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JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 7 and 21 August 2001

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JOINT COMMITTEE ON TREATIES

Tuesday, 9 April 2002

Members: Ms Julie Bishop (*Chair*), Mr Wilkie (*Deputy Chair*), Senators Bartlett, Cooney, Ludwig, Mason, McGauran, Schacht and Tchen and Mr Adams, Baldwin, Mr Bartlett, Mr Ciobo, Mr Martyn Evans, Mr King and Mr Bruce Scott

Senators and members in attendance: Senators Schacht and Tchen and Mr Adams, Mr Bartlett, Ms Julie Bishop, Mr Ciobo, Mr Martyn Evans, Mr King and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled on 7 and 21 August 2001

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Committee met at 9.11 a.m.**CAMPBELL, Mr Stephen Roderick, Nuclear Campaigner, Greenpeace Australia/Pacific**

CHAIR—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 review four treaties tabled in the parliament on 7 August 2001 and 21 August 2001. The committee took evidence on these treaties during the 39th Parliament but was unable to complete its scrutiny. Initially, we will take evidence on an agreement with Argentina concerning cooperation and peaceful uses of nuclear energy. Later in the hearing, we will conduct a roundtable discussion on the remaining three treaties: the agreement with the United States on nuclear transfers to Taiwan and agreements on nuclear safeguards with Hungary and the Czech Republic.

I welcome representatives of Greenpeace Australia, the Australian Conservation Foundation and Friends of the Earth. I understand that Greenpeace Australia and the Australian Conservation Foundation wish to make submissions in relation to the first issue and will be joined by the Friends of the Earth on the second group of treaties. I call the representative from Greenpeace Australia, Mr Campbell, to begin our hearings on the agreement with Argentina. Although the committee does not require you to give evidence under oath, the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House of Representatives and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

Agreement with Argentina concerning cooperation in peaceful uses of nuclear energy

CHAIR— Mr Campbell, do you want to make some introductory remarks before we proceed to questions?

Mr Campbell—Yes, certainly. I have quite an extensive presentation that I would like to proceed with, if that is okay.

CHAIR—How extensive?

Mr Campbell—It will take about 20 minutes or so, and then we can go to some questions, if that is acceptable.

CHAIR—That is fine. We will see how we proceed; I will keep my eye on the clock.

Mr Campbell—I would like to thank the committee for taking the time to take evidence from Greenpeace today on this extremely important issue of the nuclear cooperation agreement between Australia and Argentina. We are hoping that our presentation today will form all of the content of our submission to the committee. Specifically, during the day, we want to focus on article 12 of the agreement between Australia and the Argentine Republic, which relates to the dispatch of spent fuel from Australia to Argentina for processing or conditioning and its return to Australia.

Essentially, this nuclear cooperation agreement has been promulgated in order to paper over the clear constitutional issues with the contract between ANSTO and INVAP. Article 41 of the Argentinean constitution states that the importation of current or potentially dangerous residues of radioactive waste is prohibited into Argentina. The wording of article 41 prohibits categorically the importation of radioactive waste, admitting no exceptions. This is the unanimous interpretation of the law-makers who amended the constitution in 1994, I am advised. INVAP and the Argentinean government have failed to provide environmental information about the nuclear technology agreement between Australia and Argentina, as stipulated also in paragraph 2 of article 41—that the authorities will provide for the protection of this right for environmental information and education.

The Australia-Argentina nuclear technology transfer agreement glaringly breaches the terms of article 41, paragraphs 2 and 4 of the Argentinean national constitution, but it does not stop there. There is major opposition to nuclear transports all around the world, most recently seen during the MOX fuel transport between Europe and Japan in 2001. There was an outcry throughout the region for the spent fuel shipments from Lucas Heights to France early last year.

This agreement, if concluded hurriedly and without consultation and communication with en route states—most notably New Zealand, the Pacific island states and Chile—will be viewed extremely poorly by many neighbours in our region and also by major trading partners. I might add that nuclear shipments cause huge embarrassment to the shipping states and, in this case, those states would be Australia and Argentina—remembering that this agreement includes the waste going there and also returning to Australia. There is major opposition around the world from many countries. If you look at the MOX shipments that come through the Tasman Sea from Europe to Japan, it is essentially only Australia who gives its imprimatur to those shipments coming through and there is opposition from New Zealand and all of the Pacific states. In terms of sending the waste to Argentina, on both counts—whether we send the spent fuel from Lucas Heights to France or to Argentina—it is quite immoral, given that reprocessing is prohibited in this country by law, that the transports are highly risky and that there is no effective emergency planning in place anywhere in the world. Australia's emergency planning in relation to nuclear accidents is in a shambles.

There are, as you know, constitutional issues regarding the importation of waste into Argentina. It is prohibited by the constitution there. The COGEMA deal in France is under pressure; the OSPAR commission in France is trying to close down reprocessing in Europe. There has been some discussion of this during the Senate inquiry, of course. There is a great deal of controversy surrounding the reactor contract in Argentina. The major concern is that the nuclear cooperation agreement is an attempt to paper over the issues by providing a government to government agreement which invokes a mechanism of international law to come into play in the Argentinean jurisdiction. At the moment, all there is is a contract between a company in Argentina and a government agency in Australia, and there is no finalised, ratified government to government agreement which would take the form of international law and therefore impose itself into the Argentinean jurisdiction.

I have a report here—I believe this may already have been forwarded to the committee—prepared by Dr Daniel Sabsay, who is the chair of environmental and constitutional law at Buenos Aires University, which quite clearly states that the Australia-INVAP contract and nuclear waste imports are prohibited by the national constitution of Argentina. I will table that

imports are prohibited by the national constitution of Argentina. I will table that for the committee.

CHAIR—Could you describe that document again?

Mr Campbell—It is a document written for Greenpeace Argentina by the head of environmental and constitutional law at Buenos Aires University, Dr Daniel Sabsay.

CHAIR—Thank you.

Mr Campbell—I want to turn the committee's mind to the Rio Group in Latin America, which is a similar group to APEC in this region. There are 17 Latin American countries who are members of the Rio Group. On 27 March 2001, soon after a transport of nuclear waste from Japan to Europe passed through Cape Horn, the Rio Group chancellors expressed unanimously their concern for radioactive transports coming anywhere near the Latin American coast. I might point out that Argentina is a member of the Rio Group, naturally. They urged all states to avoid the risks of radioactive contamination and inferred that the international law of the sea recognises the sovereignty of coastal states in its territorial sea and its right to protect and preserve the marine environment of their exclusive economic zones. The reason I make that point is that, first of all, Argentina is a member of that group and was privy to that communique and was a signatory to it.

The other country that I want to bring into the discussion is Chile, which is also a member of that group and was also party to that communique. I would like to focus on Chile for a little while. Chile is a priority trading partner of Australia while Argentina is not. In fact, Chile is the second most important trading partner we have in Latin America after Brazil. The trade figures for 2000 included exports of \$150 million from Australia to Chile, imports of \$84 million from Chile into Australia, giving a trade surplus of around \$64 million.

I have a map here which I wish to show you. I am sorry that it will not be on the record and I am sorry if it is a very basic geography lesson for the committee. The proposed shipments from Australia will of course leave Sydney, travel across the Pacific, pass New Zealand, pass many Pacific island nations and will have to go around Cape Horn and into Buenos Aires and Argentina eventually. All of the high-level waste shipments and spent fuel shipments that come from Australia—the ones that go up to France—travel through this area. Obviously Chile has control over the Strait of Magellan and also over Cape Horn. As you know, there is a 300-kilometre exclusive economic zone from the territory of Chile into the passage between Chile and Antarctica, and it also covers the Strait of Magellan. In order for the spent fuel shipments to go anywhere near Argentina, unless the ships go down into the ice down near Antarctica, they will have to travel through the exclusive economic zone of Chile.

Mr WILKIE—Is there any reason why they could not go the other way?

Mr Campbell—Which way?

Mr WILKIE—From Sydney across the bottom of Australia and then straight across.

Mr Campbell—No, there is no reason why they could not, but it is the long way around and it is against the currents.

Mr WILKIE—Okay.

Mr Campbell—So what the member is saying is can they go that way. Presumably they can.

CHAIR—From right to left.

Mr Campbell—Yes, via South Africa, but it is the long way around.

Senator SCHACHT—What is the problem with the currents?

Mr Campbell—The global currents travel that way in the Southern Ocean.

Senator SCHACHT—They are not in sailing ships, are they?

Mr Campbell—No.

Senator SCHACHT—They are actually in powered ships that can steam along into the currents.

Mr Campbell—Certainly. But it is the long way around. It would take a lot longer and it would be more costly to go that way, so they are doubtless going to go through Chile.

Senator SCHACHT—Can I just look at the map there?

Mr Campbell—Yes.

Senator SCHACHT—You mentioned the countries of the South Pacific. If the ship left Australia from Sydney Harbour, went down the Tasman Sea, went south of New Zealand and then straight across, as far as my geography indicates they would not be close to any of the South Pacific countries.

Mr Campbell—Apart from New Zealand.

Senator SCHACHT—They are well south of New Zealand and they could go 300 miles or whatever the economic zone is—200 nautical miles.

Mr Campbell—We do not believe that they have gone that way in the past, but that is also a fair point. Chile—as the members of the committee may be aware—is also now aware of this nuclear cooperation agreement between Australia and Argentina, which is being discussed. I have a letter here from the Foreign Affairs Ministry of Chile to Greenpeace International, which I will table. This is from Mario Artaza Rouxel who is Ambassador and Director of Foreign Policy in Chile.

