcement of those commercial arrangements, which I outlined earlier.

So, essentially, the intergovernmental agreement between Argentina and Australia, in terms of nuclear cooperation, is the framework on an intergovernmental basis which provides for assurances in terms of the transfer of nuclear materials and nuclear technology between our two countries. It provides a cooperative relationship between our two countries in the nuclear field and provides those binding intergovernmental agreements to back up, in this particular case, the spent fuel management arrangements, which we have entered into on a commercial basis.

ACTING CHAIR—Say you sued under 12(1)(a)—Australia sued Argentina or Argentina sued Australia. The governments are going to pay. The person who has really committed the breach is the company. What do we do about that?

Mr McIntosh—If the company breaches its obligations under the contract—that is a theoretical situation—ANSTO could sue them in an Australian court for breach of contract. The contract was concluded in Australia and we would sue them in the same way any other company would take action for breach of contract. On another level there are the international obligations, as well.

ACTING CHAIR—Say the company has just said, 'Look, we will do what we want and, if there are any problems to be tidied up, let the governments of both companies tidy them up under article 12.' What right would Argentina have to sue the Australian company or, more importantly, what right would Australia have to sue the Argentinean company?

Mr McIntosh—What action would be taken under the agreement would be a matter for government to determine.

ACTING CHAIR—No, it would not. Under the contract, which is the agreement—

Mr McIntosh—Under this agreement it is a matter for government.

ACTING CHAIR—I see what you mean. Right, under this agreement.

Mr McIntosh—Under the contract it would be a matter for ANSTO to resolve with INVAP and, of course, one of our legal options would be to take legal action to enforce the terms of the contract. That exists independently of this agreement. It is the same legal right which applies to any party to a contract.

ACTING CHAIR—That is the point I am making. How you enforce your contract is up to you but, if you do not enforce your contract, what does section 12(1)(a) do?

Mr McIntosh—As I read it, section 12(1)(a) says that the Argentinean government will not hinder the performance of the contract.

ACTING CHAIR—No, it does not say that. Section 12(1)(a) says:

... if so requested, Argentina shall ensure that such fuel is processed or conditioned ...

That has nothing to do with the agreement—it does not mention the agreement.

Mr McIntosh—It does not explicitly mention the agreement. The contract with INVAP provides that INVAP shall, upon request, make arrangements for the processing of spent fuel from the replacement reactor.

ACTING CHAIR—What I am putting to you is that this is an agreement between two governments, and yet the contract that underpins it is between what I take to be a private enterprise company in Argentina—

Mr McIntosh—They are owned by the equivalent of a state government, so I am not quite sure whether one would describe them as 'private'.

Mr Paterson—Senator, I think your question is best addressed by article 15 and article 17 of the agreement. Article 15 deals with arrangements in the event of noncompliance, and article 17 deals with dispute settlement arrangements in the event that the parties cannot agree with each other.

ACTING CHAIR—That article deals with:

... non-compliance by the recipient Party with any of the provisions of this Agreement, or non-compliance with Agency safeguards obligations by the recipient Party ...

Doesn't that deal with noncompliance and this agreement—with agency safeguards rather than noncompliance with the contract?

Mr Paterson—My understanding is that it deals with the provisions of the agreement in total.

ACTING CHAIR—Where is the contract mentioned? Where is the contract between the builder and the owner?

Mr Paterson—That would come under the separate agreement negotiated between ANSTO and INVAP which, as my colleague Mr McIntosh said, is actionable under Australian law in the event of noncompliance.

ACTING CHAIR—Yes, that is exactly the point I am making. You have both an agreement and a contract. What I am trying to get from you is the relationship between the two and what that relationship produces in the way of protection—not only commercial protection but generally, including nuclear protection and the lot.

Mr Paterson—I think the two have to be seen as separate issues. I have to say that I am not a lawyer and I might need to defer to my colleagues at the table, and to my ANSTO colleagues, but—

ACTING CHAIR—If they are two separate issues, then why have this agreement?

Mr Paterson—One is a commercial contract providing for the provision by INVAP of a new reactor to the Australian Nuclear Science and Technology Organisation. As I understand it, that is subject to Australian commercial law. This agreement is a treaty level agreement between the governments involved which provides for broader nuclear cooperation to take place. It is an umbrella, if you like, under which the other commercial arrangement would operate. The two are distinct: I do not think they are legally connected. Perhaps Ms Spillane might like to elaborate on that.

Ms Spillane—To back up what has been said, the contract and the agreement are two separate things which are enforceable in two different jurisdictions. The contract is enforceable in Australian domestic law and the agreement is enforceable in international law. In one sense, that answers the question of why we have the agreement.

The point on this particular issue of the agreement is to give a government-to-government level back-up for what the companies have already agreed to do under the contract. It almost gives us an extra insurance policy or a back-up. If INVAP were not to meet its obligations under the contract in relation to the spent fuel reprocessing particular matter, then ANSTO could—and should and would—take action against them under Australian domestic law. Were, for any reason, however, there to be a problem with that—that it did not work or was not appropriate under the circumstances—this provides a government-to-government level commitment from the Argentine government that the government of Argentina will make sure that happens. And so, under article 17 and the dispute resolution provisions of the treaty, we could then take action at the international legal level on the basis that the government has given us an undertaking it would make that happen.

ACTING CHAIR—If you sue under the contract, under domestic law you can get remedies in terms of perhaps injunctions or damages and what have you. Would that be right?

Ms Spillane—Yes.

ACTING CHAIR—Whereas, under the international law, you have really got no possibility of getting injunctions or damages, have you?

Ms Spillane—Article 17(2) provides at international law that if you ultimately ended up going to an arbitral tribunal which made a judgment on a case, that judgment may extend to recommendations about certain actions to be taken or compensation. Article 17(2) states that 'the parties have agreed that all decisions and rulings of the tribunal shall be binding on the parties and shall be implemented by them'.

ACTING CHAIR—Yes, but that is only insofar as they are willing to accept them, isn't it? You cannot get a tribunal actually awarding damages which, if they do not want to pay, can be enforced.

Ms Spillane—That is the central weakness of international law generally.

Mr Bouwhuis—The point to emphasise is that basically there is an international obligation to pay those reparations as a result of that arbitral decision, so those are remedies available at international law.

Mr HAASE—I do have a number of questions, but I believe they will be fleshed out during the morning. One is a particular point that may be addressed by this group with regard to the law and the constitution of Argentina rather than Australia. I note that the constitution of Argentina, at article 41(4), says:

The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.