CHAIR—Is it dated?

Mr Campbell—It is dated 24 August 2001. He writes to Greenpeace International from Santiago. In relation to the agreement between Argentina and Australia, the letter states:

... This agreement would enable our neighbouring country to process the irradiated nuclear fuel from a nuclear reactor that they will build at Lucas Heights, Australia, and this would imply the transport of radioactive waste between both countries, presumably through the Cape Horn route.

I want to reiterate to you that this State Secretary has remained attentive to the topic of the transport of these type of materials, as can be seen in several diplomatic actions undertaken, the most recent being our initiative to include in the Presidential Declaration of the XV Rio Group Summit, a paragraph that reiterates our concern, exhorting the international community to continue working in order to complete the current international law regarding this topic.

I table that letter for the benefit of the committee. I also have a letter from the President of the Socialist Party of Chile. The Socialist Party is part of a four-party governing coalition in that country. The President of Chile is a member of this party and he has written to this committee. I just want to read into the record the letter from Camilo Escallona Medina, President of the Socialist Party of Chile. The letter states:

At present we express our categorical opposition to the transport of nuclear waste through the coastal waters of our country. Our position is sustained by the enormous risk presented by this type of transport to the ecosystem and to human beings. The transport and treatment of this type of contaminating material which are actions that are consequences of the signed agreement should be, in our opinion, the object of wide debate and consultations in order to evaluate the involved risks in a responsible way. We hope our position will be heard and that the Chilean opinion will be considered in the decision-making process.

I believe that the letter has already been sent to the committee.

CHAIR—What date is on that letter?

Mr Campbell—That letter is dated 24 August 2001.

CHAIR—Thank you. That is accepted as a document.

Mr Campbell—I also have a letter from the Chilean Senate promulgated by an independent senator, Antonio Horvath Kiss, to the Minister of Foreign Affairs in Chile asking him to act on this matter. The letter reads:

In conformity to this, His Lordship specified, it would be completely convenient that the Minister of Foreign Affairs make a presentation to the referred instance—

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in accordance with, among others, the following considerations:

1. Political attitude of Australia in case that the European countries decided to cease the processing of nuclear waste.
2. If the aim of Australia is that its nuclear waste will be processed in Argentina, what quantities this would be in, the location of the corresponding facility and the time of commencement of the activities.
3. In case the processing facility is established near the frontier with Chile, if a consultation will be made with our country.

4. Neither the Agreement nor the commercial contract between Argentina and Australia consider prior consultation regarding the sea routes to be used in the transshipment of nuclear waste. If they will use Cape Horn, that would violate the agreements of the Rio Group.

I table that letter. Finally, I have a letter signed by 17 NGOs in Chile, and I believe this letter has been presented to the secretariat as well. It should have arrived in August last year and it essentially says similar things:

Does the transport of Australian radioactive waste seek to go through the Chilean jurisdictional waters?

If this last question is yes, will Australia follow the requirements that the Rio Group declared in its chancellors meeting of March 18 and reaffirmed by the Santiago Summit on 17 August 2001. It then quotes the communique from the Rio Group.

Finally, from Chile, I have a letter from the municipality of Punta Arenas, which is essentially the local government authority that sits at the end of Patagonia, around the Magellan Straits. They are completely opposed to this agreement being signed. They are also asking the Joint Standing Committee on Treaties for consultation on the matter. They are asking, if there is an eventual accident, how the Australian government will be responsible regarding the rescue and recovery of radioactive materials as well as being responsible for the cleaning and recovery of the flora, fauna, marine ecosystems, quality of air, quality of water, fishing resources et cetera. So, they are seeking to be consulted as well in relation to this particular agreement.

I want to turn very briefly to the Pacific island states. I have here a letter from my colleague at the office of Greenpeace in Suva. It is signed not only by the Greenpeace Pacific Nuclear Campaigner but also by the director of the Pacific Concerns Resource Centre. This is dated 27 August 2001. They are seeking to be consulted as well. They say they 'would like to prepare a substantial submission regarding their deep concerns related to this agreement', and they believe that the 'ratification of the agreement will have far-reaching negative implications and consequences for Australia and the Pacific region'. I would like to table that also.

Finally, I have a few statements from New Zealand and also from Australia in relation to the proposed treaty. One is from a press release that was issued by the New Zealand Minister of Foreign Affairs and Trade on 23 January 2001 in relation to the spent fuel from Lucas Heights going to France. It says:

A cargo of spent nuclear fuel from the Lucas Heights research reactor in Sydney is bound for France.

Mr Goff states:

New Zealand does not want any shipment of nuclear materials to come anywhere near our country, and certainly not into our 200-mile exclusive economic zone.

In relation to MOX transports and radioactive fuel and waste transports through this region, I have a statement from the Australian Labor Party on 29 January 2001, signed by Laurie Brereton, then shadow minister for foreign affairs, and Carmen Lawrence, then acting shadow minister for the environment. It says:

The prospect of a sustained trade in highly radioactive nuclear fuel and waste through the South Pacific is rightly a matter of concern for Australia's Pacific neighbours—as it should be for the Australian Government. Whilst the companies and

governments engaged in this trade maintain that the risks of an accident are low, the long-term environmental and social consequences could be most serious—especially for small-island countries dependent on fisheries and tourism for their livelihood.

In relation to the MOX transport that happened last year, I have here a statement from the High Commissioner of Nauru, voicing his opposition to nuclear transports through the Pacific.

CHAIR—When you say ‘a statement’, do you mean a media statement?

Mr Campbell—It is a media statement, yes. In fact, it is a speech that he gave to the Fiji Nuclear Free Flotilla event in Suva on 10 March 2001.

Senator SCHACHT—Was this before the *Tampa* refugees turned up in Nauru, or after?

Mr Campbell—This would have been before.

Senator SCHACHT—Before—so he was not then in the pocket of the Australian government.

Mr Campbell—No, that is right. It is extremely important that there are wide-ranging consultations with all of the stakeholders, including some very important governments who are major trading partners with Australia, as well as non-government organisations, communities and other bodies around the world. I would ask the committee to make this a very high priority, to very closely scrutinise the agreement between Australia and Argentina and to make sure that, in relation to the implications of this treaty, we are not going to be seriously affronting our neighbours, our friends and our trading partners by pursuing the nuclear deal between Australia and Argentina. Of course, Greenpeace Australia Pacific remains fully opposed to the construction of another reactor at Lucas Heights, and will continue to campaign on that issue. There must be broader consultation and inquiry on this issue than has hitherto been involved, and I ask that you consider all of the matters before you.

CHAIR—Thank you. I will ask a couple of questions and then whoever else wishes to do so may indicate to me. I will concentrate on section 41 of the Argentine constitution. The Argentine government has advised the Australian government—or the Department of Foreign Affairs and Trade—that the agreement is not contrary to section 41 of the constitution. On that basis, how do you say it is appropriate for the Australian government to dispute the Argentine government’s advice to us on the constitutionality of this issue from the perspective of their constitution?

Mr Campbell—That is a matter still of some controversy in Argentina, as I am sure you are aware. There are individuals and parties within the Argentine government who do not hold that view, and there are also individuals, groups and communities in Argentina who do not hold that view. I have tabled advice from one of the foremost constitutional and environmental lawyers in the country that says explicitly that it is contrary to the Argentine constitution, and I would expect that is some clear evidence to this committee of that fact.

CHAIR—It is an opinion. It is not evidence; it is an opinion.

Mr Campbell—It is an opinion. However, as you are aware, the bilateral agreement is yet to be fully endorsed by the Argentine government and is yet to be fully ratified, as it is in this country. The matter of section 41 of the constitution and article 12 of this agreement is still one of major controversy, and I do not believe that you can pre-empt the outcome of those discussions until that is finalised by that government.

CHAIR—If it were to pass through the procedures within the Argentine government, if it were to be—in your terms—fully ratified, would that change your views?

Mr Campbell—Even once it has been fully ratified by the government, it will be open to constitutional challenge and to challenge in the courts—and I would expect that that is more than likely to happen regarding whether the constitutionality of the ratification of the agreement is in fact legal.

CHAIR—Who do you anticipate would bring that challenge?

Mr Campbell—I do not anticipate anybody in particular, but I know that there has been mention of it in the Argentine media over the last 12 months.

CHAIR—But would that necessarily affect Australia's position? If the Argentine government guarantees that it will meet its obligations, a constitutional challenge or otherwise is its problem.

Mr Campbell—It is its problem for a period of time. I am suggesting to you that there is the possibility of a constitutional challenge, which could be upheld in the court and which could make a section of this treaty invalid. I hope that you are keeping your eye on that ball.

CHAIR—I think we are aware of the issue.

Senator SCHACHT—On the same point, Greenpeace is an international operation that has had some success in raising money—although not as much as you would like. Would Greenpeace International, including Greenpeace Australia Pacific as a subsidiary group, look at making a constitutional challenge in Argentina through its Argentine branch?

Mr Campbell—There is a possibility of that occurring. It certainly has not been talked about at length, but there could be a possibility of that happening some time in the future. Certainly, we would have to look at all of the options available to the organisation.

CHAIR—There would be questions of standing, wouldn't there?

Senator SCHACHT—There is a branch of Greenpeace in Argentina?

Mr Campbell—There is, and there is also a branch of Greenpeace in Chile.

Senator SCHACHT—I understand and appreciate the comment from Nauru. Going back to the map, Nauru is on the equator. I would imagine a ship going south of South Africa or through the Horn area would have to be considerably lost at sea for a while before it would get close to

Nauru. I am not disparaging their general comment, that they do not like nuclear material being transhipped at sea, but I would not imagine that Nauru is going to be the number one area where the route would be. Would you like to make a comment on that? Secondly, under the treaty, if we ship our waste to Argentina via the Cape of Good Hope for reprocessing, would what we have to take back—the leftover amount—come back to Australia around the Cape of Good Hope into the headwinds or the current or would it go around South Africa back to Australia?

Mr Campbell—There are a couple of things to be said in relation to Nauru. First of all, when the French were undergoing nuclear testing in the Pacific in 1995 and 1996, this had a disseminating effect on the tourism industries of many island nations in the Pacific. If there were an accident on a nuclear transport somewhere in the Pacific it could have the same debilitating effect on their economies. I guess the point that Nauru is trying to make is that shipments through the area are bad for their image and if there were an accident it would be extremely bad for the image of the Pacific Island states in general. So they wish to uphold their opposition to all sorts of nuclear transports through the region.

Senator SCHACHT—Is Nauru the only country that has issued a statement like you just put before the committee? Have the Cook Islands or—

Mr Campbell—There have been many statements over the last few years in relation to nuclear transports. If you like, I can take it on notice to compile—

Senator SCHACHT—I particularly want to know of statements about the possibility of transshipping waste from Australia to Argentina. I am aware that a lot of people have expressed views about the transshipment of waste and reprocessed material between France and Japan through parts of the Pacific, but I just wondered whether you had alerted them to the risk if there is a trade to South America and whether they have made statements about it. For example, has the South Pacific Forum issued a statement about the possibility of transshipping material?

Mr Campbell—I believe the Pacific Island Forum have not at this stage, but they are very vocal on the topic of mock shipments. I would suggest to you that, at this stage, the opposition to nuclear transports of all types through the Pacific is increasing. There were some statements in relation to the last spent fuel transport from Lucas Heights, and I would expect that there will probably be an increase in those sorts of outcries whenever the next shipment is.

Senator SCHACHT—You mentioned some statements and material, including from the foreign ministry of Chile indicating its opposition. Are you aware of what standing Chile or any other country has over its exclusive economic zone to stop the transshipment of any material of any trade through its exclusive economic zone?

Mr Campbell—I believe that the International Law of the Sea gives sovereign states the right to protect the marine environment of their exclusive economic zones. I think that is the right that Chile is talking about.

Senator SCHACHT—So protecting their marine environment would be the device that they would use to say, ‘You can’t sail it through our waters’?

Mr Campbell—That is right.

Senator SCHACHT—Is there any evidence that the Chile government has already made representations to the Argentinean government along these lines?

Mr Campbell—I do not have any evidence of that.

Mr BARTLETT—As I understand it, we have similar types of arrangements for shipping spent fuel to France and, in a non-treaty form, also to Britain and the US. What is the difference between shipping it to those countries and shipping it to Argentina? Is it merely the geography of the sea route, or are you opposed to shipping it anywhere?

Mr Campbell—We are opposed to shipping it anywhere.

Mr BARTLETT—Is that the main problem, or is there a difference in the degree of risk because of the geography and the route involved with Argentina?

Mr Campbell—No, I think there is a degree of risk involved in any nuclear transport. What I am trying to outline to the committee is that there is opposition from the en route states, in particular a priority trading partner of Australia.

Mr BARTLETT—So if we were not to go down the path of this treaty with Argentina, we would still be, presumably, shipping fuel to France. You would see that as a lesser problem than shipping it to Argentina?

Mr Campbell—No, the shipment of spent fuel to France is at this present moment a greater problem than the shipping of waste to Argentina. They are both problematic, and Greenpeace is opposed to both options.

Mr BARTLETT—So this treaty arrangement would, from what you have just said, reduce the risks of the shipment of spent fuel?

Mr Campbell—I do not follow that inference.

Mr BARTLETT—If instead of going to France, which you just said is worse, it goes to Argentina.

Mr Campbell—The best option is not to ship it around the world. The shipment of nuclear material around the world is inherently risky and it is unnecessary to do so.

Mr BARTLETT—What would you propose we do with spent fuel in Australia now?

Mr Campbell—There is a range of options for dealing with the stockpile of waste that we already have at Lucas Heights. The best possible option, of course, is not to produce any more of it. We could then have a rational discussion in this country about what to do with the stockpile of waste that we have already produced.

Mr BARTLETT—Given that more will be produced, would it be your preference that it be somehow stored in Australia rather than shipped?

Mr Campbell—It is generally the view that the best option for spent nuclear fuel is to maintain it on site, at the point of production, in above ground dry storage. That is the best strategy at this time for dealing with the stockpile that we already have. Beyond that, we should not be producing the waste in order to increase the problems that we already have with this material.

Mr BARTLETT—I have one more question. The amount of material that would be shipped under this agreement potentially would be shipped to Argentina. What quantity is that compared with the total world transshipment of waste? What percentage of total volumes would that provide?

Mr Campbell—I could not give you an exact figure on that.

Mr BARTLETT—Ballpark?

Mr Campbell—No, I could not give you an exact figure on that. It is a small proportion of the amount of radioactive materials that are shipped around the world. My colleagues in France, Germany, the United States and Great Britain oppose the shipment of all of the nuclear material that is shipped around the world, whether it be across the sea or overland.

Mr MARTYN EVANS—A lot of the points that you have raised have been in relation to others' views—Chile, Nauru and New Zealand—of the shipping, but they are likely to take that kind of view, given that they are not parties to the agreement and given that it is easy to oppose these things in isolation when you are not part of the process. It is unlikely that any government is going to put out a statement saying they are in favour of having any material, whether it is polychlorinated biphenyls, radioactive material, concrete or oil.

If Nauru were to have a large oil tanker go aground—God forbid!—off its pristine beach, I do not think they would be in favour of that either, yet far more oil is shipped past Nauru than there will be radioactive waste. All of these people have their own opportunities. Chile, for example, is part of the Mercosur group in South America. They have avenues and relationships to take this up internally in Argentina and in the region, but they are not doing that. People have the opportunity to challenge this in the court in Argentina, but they have not done it yet. At what point do you think this departs from feel good statements by those who take that opportunity? To what extent is it actually meaningful opposition which they propose to follow through with legal action? Do you think Chile will impose trade sanctions, for example, on Argentina as a result of this disagreement?

Mr Campbell—I do not know if Chile has the legal right to challenge this treaty as yet. They are going to have to wait until it actually comes into force in Argentina. There may be government to government movements or discussions happening at the moment between Chile and Argentina, but I am not privy to them. I do know that the Chilean government, in the letter that I have tabled here that has already come to the committee, is asking for consultation on this issue. So they are making diplomatic and political movements towards this government and potentially towards Argentina, although I am not aware of those.

CHAIR—So you are not aware whether that consultation that the Chilean government sought is taking place or not?

Mr Campbell—No, I am not.

Mr MARTYN EVANS—What about the shipment of radioisotopes? How do you view the shipment of medical radioisotopes and other radioisotopes for general use in the community, which occurs every day in every airport of the world, basically? Do you have a view about that in relation the transshipment of nuclear material? You make a general point about nuclear material, not a specific point about this material.

Mr Campbell—Generally we do not oppose the shipment of radioisotopes. It is certainly the waste which is the big issue and the big question. It is the nuclear industry worldwide continuing to produce the waste when there are alternatives available, not only for the production of energy but also for the production of radioisotopes and for the nuclear research which is undertaken in research reactors. I know that we have discussed these matters at other times, and there is certainly a lot of difference of opinion, but there is also a lot of material on the public record in relation to it which would support my view.

Mr CIOBO—You stated that emergency planning in Australia is a shambles, in the unlikely event of there being a problem. I am just wondering if you could adduce further evidence to support that claim.

Mr Campbell—I have a report which is written by an international marine pollution expert from Wales named Tim Deer-Jones. This report was commissioned by Greenpeace International. It looks at the transport of nuclear materials around the world and it looks very closely also at the Australian emergency planning scenario. I do not have a copy with me today, but I will be more than happy to provide that to the committee for your consideration.

Mr CIOBO—So that is the basis of your statement?

Mr Campbell—Indeed. I might just add on that point that in his statement in relation to the licensing for the reactor last Friday, Dr Loy, who is the CEO of the Australian Radiation Protection and Nuclear Safety Agency, acknowledged that report and acknowledged the fact that the emergency planning in Australia in relation to nuclear accidents was indeed lacking and that a considerable amount of work would have to be done on that.

Senator SCHACHT—You mentioned that report from Greenpeace. Are there any reports from the International Atomic Energy Agency about emergency procedures or about the transshipment of nuclear material by sea?

Mr Campbell—I do not think it is the International Atomic Energy Agency that has general coverage of those issues, but the International Maritime Organisation, and they have said—it is covered in this report—that there are some issues in terms of the international regulations on the matter.

Senator SCHACHT—I want to go back to the constitutional position of Argentina. It is a matter for Argentina and a matter for someone to challenge in the court if they want to, and I fully accept that. If Argentina's government loses the case in their court, we will see what they do. But one of the issues is about the constitution of Argentina. I suspect they have had quite a few changes to their constitution. Every time a regime has changed there, they seem to adopt a

new constitution. Whereas we find it very hard to change our constitution in Australia, I suspect Argentina finds it very easy. This is unfortunate, because it means that constitutional aspects probably do not get the same weight or standing or gravitas in the community. For example, is it possible in Argentina that the constitution could be changed by a vote of the parliament, rather than a vote of the people, as it is in Australia?