If that is a fact, what sort of time restraint will there be on the signing of this by Argentina if what we are asking to take place as part of this agreement, especially article 12, is prohibited under their constitution?

Mr Paterson—I will ask my colleague, Mr Steve McIntosh from the Australian Nuclear Science and Technology Organisation, to address that.

Mr McIntosh—This issue was explored in great detail in the recent hearings of the Senate select committee. Their report records that there is a distinction at international law and in Argentine domestic law—and in fact also in Australian domestic law—between spent fuel and radioactive waste. There is advice from the Argentine Nuclear Regulatory Authority, who are the people who are in charge of regulating that aspect of the Argentine constitution, that the import of spent fuel for the purpose of processing and conditioning, with the resultant waste to be re-exported, does not breach that provision of the Argentine constitution.

We have also received advice from the Argentine government—both by way of the Ambassador's evidence to the Senate committee and by way of assurances, including at presidential level, to ministers—that the import into Argentina of spent fuel for the purposes of processing, the resulting waste to be exported, does not breach their constitution. The Senate committee found that ANSTO and INVAP were entitled to rely upon that advice. So I think that issue has been dealt with in the Senate committee.

Mr HAASE—I thank you for that. That is fine, as long as it is on the record. I question further the delay in this. We mentioned that we have 15 agreements with 25 countries, and at this stage Argentina is not part of that group. Can you briefly give me any reasons why we are just catching up with Argentina at this stage? I suspect that it has been motivated by their commercial arrangement in the construction of the Lucas Heights facility, but I wonder if there has been any other reason.

Mr Paterson—No, I think that is correct. The potential uranium market in Argentina is actually quite small. They only have a small nuclear research and nuclear power program. Hence there was no compelling reason for us to move to establish a safeguards agreement with Argentina until ANSTO and INVAP entered into a commercial arrangement for the supply of an Argentinean sourced reactor.

Mr HAASE—Is there an opinion on the stability of government in Argentina and the formulation of this treaty—the possibility of prospective Argentinean signatories to this agreement being of different ilk and perhaps not being so concerned with the wording of this treaty—at some point in the future? I refer to enrichment and military use et cetera.

Mr Paterson—Argentina is a party in good standing to the Treaty on the Non-Proliferation of Nuclear Weapons. It has safeguards agreements in place with the IAEA; it is working towards an additional protocol arrangement to strengthen those safeguards arrangements further. I suspect you are going back in Argentinean history to the period of military government when Argentina did have a suspect nuclear weapons program. It was not bound at that point by the NPT or other international arrangements. It now is. These are considered enduring international instruments at international law and by all governments. We have no reason to expect that Argentina would treat this in any other way.

Mr HAASE—How long has Argentina been a signatory to the NPT?

Mr Paterson—Since 1995.

Mr HAASE—What, in your opinion, would the most notable ramifications be of not proceeding with this treaty?

Mr Paterson—On whose part?

Mr HAASE—The most notable or deleterious ones for Australia and the Australian government.

Mr Paterson—What would the greatest downside for us be?

Mr HAASE—Yes.

Mr Paterson—We would not have in place the arrangements to enable, if need be, the export of spent fuel for conditioning in Argentina. We would not have the opportunity to sell uranium to Argentina. I think it is fair to say that it provides, as my colleague Ms Spillane mentioned, a fall back in the event that a civil action was unsuccessful and there was any dispute under this arrangement. But it is fair to say that there are some broader benefits in this for Australia in

terms of broader science and technology cooperation with Argentina which would be at risk if that framework did not exist as well.

Mr HAASE—Does it strike you—anyone may care to answer this—as unusual that an Argentinean company was contracted to build the Lucas Heights facility when there were no treaties in place, knowing full well that there would be a requirement for the reprocessing of rods et cetera? Is there a body of opinion that you might like to put on the record?

Mr Paterson—Not particularly. I think there is an established process to be gone through, and that has been gone through. We would do that if there had been another technology supplier with whom we did not have in place an appropriate nuclear cooperation agreement.

Mr HAASE—Presumably on a commercial basis, the Argentinean contractors were considered to be the best commercial arrangement, the most competent in building this facility at the right price—is that right?

Mr Paterson—That was not a decision for us.

Mr HAASE—I understand that.

Mr Paterson—That was a decision for ANSTO.

Mr HAASE—All right. Do you have any understanding of the returned waste material? Do you have any practical knowledge of that? I am interested in its state, its volume and its storage.

Mr Paterson—Again I would defer to my colleagues from ANSTO to comment on that.

Mr Rolland—If fuel is processed in Argentina—and I say 'if' because it is a fall back arrangement and, as I have indicated to you, ANSTO's primary arrangements are with the French company COGEMA—then the waste returned is required, under our contract, to be long-lived intermediate level waste which is capable of being handled in Australia. In the first instance the waste would be handled in the national store for long-lived intermediate level waste, and the preferred arrangements for it are in the process of being examined. There is a public discussion paper available in terms of that process at this point in time. The volume of the waste would be about 20 cubic metres over the lifetime of the replacement reactor.

Mr HAASE—What is the life of the reactor?

Mr Rolland—The operational life of the reactor would be perhaps 40 years.

Mr HAASE—There would be 20 cubic metres. We do not know at this stage the storage arrangement because that is under debate.

Mr Rolland—Mr Harris might like to comment on the present arrangements for the store for long-lived intermediate level waste in Australia.

Mr Harris—The government has announced a separate search for a site to build a store for the Commonwealth agency's long-lived intermediate level waste. This process was kicked off some years ago, but most recently, in August 2000, the minister announced the separate search for a site. As Mr Rolland has indicated, we have recently released a discussion paper on a proposed methodology for selecting a site for the store and we are now in the process of getting public comment on that. The earliest that we anticipate being able to identify a site for the store will be sometime in late 2002.

Mr HAASE—Okay. We do not know the form of storage either. I think you are referring to the site—and that is something that I wanted to know—but I was primarily concerned with the form, the technology that this waste was going to be converted to for storage. If that is an unknown then just say so.

Mr Harris—Mr Rolland might be able to give us a bit more detail on that, but essentially the waste arising from the reprocessing of the spent fuel rods will be returned to Australia either in concrete or in a glass matrix.

Mr HAASE—But you have not made that decision as yet?

Mr Rolland—It would be a combination of the two. The intermediate level waste would come back in two forms if it came back from Argentina. If that occurred, it would come back partly as a vitrified waste form and partly as concrete processed wastes.

Mr HAASE—Okay. Your original point, if I understood you correctly, was that it would only be a fall back position where France was not able to attend to the arrangements we have there, which is for no waste to be returned.