Mr Campbell—I believe that the argument put by the nuclear authorities in Argentina is that, regardless of the article in the constitution, once you have a treaty level document between Australia and Argentina it will trump the constitutional article to some degree.

Senator SCHACHT—I understand that. I am asking whether the government can then simply amend the constitution by a vote of the parliament—what we would call changing the legislation if you could get a majority in both houses. Can the constitution of Argentina be simply changed by a vote of the parliament? I am just asking whether you have any information about that; I do not have it myself.

Mr Campbell—No, I do not know the answer to your question.

CHAIR—Isn't it the case that the constitutional issue comes down to the distinction between spent fuel and waste?

Mr Campbell—No, it is not the case, I am sorry.

CHAIR—Isn't that one of the aspects of it, then, or are you saying it is not an aspect of the constitutional issue?

Mr Campbell—You are right in that that is the argument, once again, that is put forward by the nuclear authorities and INVAP in Argentina. However, the international regulations agree on this particular point. Spent fuel which is being shipped or slated in to be conditioned as opposed to reprocessed, and for which there is no further use, is therefore a waste as stated in the Argentinean constitution. Conditioning is a process whereby none of the radioactive materials is recovered for further use so, under the definitions in the international authorities, spent fuel is a waste. If it were going for reprocessing in Argentina, where there is some mechanism for the recovery of radioactive materials from the spent nuclear fuel—in other words, if it were going to be reprocessed and you were going to recover some of the unused uranium or some of the plutonium—under the international regulations, the spent fuel would not be a waste because there would be some further use for the material in that fuel.

CHAIR—You are aware that the Argentinean law draws a distinction by virtue of its ratification of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management? The Argentinean law draws the distinction and the Argentine Nuclear Regulatory Authority, which is the body responsible for the regulation of nuclear matters in Argentina, supports that view and has also given the Australian government its view that the constitutional issue does not arise and that the proposed agreement is not contrary to article 41 of the constitution.

Mr Campbell—But I believe that the agreement you refer to also makes the distinction between waste and spent nuclear fuel. Waste is defined as a radioactive material for which there is no further use; therefore, spent nuclear fuel for which there is no further use is a waste.

CHAIR—We are arguing Argentinean constitutional law.

Mr WILKIE—Which other South American countries have nuclear generated power or nuclear industries?

Mr Campbell—I am not sure of all of them but I believe Argentina does and that Peru has a reactor or two. I am not sure who the others are.

Mr WILKIE—The reason for asking is that, if other countries in Latin America have reactors, they must transport fuel and waste in and out. How do they do it if they are complaining about others using their waters for transport?

Mr Campbell—That is not necessarily the case, because Peru, Brazil or Argentina may not ship the waste extraterritorially. They may deal with the waste within the borders of their own countries.

Mr WILKIE—How would they get the fuel in?

Mr Campbell—It is not a waste when it is fuel coming in. The Rio Group is dealing with radioactive waste.

Mr WILKIE—Is it still dangerous?

Mr Campbell—The fuel coming in is far less radioactive than spent fuel or the radioactive waste that comes out of the reactor.

CHAIR—Mr Campbell, is there anything further that you wish to say?

Mr Campbell—No, thank you.

CHAIR—Thank you very much for your time.

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

That this committee receive as evidence and include as exhibits the four documents received from Mr Campbell for the inquiry into the agreement between Australia and Argentina concerning cooperation in peaceful uses of nuclear energy.

[10.00 a.m.]

NOONAN, Mr David Joseph, Campaign Officer, Australian Conservation Foundation

CHAIR—According to our schedule, Friends of the Earth were to be next. I propose that we move the Australian Conservation Foundation forward to be the next group of witnesses and then we can take a short break before we go to the other agreements. So I welcome the representative from the Australian Conservation Foundation. Although the committee does not require you to give evidence under oath, Mr Noonan, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. You are obviously going to make some introductory remarks before we proceed to questions.

Mr Noonan—Thank you. I appreciate the opportunity. The ACF would also like to thank the committee for having travelled to Sydney to take evidence today. The ACF is a non-government national environment organisation of over 30 years standing. We are membership based and community supported and we have a policy of addressing what we see as the adverse aspects of the nuclear industry both in Australia and overseas. We believe it is fundamentally important for Australia to take responsibility for the nuclear waste we produce in this country and we believe it is unconscionable for Australia to export the burden of our nuclear waste legacy to other countries, particularly to a developing nation such as Argentina.

I would like to address today the issues of the treaty in terms of what the treaty proposes to do, how it goes about that, and what the consequences are in Australia and in Argentina of the treaty and the reactor contract being carried out. Essentially, this is a treaty to facilitate a reactor contract in Australia between ANSTO and INVAP for a second Sydney reactor to be constructed at Lucas Heights. It is also a treaty to facilitate a spent fuel management plan, or at least the claim that there can be such a spent fuel management plan, as would be comprised by the transfer of spent fuel from Australia to Argentina and the proposed returns then of the resulting nuclear waste at a later time from Argentina to Australia and what then happens with the waste in Australia thereafter.

The ACF clearly contends that this treaty and what it proposes to do, both in facilitating a Sydney reactor and in the transfers of Australian spent fuel to Argentina and of nuclear waste from Argentina to Australia, is not in the national interests of either Australia or Argentina. We would like to address a fundamental issue and that is whether there is a need for a second Sydney reactor and for that reactor's proposed production of medical isotopes. The issue of the treaty fundamentally comes back to what the purpose of a reactor is in Australia. I would like to refer to a professional medical organisation, the Medical Association for the Prevention of War. In their policy statement of 25 February this year, Dr Sue Wareham, the President of the MAPW, said in part:

Australia's requirements for isotopes for medical and industrial purposes can and should be met by

(a) local production in cyclotrons and spallation sources, and

(b) importation of some isotopes such as technetium/molybdenum which currently require reactor production.

This approach is contemporary practice in many industrial nations including the USA, Japan and the UK—only a tiny fraction of radioisotopes used are produced in their own domestic reactors. A single reactor in Canada produces about sixty percent of the world's medical isotopes. Importation of isotopes via the well-established international isotope market served Australia satisfactorily during the three month “down-time” at the existing HIFAR reactor in Sydney during February-May 2000, and it is a viable option for the future.

This is a professional medical organisation saying there is no need for Australia to have a reactor to provide reliable medical isotopes for Australia—an Australian medical organisation. I can provide the reference—and they have made a report which is available on the web site—to the committee secretary. Any documents that I quote I will provide the reference to the secretary.

CHAIR—Thank you.

Mr Noonan—In terms of my opening remark that the ACF considered it unconscionable for Australia to be transferring our radioactive waste burden to another country, you should note that there are key recommendations that spent fuel be managed wholly within Australia. One of those recommendations was from the Senate select committee that reported in May last year and another of those recommendations for such a management plan to be prepared was from the Nuclear Safety Committee of ARPANSA, which has recently released a report to the CEO.

The Senate Select Committee for an Inquiry into the Contract for a New Reactor at Lucas Heights in May last year recommended:

... ANSTO prepare and fully cost a contingency management plan for spent fuel conditioning and disposal within Australia. This plan should fully describe the technologies to be used should Australia have to manage its spent fuel wholly within Australia.

The second proposal from the Nuclear Safety Committee of ARPANSA, which is an advisory body of experts comprising academics, scientists and experts from a number of state government agencies, recommended to the CEO:

A contingency plan for additional spent fuel storage arrangements and/or spent fuel conditioning in Australia should be submitted to ARPANSA by ANSTO as part of its conditions of licence to construct the RRR—

the new reactor. It continues:

The Applicant should demonstrate a ‘fall-back’ position which is feasible, practical and socially and politically acceptable in case the international options are not available.

ACF considers that, first, the international options will not be available and, second, Australia should not be pursuing international options when we believe it is our obligation to manage Australia's radioactive waste within this country. It appears that the federal government has not taken up the Senate committee's recommendation, for instance, from May last year nor has it yet considered taking up the recommendation from its own nuclear safety committee that Australia should prepare such a contingency plan for managing this spent fuel wholly within Australia. This matter is far more fundamental than the proposal that this treaty wishes to address—how Australia may simply get rid of that waste burden for some period of time to somewhere else.

This is also fundamentally a treaty and a reactor contract which the ACF believe will contravene the constitution of the Republic of Argentina. You have heard some debate this morning about different views of that. There is formal legal advice such as from Dr Sabsay, Professor of Constitutional Law at the University of Buenos Aires, that says that this treaty and the INVAP reactor contract are in contravention of article 41 of the constitution of Argentina. That is high-level legal advice and the committee should be taking into account that legal advice which is before you. Presumably, this committee should be able to produce for the Australian public the legal advice under which you are, apparently, working that says that the proposed export of spent fuel from Australia is not in contravention of any law or the constitution of Argentina. We would like to see that advice put before the public here.

In reference to what may happen in Argentina, a legal proceeding has already started in Argentina to investigate this matter. It was started in March this year and it was started by public prosecutors of the federal Attorney-General's office. The proceeding has now moved to Federal Court No. 8 in Buenos Aires. These federal prosecutors assert that the treaty which you are now addressing and the INVAP reactor contract both contravene article 41 of the constitution of Argentina. That matter is now before Judge Jorge Urso in Federal Court No. 8 for his determination on the pleading before him.

CHAIR—Who are the parties to that proceeding?

Mr Noonan—The parties are the two public prosecutors of the federal ministry of the Attorney-General. It is they who have brought the case to the court.

CHAIR—Against whom?

Mr Noonan—It is for the court to investigate the legality of the two documents they refer to. It is normal practice in Argentina for a court to undertake its own investigations. Their legal system is more similar to the French system than to our own.

CHAIR—So it is basically seeking a judicial ruling on the constitutional question?

Mr Noonan—Yes, they are asking the court to investigate whether it considers the treaty and the INVAP reactor contract legal in terms of the requirements of their constitution and, if the court considers there is a case to be investigated, for it to set out how they would then proceed to investigate the matter.

CHAIR—What standing do those proceedings, and any determination as a result of those proceedings, have?

Mr Noonan—As I understand it, if there is a determination by the court that, for instance, there may be a legal problem in terms of the treaty and the INVAP contract as to whether they are potentially in contravention of their constitution, the matter would be referred by the court to a higher authority to be investigated.

CHAIR—To whom?

Mr Noonan—To a higher court. There is a sequence of events, I understand, in Argentina that would follow—

Senator SCHACHT—Even if the first court found that there had been a breach of the constitution?

Mr Noonan—Assuming that the first court found, firstly, that there was a matter of sufficient warrant to be investigated, they may then undertake some initial investigations themselves, they may find partially in regard to the outcome of the matter or they may refer the matter to a higher court.

CHAIR—To another court?

Mr Noonan—To a higher court.

CHAIR—On what date were these proceedings initiated?

Mr Noonan—I understand that they were initiated in early March before Federal Court No. 6 originally, and they are now in Federal Court No. 8.

CHAIR—Does the court number make any difference?

Mr Noonan—It allows a person to follow how the matter is being addressed legally, once they understand Argentine procedure.

CHAIR—Does it have an action number?

Mr Noonan—I presume it has; I am not aware of the number. I understand that different federal courts there address different sets of jurisdictional issues, so the number of the court, to a person who understands the system, would imply both the type of issue and where it is up to in their proceedings.

CHAIR—It is a constitutional issue, so presumably it is before a judge in constitutional matters?

Mr Noonan—It is before a judge that the two public prosecutors of the federal Attorney-General have thought it appropriate to take the matter to. That was a decision of their own.

Mr WILKIE—Have they set a time frame for the consideration?

Mr Noonan—I understand that that is for the determination of the judge at present. The matter has been covered in the Argentine media, and it has been presented to the Australian media in a media release by FUNAM, the Environmental Defence Foundation of Argentina. I am honestly surprised that this committee is not familiar with it. Presumably, this committee is advised by federal government officers as to ongoing issues that are relevant to the treaty.

Senator TCHEN—Is it the position of the Australian Conservation Foundation that this committee needs to take into consideration something that you have brought to us which even you do not understand? Is it your position that we should take notice of that matter?

Mr Noonan—I am not saying that I do not understand it.

Senator TCHEN—But you are building your case around a matter that is proceeding in Argentina which you do not understand.

Mr Noonan—I am not saying that I do not understand it.

Senator TCHEN—But you cannot tell us what is going on.

Mr Noonan—I have just told you what is going on. There are some matters of fact, and the case—

Senator TCHEN—But you cannot explain what those facts are.

Mr Noonan—Depending on how the judge may decide, the matter may go in different directions thereafter. It is not for me to say what the judge will decide.

Senator TCHEN—All right. Can you tell us what direction it might go in? What directions are available?

Mr Noonan—If the judge should agree with the two public prosecutors of the federal Attorney-General's office that there is a case to answer on whether this treaty and the reactor contract do potentially contravene article 41 of their constitution, the judge may either have an initial proceeding to decide some of those matters himself or refer the case to a higher court for them to investigate.

Senator TCHEN—What happens then?

Mr Noonan—Again, that is a matter of the specific relevant outcome of the next stage of their legal proceedings. A final possible outcome is that a legitimate legal authority in Argentina will declare that both this treaty and the reactor contract do in fact contravene article 41 of their constitution and are therefore invalid.

Senator TCHEN—Is it likely that Argentina may then amend its constitution to make it legal and constitutional?

Mr Noonan—I do not know that that stage of the outcome—that another country might have to amend their constitution to allow a particular matter before it to go through—is something that I or the committee can do anything other than speculate on.

CHAIR—We can only speculate. This is all hypothetical.

Mr Noonan—The proceedings before Federal Court No. 8 are not hypothetical, though.

Senator SCHACHT—I just want to get this straight. The proceedings before court No. 8 are dealing with a breach of article 41 of the Argentinean constitution—we are dealing specifically with the treaty and the possibility of shipping nuclear waste to Argentina. The hearing is also dealing with the actual contract itself as a possible breach of article 41 of the Argentinean constitution. Is that correct?

Mr Noonan—That is correct. The federal prosecutors assert that, if the contract should be carried out as proposed, those actions may contravene the constitution—the action specifically being the entry of spent fuel, nuclear waste, from Australia into the country of Argentina.

Senator SCHACHT—Can I just get this clear. I understand that point, but is it also that the actual contract, which is also in contravention of article 41 of the Argentinean constitution, that a company in Argentina—with the support of the Argentinean government—has to build a nuclear reactor in Australia is being challenged in court? It is a different point.

Mr Noonan—I understand they are saying that, if the contract were to be carried out, those actions would be in contravention of their constitution.

Senator SCHACHT—The transshipment, not the actual building itself?

Mr Noonan—I am not aware that they are making a distinction that they can carry out the contract up to the point where it is shown to be illegal by that particular action. I understand the prosecutors to be saying that both the treaty and the contract and what it proposes to do—and there are other issues of their law to do with contractual matters that are relevant and that they have said are relevant—in the view of these federal prosecutors from the federal Attorney-General's office in Argentina contravenes their constitution.

Senator SCHACHT—If by some chance the Argentinean and Australian governments negotiate, as a result of your excellent evidence—and you have made a good point—we are going to amend this treaty to say that there will be no mention in the treaty about the transshipment of nuclear waste from Australia back to Argentina for reprocessing. They would just exclude that and say, 'Australia, you're on your own; you keep doing it with the French.' Would taking out that section of the treaty—I think it is section 12—mean that the Argentinean constitution is not being breached?

Mr Noonan—It would be presumably for the legal authorities in Argentina—and perhaps, really, it is the outcome of this case and its proceedings—to decide whether the contract can stand in whole or in part, whether a part of the contract being potentially in contravention of their constitution somehow invalidates the rest of the contract. I understand that is a matter they have asked the court to consider. They also asked the court to consider the legal validity of the original advice from the nuclear regulator in Argentina claiming at the time that it would not be in contravention of their constitution for that spent fuel to enter the country.

Senator SCHACHT—Pardon my ignorance about this, but does Argentina have its own nuclear reactor?

Mr Noonan—It does have nuclear reactors, and its spent fuel is managed entirely within the country; it is not sent across borders.

Senator SCHACHT—So it is not against the constitution of Argentina to have a nuclear reactor inside Argentina.

Mr Noonan—That is correct.

Senator SCHACHT—And as long as they do not ship their waste anywhere else and keep it within the country, that is not against the existing constitution?

Mr Noonan—No. The matter of their constitution prohibits the entry of radioactive waste from elsewhere to their country. It was part of a set of fundamental human and environmental rights put into their constitution at that time—you have referred to potential changes over time in their constitution—and the prohibition of the entry of radioactive waste was one of those key issues. It is a fundamental issue for both the society and the public policy in Argentina that the basis of their constitution be respected not only within their own country but also by Australia, presumably.

Mr MARTYN EVANS—It seems that they only approve the import and not the export, and that they are quite happy for others to receive theirs but not to receive from other countries.

Mr Noonan—I am not aware that they have even done that.

Mr MARTYN EVANS—So much is made of this point, but I am not really sure of what you, and others who have advanced the same point, say it turns on. Is this the fundamental objection to the treaty, or is this a device to object to the underlying concept? If this is the fundamental issue that you are raising with us, then, such things have a mechanism both within Argentina and within Australia to be dealt with. They will follow a certain course of law in both countries. It might be the case that, in the future, Australia amends its Constitution to prohibit nuclear reactors in the country, and we would have to deal with that at the time. It might be that Argentina amends its constitution. A lot of things might occur in the future and they will have to be dealt with in accordance with the law of the country when they happen. So I am not sure whether you are saying that we should reject this because of that fundamental conflict, but that if that conflict were not there it would be all right. Or, are you saying that we want to defeat the underlying purpose of the treaty, which is to construct a reactor, and that a device to do that is this possible breach of the Argentinean constitution?

It seems to me that there are two quite fundamentally different things there. We are not in a position to rule on the Argentinean constitution, just as we would not want a committee of the Argentinean parliament ruling on our Constitution. Such things are dealt with in accordance with the law of each country. So do you see this, then, as a device to achieve the end, or do you see this as being fundamental in itself and not relevant to the core purposes, if you will forgive the pun?

Mr Noonan—We certainly see it as fundamental in itself as to whether the proposed transfer of spent fuel from Australia to Argentina is legitimate under their constitution, which has certain matters that should be respected in their country, and, hopefully, in ours. What the Australian government will do with the spent fuel that would come from a new reactor for the next 40 years we see as fundamental to what should be told to the people of Sydney and Australia. If it is the case that it is unconstitutional for that spent fuel to be transferred to

Argentina for conditioning, then the Australian public are being misled by what this government says will be done with the spent fuel that would come from a new reactor. I understand that it was also the position of the federal Labor Party at the last federal election to oppose the new reactor on a range of grounds, which you would be familiar with.

Mr MARTYN EVANS—Isn't it your preference that the fuel stay in Australia? Isn't that the objective that you seek?