Mr Rolland—The arrangements we have in place at this point in time with France provide for the reprocessing of spent fuel from the replacement reactor. Waste does come back from those arrangements also to Australia in the form of intermediate level waste.

Mr HAASE—What form is that in?

Mr Rolland—That is in a similar form to what would come back from Argentina. It would be in the form of vitrified intermediate level waste.

Mr HAASE—Those are all the questions I have, thank you.

ACTING CHAIR—I think this is a very important issue. I was about to call Greenpeace Australia and perhaps Sutherland Shire. I was wondering whether the various departments could stay and listen to this.

Mr Paterson—I cannot speak for colleagues. Some of us have other commitments, but certainly some of our colleagues could be made available.

ACTING CHAIR—I think there are some very important, big issues here.

Mr Paterson—We understood that we would deal with your questions sequentially and that would be that.

ACTING CHAIR—If needs be we can get you back some other time. Would that be reasonable?

Mr Paterson—We could do that, yes.

ACTING CHAIR—If anybody can stay, it would be very nice for them to stay.

Mr Paterson—I would be happy for colleagues to observe the subsequent proceedings. But, as I understood it, we would give you testimony, deal with the questions that you had and then, in effect, you would move on to other witnesses.

ACTING CHAIR—All right. If we gave you copies of the transcript and passed any further questions on to you, that might be the best way of doing it.

Mr Paterson—We would certainly be happy to answer any other questions you might have.

ACTING CHAIR—Thank you very much for that. Thank you for coming.

[11.25 a.m.]

BAKER, Mr Stephen, Coordinator, National Campaigns Reference Group, Friends of the Earth Australia

CAMPBELL, Mr Stephen Roderick, Nuclear Campaign Team Leader, Greenpeace Australia/Pacific

MASON, Ms Leah Marie, Coordinator, Sydney People Against a New Nuclear Reactor

SWEENEY, Mr Dave, Anti-Nuclear Campaign Coordinator, Australian Conservation Foundation

McDONELL, Councillor Ken, Councillor, Sutherland Shire Council

ROBERTSON, Mr Timothy Frank, Consultant, Sutherland Shire Council

SMITH, Dr Garry, Principal Environmental Scientist, Sutherland Shire Council

ACTING CHAIR—Can I apologise because we are behind time, but I think you would all agree that it is a matter of some moment. I am trying to work out what we can do. I presume that everybody has got a fair deal to say; is that correct?

Mr Campbell—It would be.

Ms Mason—Yes.

Mr Sweeney—Yes.

Mr Robertson—I can say what I have to say very briefly.

ACTING CHAIR—Mr Robertson, you would do it lucidly, if I may say so, and to the point. From past experience, I say that with all sincerity. Do we need to come back another day or should we see what we can do now?

Mr Campbell—I think that what you have heard from the government authorities and departments and what you are likely to hear from this group will show you that you are hearing only the tip of the iceberg on this matter. I do not think it is a matter that you can deal with in a 2½-hour hearing. I am certainly happy to come back another day if you want to hear from some of the other groups, whenever that is convenient. I have prepared a reasonably lengthy presentation and there are an awful lot of matters that I would like to bring to your attention.

ACTING CHAIR—What about the Sutherland Shire Council?

Councillor McDonell—As far as the Sutherland Shire Council is concerned, we would be happy to come back another day if necessary to cover this issue because, as you can imagine, this is very important to us.

ACTING CHAIR—What about the Friends of the Earth?

Mr Baker—I am not actually our expert in this particular area, so all I have is a statement to read. I cannot really address the issue in much detail. We would certainly like the opportunity to be able to address it in much more detail with our particular expert.

Councillor McDonell—Can I just make another point. As far as Sutherland Shire Council is concerned, our barrister Tim Robertson, who is acting as a consultant for us, might not be able to come back another day. So we would certainly like our views, with the support of Mr Robertson, to be heard today.

ACTING CHAIR—What about the Sydney People Against a New Nuclear Reactor?

Ms Mason—In terms of my ability to zip up and back from Sydney, I guess my preference would be to speak today if possible. But I think that the issues are quite involved and I would make shift to be available if that is required.

ACTING CHAIR—What about the Australian Conservation Foundation?

Mr Sweeney—We see this issue as very important and have a detailed submission. We would be happy to come back at another time to facilitate the committee's consideration.

ACTING CHAIR—What sort of reaction am I going to get from everybody if I played favourites to a certain extent and asked Mr Robertson to make his presentation?

Ms Mason—I have no issue with that.

Mr Campbell—That is fine.

Senator TCHEN—Can I ask Ms Mason and all the gentlemen: are your concerns solely with the treaty with Argentina?

Ms Mason—Yes.

Mr Baker—I have got issues on some of the other treaties, too.

Senator TCHEN—Chair, perhaps we ought to hear Mr Baker at an early stage as well.

ACTING CHAIR—All right. There is somebody from the Friends of the Earth who could come back, isn't there, Mr Baker?

Mr Baker—We would certainly prefer to have our particular expert in this because he would be able to answer your questions. All I can really do is read the statement that he has sent me in regard to the issues.

ACTING CHAIR—Well, then: everybody is in trouble and we have got you into this trouble; I understand that. But the two people who are under pressure are Mr Robertson and Ms Mason.

Mr Campbell—I would not be available between 10 and 30 September because I will be overseas.

ACTING CHAIR—All right. Mr Robertson, you say you are going to be succinct in your usual fashion.

Mr Robertson—Yes.

Councillor McDonell—Senator, can I kick off first for Sutherland Shire Council. Our shire is to be host to the new nuclear reactor which is going to produce nuclear waste, which will probably be twice the rate that is currently produced in a reactor that exists at this time. We have got serious doubts about the proposal because of the lack of safe proposals to deal with the nuclear waste, and that is all set out in our submission, so I will not go over that.

We are concerned that this treaty is just a fall back if the existing arrangements fall through which it appears could be the case in Europe. We understand that there is a move to ban reprocessing in Europe, which is going to cause problems for ANSTO in relation to their current arrangements. We do not know what guarantees the treaty provides regarding reprocessing of waste in relation to the capacity of Argentina to deal with that waste, particularly given that we do not know what fuel type will be used, and that raises concerns which we have also outlined in our submission.

We are concerned about the legal status and whether this is simply an attempt to subvert the Argentinean constitution, which you have already heard about this morning: the prohibition of nuclear waste being imported to that country and what will happen if someone challenges the treaty and is successful. We consider that the current proposals for waste management are totally inadequate and, in fact, mediocre. The treaty does not allay our fears at all in this regard.