Mr Noonan—That is an outcome which we consider is much more preferable but this is not just a mechanism to achieve some particular outcome. We believe there is a matter of legality in Argentina that has to be addressed, and that this committee should be able to come to an assured position about, before you proceed with this treaty. In doing that you would be informing the Australian community as to what are the legitimate options for the disposal of the spent fuel that is proposed to be produced for the next 40 years at a new Sydney reactor. If it is the case that the spent fuel cannot go to Argentina, then the people of Sydney are being misled that that spent fuel can be managed in that way in the future.

Mr MARTYN EVANS—But you would advise them that that is actually preferable, would you not? If that were to occur, the position of the ACF would be that that is a superior position, that that is in fact a desirable position. The ACF would actually prefer that. If, as result of this action, Argentina were to say that the waste could not be imported and that it had to remain in Sydney, that is your preferred position, is it not?

Mr Noonan—It is the position. Preceding all these events—preceding even the proposal for a second Sydney reactor—it was the position of the ACF that spent fuel produced in Australia should be managed wholly within Australia and should not be taken overseas for any purpose. That is a policy position of the ACF. That there should be management plans to address that position was also the recommendation, in May last year, of the Senate select committee into the reactor. And it is also the recommendation of the nuclear safety committee of ARPANSA. Can I make a couple of other points that are exactly relevant to this position?

CHAIR—Fine. Then I will ask Mr Bartlett to ask some questions.

Mr Noonan—That would be welcome. Before I proceed to the issue of waste transfers to third countries and returns to Australia—and what it may mean in Australia—there are two other points I would like to make that are directly relevant to this. The first is that you may well be aware that John Loy, the CEO of ARPANSA, has now granted a licence to construct the second Sydney reactor. In his reasons for decision on 4 April he stated that he had not been in a position to judge the argument about the Argentine constitution. So the CEO of ARPANSA is not saying to you or to the Australian community what the outcome will be, or what the actual legalities are, in regard to the potential export of Australian spent fuel to Argentina. You should be fundamentally aware that that issue has not been fully addressed or assessed within the licence to construct a new Sydney reactor. That issue remains to be resolved and, given that your committee is investigating this treaty, I consider it behoves your committee to properly investigate that matter before you potentially approve the treaty.

Secondly, as the chair has mentioned, there is a contest of views as to whether spent fuel produced in Australia at the second Sydney reactor constitutes radioactive waste. Again, I

would like to draw your attention to a key report in that regard. It is the report of the nuclear safety committee of ARPANSA to the CEO dated February this year. It addresses spent fuel and radioactive waste management issues and it is a report of ARPANSA's own expert committee on those issues. On page 83 of that report, the committee—and this is a panel of nuclear experts in Australia—set out their understanding of what the definitional issues are overseas in regard to spent fuel and nuclear waste. They set out their understanding that spent fuel that is not intended to be reprocessed is nuclear waste. The spent fuel that Australia intends to send to Argentina is not to be reprocessed. There are fundamental differences between reprocessing and conditioning. Australia accepts that the spent fuel going to Argentina is to be conditioned and the nuclear safety committee of ARPANSA say in their report that, under the international definitions as they read them, it is therefore nuclear waste. If you take that view of the panel of experts in Australia and you put it before the question of the legality under the constitution of Argentina, it becomes clear that there is a very broad body of experts—not just the ACF, not just the Environmental Defence Foundation of Argentina, not just two public prosecutors of the federal Attorney-General's office saying this to you—a committee of ARPANSA saying that this spent fuel is nuclear waste by definition under international agreements. I hope that your committee can address those issues before you consider what you do with this treaty.

CHAIR—At the end of the day, the parties to the treaty must come to the table with the capacity to enter into it. Likewise in any commercial contract, the parties to the agreement must come with the capacity. If they do not have the capacity, then certain consequences follow. In this instance, we have been informed that this treaty has passed the upper house of the Argentinean parliament and it is in the process of completing its passage through the House of Deputies. Whether there is or is not a constitutional challenge at the end of the day is a matter for the Argentinean government. We can take note of the issue and we can take note of the circumstances, but I do not think that Australian legal advice in this regard would be able to bind this committee on something that is essentially going to be resolved within Argentina. Your comment?

Mr Noonan—To be honest, there may be a range of things that your committee will have to do under its legitimate purposes. I would think one of them would be that, if you agree to a treaty and that treaty is then put to the Australian people as a course of events that may occur, you have a responsibility to be satisfied yourselves that that course of events could actually occur.

CHAIR—Once it has passed through the House of Deputies, it is law in Argentina. Any range of matters might or might not occur in terms of people challenging the law, but you take it as it is at any particular time; otherwise the rule of law would fall down around our ears. So, once it had passed through the House of Deputies in Argentina, do you see any other course for the Australian government other than to accept that Argentina has capacity to enter into this?

Mr Noonan—I think first you should be seeking advice yourselves. One good place that you potentially seek that advice from is the nuclear safety committee of ARPANSA who, in their report, looked at the definitional issues and are saying that this spent fuel is nuclear waste. If you start from that—

CHAIR—Are they experts in Argentinean constitutional law?

Mr Noonan—They are making a statement that, in their professional expertise about nuclear waste, this spent fuel is nuclear waste. That is a highly informative matter as to whether one then triggers article 41 of the Argentine constitution, which prohibits the entry of radioactive waste to that country.

CHAIR—Whether or not the Argentinean government takes any notice of their view is another issue.

Mr Noonan—It is certainly a matter for the Australian community as to whether the Argentine government and this Argentine company INVAP can fulfil the articles of the contract that they have signed with Australia to carry out. They have signed a contract with Australia to take spent fuel from a new Sydney reactor. If they do not have the capacity, legal or otherwise, to do so now or in the future, that is a fundamental matter of importance to public policy in Australia and importance to the people of Sydney, who are being told, ‘If you accept a reactor in Sydney, our federal government will take the waste away somewhere else, and one of the key transfer locations is Argentina.’ If that is not a viable option, then the community in Sydney is being misled. I think it is important for your committee to address that issue. You must look to the consequences of the treaty which you have before you, and that is the key one: what then needs to be done in Australia with the spent fuel if it does not go to Argentina because it is not possible according to their authorities?

CHAIR—So I take it you accept that, if the Argentinean government has capacity because the laws of its territory say it does, it has capacity. So we cannot sit there and say, ‘Well, in the future something may or may not happen.’ If it has capacity, it has capacity to enter into a treaty.

Mr Noonan—There is a court in Argentina investigating at present whether the treaty is valid under their constitution. I think that is a matter that you should have to fundamentally address as a committee.

CHAIR—If the Argentinean government then arranges for reprocessing in a location not within its own territory—

Mr Noonan—Would you like me to proceed to the third-country transfer option?

CHAIR—Which is why I got you to it.

Mr Noonan—Thank you. Your treaty also provides for third-country transfers of the spent fuel from a new Sydney reactor if the waste should not, by Australia’s first preference, be dealt with by reprocessing in France, if it should then be meant to go under the INVAP contract, if INVAP should have to take that waste for conditioning in Argentina, and the contract anticipates this. If for whatever reason INVAP cannot satisfy the conditioning of that waste in Argentina, under the contract it is then INVAP’s responsibility to arrange third-country conditioning of that waste, of that spent fuel. Again, your committee should look at: what does this treaty mean? What is it set to actually carry out in terms of providing for a third-country transfer of spent fuel to be produced in Australia? Where else could that spent fuel go?

I am not aware that any government agency has put before you information on what the third-country transfer clauses may actually mean as a course of events in the future. What are the

options that the Australian government is envisaging for a third-country transfer? To my knowledge, the only country which representatives of the Australian government and their agencies have in any forum cited as the potential transfer point as a third country under the contract is Russia. A representative of ANSTO appeared before the nuclear safety committee of ARPANSA and when asked about the third-country option the only country which that representative of ANSTO identified was Russia. Russia, as I understand it, only has one reprocessing plant and it is called Myak. It is one of the most polluted sites on the planet. If this committee approves a treaty which has third-country transfer clauses for spent fuel produced in Australia potentially for the next 40 years, and if, under the fuel arrangements, that spent fuel should be silicide, then the contract would ask INVAP to take 40 years of spent fuel from a reactor in Sydney. If they cannot deal with it in Argentina, if there are legal or technical or licensing issues, the contract provides—and this treaty will provide—for third-country transfers. And be aware, there are no licence facilities to undertake what is proposed to be done in Argentina. There has been no public assessment and no environmental assessment there. Presumably, their community would also have the right to prevent those actions if they find them unacceptable. Where—if the committee could please tell me—have the government representatives told you that waste is to go in the future, if the third-country clauses are to be enacted under this treaty?

CHAIR—The process we are undertaking today is that you are giving evidence and we are asking questions.

Mr Noonan—I appreciate that. I apologise if that came across in the wrong manner, but it would be of interest to—

Senator SCHACHT—Do not apologise to a Senate committee—joint committee, I should say; a real committee. We just take it as part of the process. You have got every right to have a go.

Mr Noonan—It might be informative, even within my evidence, if a member of the committee could advise me as to whether any government representative or representative of a federal government agency has informed your committee as to what the third-country transfer identity is.

Senator BARTLETT—Wouldn't the third country still have to be party to IAEA safeguards? My understanding is that that is part of the requirement of this treaty.

Mr Noonan—Presumably, under Australia's requirements, any third country identified would have to satisfy a whole range of matters.

Senator SCHACHT—Including our own unilateral nuclear safeguard arrangements that Australia may choose to have—and we have pretty strict safeguards. We might say we are not going to allow it to go to Russia as a third country, or any other country. We can determine that ourselves.

Mr Noonan—What then happens with it, if under the contract—

Senator SCHACHT—What would happen would be what you want, that it stays in Australia.

Mr MARTYN EVANS—Your preferred solution—it stays here.

Senator SCHACHT—Yes, your preferred solution that it all stays in Australia.

Mr MARTYN EVANS—And that would be what occurs. We are talking about not a permanent transfer to Argentina or Russia, but a temporary transfer. It is anticipated by everyone that, wherever it goes, it is only for conditioning or reprocessing and that, ultimately, in a very short period of time, it actually returns to Australia. If it never left is the other option, which, as I understand it, is the preferred view.

Mr Noonan—That still leaves open the matter of whether this government can inform your committee or not what the third-country transfer options are under the treaty which you are considering approving. If they cannot do so, presumably that is a matter of interest to the committee.

Mr MARTYN EVANS—It is. But I assume that you would in fact support the outcome where they could not transfer it anywhere.

Mr Noonan—As I have said earlier, it is the ACF policy, preceding any of these issues or developments, that Australia should manage its radioactive waste wholly within Australia.

Mr MARTYN EVANS—You do not regard the permanent storage of it here as taking responsibility for the waste? So it really comes down to a question of whether it is allowed to go on a short holiday. That is really what it amounts to.

Mr Noonan—I would find that unfortunate, if the people of Sydney were to be given the impression that the spent fuel might be taken away from them to somewhere else for a short holiday and then returned to Australia.

Mr MARTYN EVANS—Although it will not be stored permanently, in anyone's view, in Sydney, will it?

Mr Noonan—That is exactly what the federal governments, under both Liberal and Labor, have done for the 40 years of the existing reactor: store that waste in Sydney.

Mr MARTYN EVANS—Yes, but that is not anyone's intention. Ultimately the intention is to have a storage facility in Australia to manage the long-term storage of returned spent fuel. And it would not be at Lucas Heights. The only people who support retaining it at Lucas Heights are those who object to the contract: the ACF, Friends of the Earth and Greenpeace. They are the only groups I have ever met who support retaining the waste at Lucas Heights. Everyone else I have ever spoken to supports the establishment, as an alternative, of a long-term storage facility other than at Lucas Heights.

Mr Noonan—If I could clarify a couple of matters: you have referred to spent fuel leaving Australia for only a short period. I understand it is in the order of between 10 and 20 years that spent fuel may be elsewhere before its proposed return to Australia. That is a very substantial period in terms of public policy. It is almost an intergenerational issue, if you are a person in Sydney looking at what is to happen with the radioactive waste from a reactor proposed to be built next door to you. How will your children address these matters? It is almost leaving the issue for a person's children to address.

Secondly, it is almost a unanimous policy of national and international environment groups that spent fuel should be managed on the site of production or use and that it is not legitimate to transfer spent fuel unnecessarily around a country or around the globe. It is the policy of the ACF that spent fuel should be managed on site at a reactor once the reactor is maintained in use. The committee is anticipating my overheads, so the committee is effectively asking me to move on to the issue of returns to Australia and what may be done with the nuclear waste in the long run.

CHAIR—I would be pleased if you did complete your submission.

Mr Noonan—The issue of returns to Australia is anticipated in the treaty and, again, this committee has a responsibility to address what that may mean for Argentina and particularly for Australia. The ACF sees the proposal for a second Sydney reactor and the consequences of an Australian government's potential management of the spent fuel as a fundamental threat to democracy in Australia. In our view, it is not just a matter of radiation safety or environmental standards; it is a matter of democracy and human rights in Australia. What may be done to Australian communities, states and its citizenry, including traditional owners, by a federal government which has on its hands the waste that a new reactor would produce? What will that government do with the waste? One proposal is that it goes overseas for—in one person's terminology—a short holiday and that it then comes back to Australia. This committee should anticipate the consequences, if it agrees to such a treaty, which would allow the waste to be produced by facilitating a reactor contract whereby the waste comes back to Australia. The committee should consider what that means for Australian communities and states.

I would like to submit as evidence a letter, dated 6 March this year, from Premier Mike Rann of South Australia to the Prime Minister. The letter was made public by the South Australian government and it states:

The South Australian Government is opposed to any national radioactive or nuclear waste dumps being established in this State.

... ..

The South Australian Government will introduce legislation to hold a referendum of South Australians if **any** Commonwealth Government, now or in the future, attempts to use its powers to override state laws and seeks to establish a medium or high level nuclear waste dump in South Australia.

... ..

... I must make clear that my Government and the vast majority of South Australians are opposed to this State becoming the nation's nuclear or radioactive waste dump.

CHAIR—So he is saying it would be subject to a state referendum?

Mr Noonan—The Premier is stating he would introduce legislation to make any action by the Commonwealth that overrides state laws on this matter subject to a state referendum.

Senator SCHACHT—Constitutionally, that would not stop the federal government, if it so chose, ignoring such a referendum. You can say there is a political cost but there is not a legal prohibition as a result of the use of a referendum; it is really a plebiscite of opinion. No state can hold a referendum to stop the federal government choosing to establish—

Mr Noonan—There are matters of influence in law and in politics other than strict legal—

Senator SCHACHT—I accept that there is a political outcome. Mike Rann has been very careful and quite correct in saying, ‘If you try to do this to South Australia, we will test public opinion in a referendum.’ But if a federal government still chooses to put a nuclear waste dump of any type in South Australia, it can do so under its existing constitutional arrangements.

Mr Noonan—The committee should be aware that there is a law in South Australia, the South Australian Nuclear Waste Storage (Prohibition) Act 2000, which was passed by a Liberal state government. There is in South Australia and there is in WA bipartisan—

Senator SCHACHT—I know all of that. Irrespective of what a state government carries—and you might get six states and two territory governments all carrying the same resolution—in the end if a federal government chooses to exercise its constitutional powers to establish a dump somewhere in Australia it can override state legislation. Do you accept that power?

Mr Noonan—No.

Senator SCHACHT—Okay, fine. The ACF has that difference of opinion—

Mr Noonan—The ACF understands that it is a matter that would have to be taken through the Australian courts. If a federal government decided to override a state law, which is properly designed for a purpose to prevent a national nuclear waste dump, that is a matter that we believe can only be dealt with, for instance, through the High Court.

Senator SCHACHT—Okay, you disagree. We are not getting anywhere with that. I just wanted to get clear what the constitutional arrangements were.

Mr Noonan—There is legislation in South Australia; I have referred to the name of the act. It prohibits the import, transport, storage and disposal of medium to high level nuclear waste—exactly the sort of waste that is anticipated to be produced by a second Sydney reactor. Spent fuel in any consequent reprocessing of nuclear waste—

Senator SCHACHT—You want it all left at Lucas Heights?

Mr Noonan—As you would be aware, Senator, the community of South Australia has fundamentally rejected the waste being brought to South Australia.

Senator SCHACHT—This is the Australian parliament, responsible for all of Australia. So you would rather the waste be left at Lucas Heights?

Mr Noonan—The Australian parliament presumably should have to address where in Australia the waste should go. Successively, the states and territories of Australia are saying no, they will not accept this waste. We have bipartisan, political opposition in South Australia and in Western Australia to this waste being brought to those states. It is not just a position of the ACF; it is not just a position of the ALP; it is the position of the Liberal and Labor parties in having their say in WA.

Senator SCHACHT—Let me ask you this question: if the New South Wales government said, ‘We would rather have the nuclear waste from Lucas Heights taken out of the immediate Sydney metropolitan area and stored somewhere west of the Darling River in New South Wales, and we will pass legislation to get it out of Lucas Heights to put it in western New South Wales in a very remote area with all proper safeguards, protections et cetera,’ would you favour that outcome to at least get the waste out of Lucas Heights?

Mr Noonan—I would like to make some points in response to that. The first is that the ACF considers that any national nuclear waste dump which is designed to facilitate increased production of waste by a new reactor at Lucas Heights is not a legitimate imposition on the community. The second is specifically relevant to your point. I understand that recently, in the New South Wales parliament, the Treasurer, Mr Egan, stated that Labor and New South Wales would not accept a national nuclear waste dump in that state. I understand that he stated—and I can fetch the exact wording for you if it is of benefit to you—that only the Liberal and National parties would impose a national nuclear waste dump in New South Wales and that Labor would not do so.

Senator SCHACHT—You are saying that Mr Egan wants to leave the waste at Lucas Heights?

Mr Noonan—I could give you the verbatim statement that he made, and his comment was against a national nuclear waste dump in New South Wales.

Senator SCHACHT—Every state and territory will carry a resolution opposing a nuclear waste dump. That is just a given fact. Where do you think the existing nuclear waste should be stored—back at Lucas Heights or somewhere else?

Mr Noonan—The ACF considers that, while there is an operating reactor at Lucas Heights, it should be stored on site of production or use, which is Lucas Heights.

Senator SCHACHT—I have to say that I have always opposed a second reactor being built. I think the \$300 million could be better spent in many other areas of scientific research. But, unfortunately, we are not the government, and the government is going to get something through. We are going to have to deal with what we inherit. The inheritance is a second nuclear reactor. What do you do with the waste?

Mr Noonan—You do not impose it on communities against their wishes. You do not impose it on traditional owners, the Kungka Tjuta—the Aboriginal women and elders in South Australia—against their wishes.

Senator SCHACHT—I want to ask: do the people at Lucas Heights, the local community, want the material kept at Lucas Heights?