The possibility that ANSTO has accepted INVAP as a preferred tenderer based on the presumption that INVAP would accept the waste from the new reactor for reprocessing, even though the Argentinean constitution prohibits the importation of radioactive waste is of major concern to us. I am concerned about what I have heard here this morning about the waste coming back into Australia. I do not think it has all come out fully; I just make this point. I understand that none of the waste sent overseas so far for reprocessing has been returned to Australia as yet. Secondly, the contracts for that will require that the waste that is returned to Australia will have exactly the same level of radioactivity as it had when it left this country. I will hand over to Tim now to talk on our behalf.

Mr Robertson—The bottom line is that this agreement may never be approved by the congress of Argentina, which is their federal parliament—Argentina is a federation—because article 12 is contrary to a constitutional guarantee.

ACTING CHAIR—In Argentina?

Mr Robertson—Yes, so there is a real question as to whether the entry into this agreement would be futile on the part of Australia, and I suppose a second policy issue arises, and that is whether Australia ought to be making agreements with other countries which are fairly obviously in breach of that other country's constitution.

The way it works in Argentina is this: unlike the Australian constitution there is a list of express guarantees. One of those guarantees is a guarantee against the importation of radioactive wastes, and that guarantee is made in the context of a provision, which more generally protects the environment. Under the Argentinean constitution, any person may challenge any executive act or parliamentary act that is contrary to a guarantee. In other words, there is an open legal standing provision in the Argentinean constitution which can be invoked at the point of agreement or at the point of taking action to implement an international agreement if that agreement runs contrary to a guarantee.

The third thing that needs to be understood—

ACTING CHAIR—The agreement that we are talking about there is between Argentine and Australia?

Mr Robertson—Correct, yes.

ACTING CHAIR—Not the contract?

Mr Robertson—No. That agreement takes effect in Australia upon its signature under our law, but it cannot affect rights and obligations of Australians unless it is implemented by legislation. The position is different in Argentina. Upon approval of a treaty, it takes effect as part of the law of Argentina and is, in fact, a superior law to the laws made by the parliaments in Argentina. So a treaty in Argentina has direct legislative effect and is superior to the laws of Argentina, but is inferior to the constitution and in particular constitutional guarantees.

So, in Argentina, there is a hierarchy of laws. There is the constitution that is at the peak of the hierarchy, treaties and then laws made by the national and the provincial parliaments, pursuant to the federal republican system of government adopted there. So there is a requirement for the parliament to approve treaties before they take effect. The reason for that requirement is that the treaty has effect in municipal law in Argentina upon its approval. The approval signified by the parliament of Argentina, called the congress, has to be an absolute majority of both houses of parliament. And after an agreement has been reached by the executive government of Argentina with a foreign power, the treaty must be submitted to the Argentinean parliament within 120 days. This treaty has not been submitted, I am advised, to the Argentinean parliament. If it were so submitted, it might not be approved. If it is not approved, it will never enter into force in Argentina. So Australia has to be well aware of these

roadblocks, if you like, that exist in Argentina. But the most important roadblock of all is section 41 of the constitution, which is the guarantee against importing radioactive waste.

Let me tell you something about how that arose. As you know, Argentina was the subject of military government for many years and then there was a quiet revolution and it is now a democracy. In 1993, there was a series of constitutional conventions in Argentina. There were two conventions—a popular convention and a drafting convention—

ACTING CHAIR—In 1993?

Mr Robertson—In 1993 and 1994. As a consequence of those conventions, the Argentinean constitution underwent significant alteration. Whereas before it had guarantees written in the language of the 19th century—it was originally adopted in the 1850s—now it has guarantees written in the language of the liberal human rights approach to constitution making in the 1990s. So it has a series of guarantees, and in fact it literally adopts as part of the constitution the International Covenant on Civil and Political Rights, for example. So it does a number of very radical things. So we have to see the constitution as an instrument that was essentially reworked in 1994. One of the guarantees was of environmental health. That is found in section 41. It says:

All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law.

So in that phrase, there is essentially the principle of ecologically sustainable development—which Australia adopted as a nation in 1990 after the intergovernmental agreement on the environment with the states in 1988—which has been followed as a policy of the national government ever since. But the next subsection says:

The authorities—

and that means the executive governments of Argentina—

shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education.

Then it says:

The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.

So it is in that context that the guarantee appears, and it is a guarantee of a fundamental nature. The way the constitution of Argentina works is that the parliament can neither make laws nor approve treaties that are contrary to such a constitutional guarantee, and a treaty—because the stream cannot rise above its source—cannot, by accepting an obligation on behalf of Argentina, overcome or undermine a guarantee in the Argentinean constitution.

If you go back to the hierarchy of laws with the constitution at the peak of the hierarchy, nothing in this treaty could undermine that guarantee. But, more importantly, there is an obligation to implement the environmental article, article 41. It is a breach of the constitution

for the national government of Argentina not to implement that article. Section 43 of the constitution gives open standing rights to anyone to enforce it.

How is this a breach of the constitution? Spent fuel arisings from a nuclear reactor using silicide fuel, which is the fuel proposed to be used, cannot be reprocessed. All it can be is conditioned. The distinction between reprocessing and conditioning is an important one. Conditioning of waste occurs in industrial facilities all the time. All that conditioning is is getting the waste ready for disposal. Sometimes it involves melting the waste and encasing it in a solid form. If it is in a liquid form it involves using particular methods, adding to that waste so it can be more compact or more easily disposed of and sometimes it is necessary to separate wastes into hazardous and non-hazardous components. That has very great significance for industry in Australia because the cost of landfilling hazardous waste is infinitely greater than the cost of landfilling what is called solid or non-hazardous waste.

The conditioning of waste is something that happens in factories all the time. That is all, as I understand it, that INVAP is capable of doing. INVAP is the Argentinean party that has entered into a contract with ANSTO to build the nuclear reactor. As we understand it, the Argentine nation has no capacity presently to reprocess silicide waste. If that is the case, the only reason for importing the waste to Argentina is as waste, not as something that could be beneficially reused or recycled. In that case, this obligation in article 12 of the agreement is directly contrary to article 41 of the Argentinean constitution.

There is an argument, however, that spent fuel, if it can be reprocessed—that is produced in radioisotopes that can be reused in other fuel with a very large percentage of the spent fuel then going to waste—is itself not waste. In fact, in 1997 the nuclear powers entered into a treaty relating to the disposal of spent fuel and of radioactive waste. In that treaty spent fuel in itself is treated as a beneficial product, not as waste, until it has been reprocessed. However, that treatment in international practice is not binding on the Argentinean courts and probably would not control the meaning of the word waste in the Argentinean constitution. But I draw your attention to the fact that there is an international practice that does distinguish between spent fuel and waste. However, it makes that distinction only where the spent fuel is capable of being reprocessed. As we understand it, this fuel is not capable of being reprocessed. Any description of conditioning as reprocessing would be false.

The upshot is that article 12 of the agreement, which is an unusual article in a safeguards treaty, and has been specifically drawn with the disposal of spent fuel in mind, is in my opinion contrary to the Argentinean constitution. The agreement as a whole may not be approved by the national parliament of Argentina with article 12 in it. If it is approved by the national parliament, any person in Argentina can challenge it in the courts immediately, without having to wait five or 10 years for the waste to arrive.

ACTING CHAIR—Thanks very much. Ms Mason, did you want to say something and then we could perhaps go to questioning you and Mr Robertson?

Ms Mason—I appear before you in my capacity as coordinator of the Sydney People Against a New Nuclear Reactor. I represent 294 people who I am in regular communication with about issues indirectly or directly concerning the proposed replacement reactor. Given what we have heard this morning about the complete lack of public consultation about those implications,

which include the current and standard practice of transporting wastes through the city streets to the port facility without due notification and without what I consider to be adequate security, we are concerned about the implications that this treaty holds for the people of Sydney. We are concerned about the lack of consultation that has gone on leading up to this. That is essentially the basis of my concern.

With that in mind, I express to the joint committee that we feel that discretion would be better served by awaiting a more thorough investigation of the implications for the very large community which will be affected should this treaty go through and should the fall-back position of conditioning in Argentina and/or reprocessing become available to ANSTO, given that there are prohibitions on reprocessing of silicide fuel, which is the scheduled matters for the first operations of the replacement reactor. There are prohibitions on reprocessing of that fuel—just in the beginning part of that—regardless of what happens in terms of bans on reprocessing. There is an in-principle agreement, according to ANSTO, but I would not rely on that in terms of being an internationally binding agreement. Briefly, that is what I had to say. I thank you for allowing me to say it.

ACTING CHAIR—Does anybody on the panel want to ask Ms Mason or Mr Robertson any questions? With due respect to Mr Sweeney, Mr Baker, Mr Campbell, Councillor McDonell and Dr Smith, I am sort of pushing you aside at the moment while the others come in. I hope you do not nurture a grudge as a result of that. Would you like to ask any questions?

Senator TCHEN—I wonder whether Councillor McDonell's view was the only concern that the council needs to express. Did his submission represent the total of the council's submission?

Councillor McDonell—My submission represents—

Senator TCHEN—No; Mr Robertson.

Councillor McDonell—Mr Robertson is the barrister representing our council. Certainly his submission supports our council's written submission we have already submitted.

Senator TCHEN—And do you have other aspects that you wish to speak on?

Councillor McDonell—You have got our written submission and I will be happy to answer any questions on it. There is one point I might make later. It will not take long.

ACTING CHAIR—Perhaps I did not make this clear. Mr Robertson and Ms Mason have difficulty getting back this week, so I thought we would get their evidence and concentrate on that.

Senator TCHEN—I was wondering whether Mr Robertson's submission was the sum total of the Shire of Sutherland's submission. It appears I was wrong.

Councillor McDonell—We have lodged a written submission to the committee.

Senator TCHEN—I have a quick question, Mr Robertson. There is a question over whether Argentina will ratify the treaty.

Mr Robertson—There is a question that, if it does, (a) whether it will be approved and (b) whether, if approved, it will survive attack in the courts.

Senator TCHEN—Seeing that this is a bilateral treaty, it does not really matter if there are concerns about our treaty here, because if Argentina does not approve it then the treaty is null and void.

Mr Robertson—Yes, but we have got the problem—

Senator TCHEN—What is the objection?

Mr Robertson—We have got an Argentinean company that is contracted to perform works both in Argentina and in Australia relating to a nuclear facility and we have no safeguard agreement in place. That may place Australia in some difficulty under its existing safeguard arrangements. We are inviting a group of Argentinean contractors to enter Australia, who will no doubt have subcontractors from other countries as well, to build a nuclear facility in Australia and to handle nuclear waste in doing so. That raises safeguard concerns for which there should be a bilateral arrangement with Argentina. One would have thought as a matter of policy Australia would ensure that there is some bilateral safeguard arrangement in place. Perhaps the way to go about it is to delete article 12. If you deleted article 12, you would have an agreement between Argentina and Australia that would be effective for safeguard purposes but would not strike the legal problems that I have outlined.

Senator TCHEN—Thank you. I understand that.

Mr HAASE—There are a million questions. Where to start? Mr Robertson has focused me somewhat. If article 12 was removed from the treaty, I would have thought that there would generally be a greater degree of criticism because there would be no article covering a fall back position for the French treatment and reconditioning of rods and so forth. Can you elaborate on how you would see this treaty working—and working in every sense—without article 12?

Mr Robertson—It works because it protects both nations and their government authorities in the work of construction and operation of the ANSTO reactor so far as waste arisings are concerned. The problem in Argentina is that it cannot condition the wastes without amending its constitution, and I assume that is an unlikely or improbable thing. One would have to ask why Argentina was selected in a contractual sense by the Australian government agency to perform something which is open to significant doubt. If Australia wanted some assurance in relation to its waste, then it could adopt the ESD approach, and that is to deal with its waste when and where it arises; in other words, conditional reprocess the waste in Australia rather than export it. If Australia wants to develop a nuclear facility, which inevitably involves the production of high level or intermediate level and long lasting waste, then it should have the capacity technologically to treat that waste within Australia. My background is that I have worked as a public lawyer specialising in constitutional and environmental law, and from that background I have difficulty with anyone opening an industrial facility of any kind, or a research facility—and this is part research and part industrial—without the capacity to treat its own waste.

Mr HAASE—Yes, and I appreciate your candid comment about not being an authority on nuclear reactors, or whatever, but I am not convinced that the quiet amendment of this treaty to remove article 12 would be the end of the issue. Call me a sceptic if you like, but I do believe that the removal of article 12 would focus attention on the government's reluctance to make provisions for a fall back position, given that the arrangements currently in place in France failed, and I believe we would be focusing additional criticism on the handling of this treaty arrangement by the government.

I am also led to conclude that, to a certain extent, much has changed in Argentina since 1995. I have no evidence except that the constitutional amendments and redrafting that occurred in 1993 and 1994 are, quite obviously, prior to the 1995 agreement of the non-proliferation treaty. How, in practical terms, might the Argentinean government propose to be part of this treaty, presuming that there has been a bilateral arrangement to this date and that all parties are aware of the inclusion of article 12. It surprises me to see that we are this far down the track without there being some formal comment.

Mr Robertson—The difficulty is that there was a case last year involving a ship carrying nuclear waste going through Argentinean waters, and the passage of the ship was challenged.

Mr HAASE—Do we know the nature of that waste and if it was perhaps vastly different to the waste that is being proposed?

Mr Robertson—I do not think it was.

Mr Campbell—It was high-level waste returned from Europe to Japan, being carried by the nuclear transhipment company Pacific Nuclear Transports Ltd.

Mr HAASE—Can we be technically correct in differentiating between that waste and the waste proposed from the new Lucas Heights situation?

Mr Campbell—Essentially it is the same sort of waste, because it arises from the processing of spent nuclear fuel.

Mr Robertson—If it is high level, one assumes that it has radioisotopes, which are capable of being extracted.

Mr HAASE—One assumes this, but I wonder if, after informed debate, it would prove to be so.

Mr Robertson—I think one can only look at the record of the Argentinean courts, and I am advised by the Argentinean lawyers we have retained that the record is not explicit about this question. The court there assumed that, because it was radioactive waste which eventually would be disposed of whether or not it was capable of further recycling or reprocessing, it was in breach of section 41 of the constitution and the court issued an injunction on that basis. I suggest your question—which is really, 'Why has the Argentinean government gone down the track so far as to enter an agreement, when we say there is a question arising concerning its legality?'—can only be answered by reference to the policy of the Argentinean government, which is to encourage the export of nuclear technology developed indigenously within

Argentina. I am not here to criticise that policy; I am just giving legal advice as best I can within the context that I explained. The people on the political side of things can no doubt answer the political part of that question.

Mr HAASE—And would surely need to do so.

Mr Robertson—Yes, but can I say this: there is no doubt Argentina has set up institutions internally which are reflective of what we have here with ARPANSA and ANSTO et cetera. It has, as you rightly point out, entered the safeguards order of discourse, and it has commenced implementing the structures that the International Atomic Energy Agency recommends that countries that handle nuclear materials implement. It has taken steps to do that, but there is a point where there is a line drawn in the sand by the constitution. There is no doubt that this is not a bit of smoke thrown up by environmental groups or opponents of nuclear energy; it is a real problem.

Mr HAASE—I make the point again—and this is quite surprising, given that this article 12 is still in here—that there has been extensive negotiation to this point in time and yet article 12 is still there. I have asked the question of departmental people and they have given a different answer, so I dare say there will be further debate.

Ms Mason, I know next to nothing about your organisation, so I confess that up front. But the immediate situation that comes to mind—knowing that all things nuclear promote passionate debate, as have many things in the recent past, for instance, regarding transmission towers for mobile phones—is the nimby concept of, 'We appreciate all the benefits and we must have them, but not in my backyard.' I just wonder if you could further explain to me—and I do not mean 'defend yourself'—why your cause is a just one.

Ms Mason—There are a few articles there that I can elaborate on. You have not heard of SPANNR because the vast majority of Sydney is unaware that there is a replacement research reactor planned for them. Public consultation on this has been minimal.

Senator TCHEN—Come on, Ms Mason, that has been in the news for the last however many years.

Mr HAASE—Even Western Australians have heard of it.

Ms Mason—Yes, but Sydneysiders have not, and Sydneysiders have not been given access to this information in many of their languages.

Councillor McDonell—And the Western Australians would not have it.

Ms Mason—The Western Australians have decided not to have it. We are not talking about nimbyism, because SPANNR is not just about not having one in Sydney; it is about not having a new nuclear reactor. The people who are a part of SPANNR are of the opinion that we have had 40 years to come up with better answers to these problems. The benefits that we have gained by having a nuclear reactor are within several years—in most cases they are able to be dealt with in a way which is safer and less expensive than are currently proposed by this research reactor proposal. One or two aspects are not currently covered by technology which is already available

in Sydney and, pending its ability to be used for these kinds of purposes, we are looking at the kind of situation where money put into a reactor actually prevents coming up with technology that will serve all the purposes that have been mooted and thrown around rather passionately.

If we do not start investing in these things now, we are actually consigning 2,500 generations—if you look at the longest-lived radioactive waste—to a really interesting situation whereby we have, say, a magic cup which does a few good things, but there are a lot of very interesting and problematic consequences involved with usage of it. Say I attempt to hand this on just four generations, with all of the warnings and the consequences of handling, knowing that every generation it will have changed and that more study needs to be done about how it will affect those who are then going to handle it. Now, extrapolate that and take that several thousand generations on. What kind of responsibility are we showing in being involved in an old technology and handing that on as a legacy?

Our main concern is that we have the responsibility to make use of the last 40 years of information in a discreet and circumspect way. We are no longer in a position to say, 'Well, it is a bit dangerous because of terrorism or other kinds of stuff. We're not going to tell everybody everything about it'—but claim that that constitutes public consultation. No-one is in a position to make determinations about this because not everybody—in fact, very few people—has seen this proposal in its entirety.

I am not impressed with the process that has been put in place. We have heard from a bunch of government officials that all the things that are required to put in a nuclear reactor are not yet in place—we will make this decision in February, potentially, about building one. The decision about the siting of any kind of waste dump—that is just the long-lived intermediate waste which, as far as we are concerned, is a euphemism in that America considers spent fuel rods to be high-level waste—

Mr HAASE—I do not believe that we are talking about spent fuel rods though, are we?

Ms Mason—We will be eventually. If this treaty is signed, we will be.

Mr HAASE—Well, we may be, but I do not believe, Ms Mason, that you can make technical comment about that. The intention is to store waste as a result of the reconditioning of fuel rods—that is my understanding.

Ms Mason—Yes.

Mr HAASE—We are agreed on that in this debate.

Councillor McDonell—Can I comment on this please? As far as we are concerned, the Sutherland Shire Council and the shire have had the charge of nimbyism directed at us, because we have had a nuclear reactor in our local government area for the last 40 or 50 years. There are a couple of issues I would like to take up. I was not going to comment on those today, because our council has made extensive submissions to the parliament through the various committees that have heard evidence in relation to this matter. I will make available our latest submission to the last Senate committee that looked into this, plus an alternatives paper that we have had prepared. We are not just opposed to a nuclear reactor at Lucas Heights; we have gone into the

question of new technologies that would be available to provide the sort of medical services, et cetera, that it is claimed this reactor is required for. I will make that available as well. We have made that available to the government and to other people.

One point I would like to make is that a question was raised earlier about the life of the new reactor. Some 40 to 50 years was mentioned and it was also mentioned that the waste will come back in certain forms. The nuclear waste starts off as spent fuel from the reactor. That nuclear waste is transported away from the reactor to be reprocessed and then brought back in another form to Australia for storage. I make the point I made earlier: the amount of radioactivity that leaves there will be exactly the same level as that which comes back to Australia for storage. That spent fuel will have a short half life—and I think this is more important than the life of the reactor—of hundreds of thousands of years. I have raised that with ANSTO and they have not questioned that. My understanding is that that material will not start to break down until that period of time. There is a real intergenerational equity thing here that has to be dealt with and recognised.

As I said, I did not come here to talk about those issues today because I am simply dealing with the treaty aspects of this, but I think the point needs to be made about that. I will make some information available to the committee, if you like, about our earlier submissions. There are such things as reference accidents that could occur; such things as the reference reactors, which were chosen by the tenderers to back their submissions. I have not gone into those matters because they have been dealt with elsewhere in other committees. But if we are going to get into this question of the waste from the reactor—what is going to happen to it, where it is going to go for reprocessing and then be brought back to Australia after reprocessing—I think that is terribly important and it has to be taken into account in considering this treaty.

As I said to start with, the processes that they are attempting to put in place to deal with the nuclear waste are mediocre. There are several attachments to our submission, one of which, I might point out, from Alan Martin of Alan Martin Associates in the United Kingdom, actually recognises that the case has been made for the new reactor. However, it goes on to point out a lot of deficiencies in the EIS that were raised. One of those goes to the adequacy of the plans put in place to deal with the nuclear waste. There is currently no site selected to deal with what I consider high-level waste. We go through all these terms of intermediate-level waste, high-level waste and all those sorts of arguments—

Mr HAASE—It is very confusing, isn't it?

Councillor McDonell—It is waste that kills you.

ACTING CHAIR—Does the committee want the material that Councillor McDonell—

Mr HAASE—I think any contribution is beneficial.

ACTING CHAIR—Thanks very much for that, Councillor McDonell. We will have that.

Ms Mason—I just want to go back to that. I just want to make sure that the committee is aware that for 40 years Lucas Heights has been a storage site for spent fuel rods and, if this treaty does not go through and if COGEMA chooses not to be involved because of various

international agreements or because it is already prohibited processing of silicide fuel elements—which, as I said, is scheduled for first use—then what we are looking at is storage on site until something can be set up. That has to be considered. We will be storing spent fuel rods.

Mr HAASE—So your final word is that you advocate no such construction of a facility in Australia?

Ms Mason—I think it would be a waste of money and a waste of the information we have received over the last 40 years. I would say it was irresponsible.

Councillor McDonell—Irrespective of what is decided to be done in dealing with this waste, it has been clearly set out in the EIS documents that the waste is going to stay at Lucas Heights for between nine and 10 years before it is moved. That, as far as I am concerned, is contrary to the undertakings that were given about it being stored there only during the operational period. This waste should not be stored in that facility, as far as I am concerned, close to a city like Sydney and close to urban populations.

ACTING CHAIR—Senator Ludwig, did you have some questions?

Senator LUDWIG—I actually wanted to hear everybody's submissions first. I have Whip's duty that is going to beat me as well. I have taken the opportunity to write some questions down and I can make them available to you.

ACTING CHAIR—Did you want to ask any questions of Mr Robertson or Ms Mason?

Senator LUDWIG—I have written those down.

Senator BARTLETT—Mr Robertson, is there any conditioning of nuclear waste done in Argentina at the moment?

Mr Robertson—We understand that they do not presently have the facility to do so. They have an experimental area, which I think is run not by INVAP, the contracting party, but by the Argentinean nuclear authority. There is a process which is presently secret that is subject to patenting, in which conditioning will take place. We do not believe that the Argentinean government will have an operating facility for conditioning until 2004.

Senator BARTLETT—The extra submission you provided today talks about conditioning rather than reprocessing. Is that distinction crucial in terms of the constitutional issues you have raised?

Mr Robertson—It is important. I do not know whether it is crucial. It is still uncertain, and it is a gamble that obviously the Argentinean government is prepared to take. It is still uncertain whether the Argentinean courts will make that distinction which is made, as I explained, in some international instruments regulating the trans-boundary shipment of spent fuel rods and radioactive waste. The point is simply this: if they are conditioning only, what they are doing is simply getting existing waste into a form that is easier to dispose of. It must be entering Argentina as waste. If, on the other hand, they are reprocessing by seeking to recycle the fuel rods by

extracting isotypes for future energy needs, then there is an argument that they are not importing the fuel rods as waste.

I have to say that in the Greenpeace submission there is a paper written by a distinguished professor of constitutional law—I think from the University of Buenos Aires—who has concluded that the importation of spent fuel for reprocessing would also be a breach of section 41 of the constitution. The advice I have from the firm that we have retained in Argentina, partners of which were formerly the partners of Baker and McKenzie in Argentina, and hence they would be a leading law firm in that country, is that the professor whose advice was sought by Greenpeace, and has been made available to the committee, is regarded in Argentina as the leading authority on the constitutional law and the environment. I am not an Argentinean practitioner. I prepared this advice in consultation with Argentinean lawyers, but some considerable respect should be given to the advice by the professor cited by Greenpeace on that question.

It would be foolish of me to state authoritatively, because I cannot, that waste that enters Argentina for reprocessing is radioactive waste. It is likely, given the context in which this prohibition appears as a guarantee of environmental health, that it will be read broadly. It was, after all, made five years after the Basel convention that dealt with non-radioactive hazardous wastes where the problem had arisen under the Basel convention of the definition of waste not extending to wastes that would be recyclables, in other words.

The makers of the Basel convention added schedules to the convention specifically naming or nominating recyclables such as aluminium dross as the subject of the Basel convention to extend the meaning of waste there. So I think that the context in which the words 'radioactive wastes' occur in the constitution would compel an Argentinean court to give it a broad meaning and would include recyclables such as spent fuel. In a physical sense most of that spent fuel, if it is to be reprocessed, is waste. There is only a very small amount of that fuel that is then capable of beneficial reuse. We would consider it, if we were administering an environmental protection law in New South Wales, the state from which I come, as waste and, in fact, when we recycle waste we call it waste recycling, but you are right to point out there is a definitional problem there.

Senator BARTLETT—I would like to look at some of the other treaties as well as just the Argentinean one. I have one other question on this specific matter, and I guess on the contractual arrangements as well, in terms of what mechanisms are in place to ensure the arrangements are met and followed, whether there are any mechanisms there to follow up on things like that?

Mr Robertson—The difficulty is that the contract itself has not been disclosed. There are parts of it which have been made available to the parliament after much effort on the part of a Senate committee, so the contractual measures would only bind INVAP. The safeguards agreement binds the nation of Argentina, the executive government. We understand, however, that INVAP will not be doing the reprocessing or conditioning, whichever it is; it will be done by an agency of the Argentinean government.

The international obligations are binding as a matter of international law, which means that the country that has the larger army generally is able to have its way, but I think it was pointed

out a little earlier by the legal adviser to the department of foreign affairs that the concept of binding obligations in international law is essentially elusive and really depends on the circumstances. There is an arbitration clause in the agreement. The effectiveness of nuclear arbitration clauses is something you simply could not even guess at because to the best of my knowledge there has never been an arbitration under such a clause.

If it was a commercial trading agreement I could tell you what the effectiveness of the arbitration clause would be, but there has been no experience at all of arbitration. For very many years, international nuclear regulation was not worth the paper it was written on because the obligations were expressed so broadly, if they imposed obligations at all. It has only been in the last three or four years that obligations have been expressed with certainty and precision in international nuclear instruments.

Senator TCHEN—Ms Mason, can you tell the committee what you understand a nuclear reactor to be—your understanding?

Ms Mason—My understanding of a nuclear reactor is a facility in which a positively charged neutron is targeted at a fuel rod made up of various matters, depending on the type of fuel rod, but generally with a form of uranium, high enriched or low enriched, which sparks a reaction via the neutron, breaking up the uranium atoms and spreading further positively charged neutrons across into the reactor, which then break up more uranium atoms. I think essentially this is the way that the sun operates. That is my understanding of what a nuclear reactor does. This research reactor will operate in that way, and this is also the way that, as far as I am aware, a power reactor would work. The heat produced by this produces steam, which is then converted into power. There is, essentially, not very much difference in terms of the way a reactor operates between a power reactor and a research reactor. The difference is in scale, and then in the use of the heat which is produced.

Senator TCHEN—In that case, which aspect of the nuclear reactor does your group object to?

Ms Mason—Which part?

Senator TCHEN—Yes.

Ms Mason—We object to the part which involves the disturbance of uranium to the point where it threatens the environment that people live in, and thereby the people that live in it.

Senator TCHEN—The radioactive isotypes of uranium decay naturally as well.

Ms Mason—Absolutely. Generally they decay underground, and they decay away from people.

Senator TCHEN—I hope you are not saying that it is out of sight, out of mind?

Ms Mason—No, I am definitely not. What I am saying is that I am quite broadly against disturbing it in any kind of way. Breaking it apart just makes it even more difficult to deal with because it forms other compounds which are differently dangerous. I feel that it is essentially

the same thing as saying that we need a very large store of sulphuric acid and the best available position to do it is in a big valley. We can put it all in there, we have uses for it and there are benefits to it. There are a few problems like keeping water out of it, because if you put water into sulphuric acid it is a very bad scene. Essentially, that is the same thing we are doing here. We cannot guarantee anything about what will happen to this stuff over the kind of time it will take to become innocuous.

Senator TCHEN—Councillor McDonell, when I was at university in Sydney 30-odd years ago, I remember Lucas Heights was out somewhere in the sticks. You said today it is close to urban development. How did that happen?

Councillor McDonell—That happened through land releases that came through state and federal governments. Our council did not support those land releases, but once the land releases occurred people took up those land holdings. I would hasten to add that I have lived there since 1966, and probably in the first 20 years of living there I did not worry about the reactor either until I got on council. We had a submission put to our council by a spokesman from ANSTO, who told us there had been no accidents at ANSTO affecting the staff. What we found out about two weeks later was that there had been an accident inside the reactor two to three weeks before that particular gentleman addressed our council. What happened was that four workers on the floor of the reactor were exposed to 20 per cent of the amount of radiation they were allowed to be exposed to in one year. They were exposed to that amount of radiation in the matter of one minute. The only thing that saved their lives was that the operator of the crane was quick enough to drop the isotype, which had caused the problem, back into the water. That started me being concerned about ANSTO.

I know you are in a hurry to get away but, if you wanted me to, I could go over quite a number of concerns that we have had about the operations of ANSTO. It is said to be safe all the time; it is not. There is a whole history of accidents that have occurred over there. As far as I am concerned, our community has not been treated well in relation to this matter. We were not asked about whether or not we wanted a new reactor at Lucas Heights; we were told we were getting one. There was no consultation at all. Furthermore, on a freedom of information document, which was provided to us from one of the departments—I can get this for you if you want me to—there was a briefing paper prepared for members of parliament and senior officials who were appearing before a parliamentary committee. I am not sure which one. They made it quite obvious, and it is in writing, they were not to raise questions of the health of residents of Sutherland Shire. That is absolutely outrageous. I want to make the point that there are people who live there that are very concerned about this. Every survey we have had conducted, including surveys conducted by ANSTO themselves, show that between 70 to 80 per cent of people do not want a new nuclear reactor at Lucas Heights.

ACTING CHAIR—Did you want to add anything Ms Mason?

Ms Mason—I think that I have probably covered what I need to. My main concern here is that there are implications with this treaty that are very much more wide ranging than the consultation has been to date. I would go so far as to say ‘slipshod’ with all respects regarding this reactor process; I would not stop at ‘mediocre’.

ACTING CHAIR—Do you want to add anything, Mr Robertson?

Mr Robertson—No.

ACTING CHAIR—Thanks very much. Thanks Mr Sweeney, Mr Baker, Mr Campbell, Councillor McDonell and Dr Smith for your patience. Mr Robertson and Ms Mason, thanks for coming; we will not see you again so we will miss you. Nevertheless, thanks for giving your evidence now.

We are going to come back again, but if anybody wants to add anything in writing that would be useful. But that is not saying that you have to have written submissions in, because we will get everybody back.

Ms Mason—I will answer any questions that are directed at me.

ACTING CHAIR—Okay.

Resolved (on motion by **Senator Bartlett**):

That the submission from Mr Robertson be received as evidence to the committee's inquiry into the Argentine Nuclear Agreement and be authorised for publication.

Resolved (on motion by **Mr Haase**):

That this committee authorises publication of the evidence given before it at the public hearing this day.

Committee adjourned at 12.26 p.m.