Mr Noonan—I presume many of the people at Lucas Heights did not want the first reactor, let alone the second.

Senator SCHACHT—Of course.

Mr WILKIE—Just as clarification, I think basically what Senator Schacht is saying is that, if the second reactor is going to be built, where should the waste go?

Senator SCHACHT—That is right.

Mr WILKIE—If it is not going to be stopped, if the second reactor is going to be built, what do we do with the waste?

CHAIR—I think Mr Noonan understands the question. We are just waiting for the answer.

Mr Noonan—There seems to be a problem that the Australian government have—that they wish to build a new reactor without being able to tell the community where the waste will go. The ACF can legitimately say to you that we consider it is for government to have to answer where they will put the waste from a new reactor in Sydney—waste they will produce for the next 40 years.

CHAIR—And the position of the ACF is?

Mr Noonan—The position of the ACF is that, while there may be an operating reactor at Lucas Heights, the spent fuel waste should remain on site. We would also consider that it is a matter not just for the Australian government but for this committee to anticipate what should be done with that waste, since the treaty which you are considering directly provides for some particular mechanisms as to what may happen with the waste. We believe there is a legitimate reason for your committee to consider that the waste may not, over time, go to Argentina because of constitutional issues, and there are legitimate reasons for your committee to consider what is involved in that waste going to a third country. If your own government advisers have not yet told you what the third country offers are, perhaps it would be of interest for the committee to investigate with them what other third countries are possible receivers and what issues are involved in those potential destinations.

CHAIR—Thank you for your advice. Could you conclude your submission? Is there anything further?

Mr Noonan—I will conclude on that point.

CHAIR—Are there any further questions the committee has of Mr Noonan?

Mr WILKIE—I have one question. We have gone to the bottom of the matter, and that is that the ACF believes the waste produced at site should remain there. Do you believe therefore that the public should be told that that is the option?

Mr Noonan—If I might clarify first, it should at least remain there while there is an operating reactor on site. Essentially all the national environment groups prior to the federal election took a policy recommendation to the Liberal Party and the Labor Party that there should be a full public inquiry under the EPBC Act as to the proper management of Australia's radioactive waste. That is a legitimate role under the existing federal legislation and a legitimate investigative means as to what are the proper array of options that could be carried out with that material over time and how best to do so to gain public consent and public acceptability to the potential outcome and to have scientific defensibility to the outcome and to have, for instance, levels of community acceptance, whether it be local government, Sutherland shire, or the Australian Local Government Association, ALGA, which has issued a recommendation that local government authorities should have a right of say in the transport of such long-lived waste through their local communities and their local areas of jurisdiction. We believe that sort of full public inquiry under EPBC would be an appropriate mechanism for an Australian parliament to recommend to properly investigate what should and can be done and what is the best possible outcome among an array of options with the existing waste at Lucas Heights.

Mr CIOBO—I have one question, just to clarify your position for my mind, Mr Noonan. ACF is opposed to countries exporting nuclear material. Is that right?

Mr Noonan—Specifically spent fuels, certainly. If you wish to address the specific type of radioactive material, certainly. The ACF is opposed to Australia or other countries exporting spent fuel.

Mr CIOBO—But not nuclear material per se.

Mr Noonan—It depends entirely on what you are asking about. For instance, another member asked the previous witness about radioactive isotopes. The ACF supports proper medical use of radioactive isotopes. The ACF position is that there is no need to have a second Sydney reactor to properly provide medical isotopes in Australia. That is also the position of the Medical Association for the Prevention of War.

Mr CIOBO—From your position, though, the point of differentiation between those two, our import of isotopes and our export, is what?

Mr Noonan—I am sorry, I do not follow that.

Mr CIOBO—You are opposed to the export—

Mr Noonan—I am specifically discussing spent nuclear fuel. I am not discussing medical isotopes.

Mr CIOBO—What I am saying is that your concern is over the environmental threat and those types of things of the export and import, the global trade in these materials. Your point of differentiation between our importation of isotopes and our export of nuclear waste or spent fuel is what?

Mr Noonan—I wish to clarify that in the mind of the ACF there is a complete differentiation of issues between medical isotopes and their movement around the globe and what we are discussing today, which is spent nuclear fuel from the new Sydney reactor. It is spent nuclear fuel which is addressed under the clauses of this treaty; it has nothing to do with medical isotopes under this treaty.

Mr CIOBO—I understand that. What I am trying to clarify in my own mind, though, in terms of the ACF position is your point of differentiation between the two. What is your area of concern?

Mr Noonan—Spent fuel and reprocessing and conditioned waste are fundamentally different material from medical isotopes. There is a fundamentally different level of radioactivity involved, of longevity involved and of risk involved and of potential health and environmental consequences. It is fully recognised, whether by the Nuclear Safety Committee or by whoever else you may wish to look at, that there is a totally different management regime and safety standards required for spent fuel than is required for a matter such as medical isotopes, which is an entirely different issue.

Mr CIOBO—So it is degree of risk, in other words.

Mr Noonan—They are entirely different matters, sir. I find it difficult to discuss them in the same sentence because they are so different.

Senator TCHEN—I suppose this is a hypothetical question. Supposing Premier Rankin actually calls for a referendum or plebiscite in South Australia and by a narrow majority the people of South Australia say yes, we will have nuclear waste. What is the position of the ACF? Would you continue to oppose it?

Mr Noonan—For the benefit of other members of the committee, that would be a highly hypothetical matter given that we have already had bipartisan political opposition to the import of that waste to South Australia. We already have legislation passed unanimously by the South Australian parliament making the entry of that waste—its transport, storage and disposal—illegal in South Australia. We already have opinion polling showing that around 85 to 95 per cent of South Australians are opposed to that waste entering South Australia.

Senator TCHEN—I am not asking you to assess the possibility of this plebiscite being passed; I am asking you what the position of the ACF would be.

Mr Noonan—If there were such a referendum, the ACF would certainly be recommending that people oppose the entry of that waste to South Australia.

Senator TCHEN—No, subsequent to the outcome.

Mr Noonan—So you are asking me to answer for—

Senator TCHEN—You actually put it to this committee that this committee must consider the hypothetical situation that a third country transfer might be necessary. You said it is the duty of the committee to consider that, and I am putting to you the hypothetical question that the ACF should perhaps consider as well.

Mr Noonan—All right. The issue is perhaps less hypothetical for you than for me because it is a specific clause of the treaty that you are addressing. And in my own response I could well draw attention to the comments of the Premier of South Australia, who, in his view, says that the vast majority of South Australians are opposed to the state becoming a national nuclear waste dump.

Senator TCHEN—I think the Premier is making a hypothetical assumption about how the voters of South Australia would decide.

Mr Noonan—He has just been elected with that as a key plank of his policy.

Senator TCHEN—You made a statement at the beginning, Mr Noonan, that it would be unconscionable for Australia to export nuclear waste to another country and that it would be especially unconscionable to export waste to a developing country.

Mr Noonan—Yes.

Senator TCHEN—You were meaning Argentina. I would like to make it clear that this committee does not consider that lesser economic development necessarily means that this country is less developed in other areas, in terms of its society and culture. So it is not necessary for Australia to make a special case that a certain country needs to be looked after or that doing something to one country would be less unconscionable or more unconscionable than doing something to another.

Mr Noonan—The ACF would oppose the export of Australian spent fuel to any country. We believe that the—

Senator TCHEN—Yes, I understand that part. But I am saying that you identified an underdeveloped country in particular and specifically, in this case, Argentina. I think that might be offensive to economically developing countries, and particularly to Argentina, and I want to make it quite clear that this is not the view of this committee.

Mr Noonan—I have certainly not meant any offence either to the committee or to the community or government of Argentina. It may well be that Argentine society is more culturally advanced than Australia. They have put a specific set of human and environmental rights in their constitution, for instance, and we have not yet considered that.

Senator TCHEN—Thank you.

CHAIR—On that point, is there anything further, Mr Noonan, or have you completed your submission?

Mr Noonan—I have completed my submission.

CHAIR—As there are no further questions from the committee, I thank you very much for taking the time to be here. That concludes the taking of evidence on the agreement with Argentina. We will move to a roundtable discussion on the remaining three treaties with the United States, Hungary and the Czech Republic.

Proceedings suspended from 10.53 a.m. to 11.21 a.m.

NOONAN, Mr David Joseph, Campaign Officer, Australian Conservation Foundation

THOMPSON, Mr Bruce Peter, National Nuclear Campaigner, Friends of the Earth, Australia

Agreement with the United States on nuclear transfers to Taiwan and agreements on nuclear safeguards with Hungary and the Czech Republic

CHAIR—The process that we will now undertake will be in the form of a roundtable discussion on the remaining three treaties, the agreement with the United States on nuclear transfers to Taiwan and agreements on nuclear safeguards with Hungary and the Czech Republic. We have representatives from Friends of the Earth Australia and the Australian Conservation Foundation and I understand that the representatives from Greenpeace Australia had to leave. The committee does not require the representatives to give evidence under oath, but I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you have any preference as to whether you want to deal with the treaties as one or do you wish to separate them—the US, Hungary and the Czech Republic?

Mr Thompson—On the understanding that this is a roundtable discussion, we have some illustration of the issues. We could group the issues involving Hungary and the Czech Republic together, because there are similar issues that we would like to present about.

CHAIR—In relation to the United States?

Mr Thompson—There are just a few comments in terms of the use of Australia's uranium by Taiwan. The main substance would be the issue of Hungary and the Czech Republic.

CHAIR—I suggest on that basis that we deal with Hungary and the Czech Republic and, at the conclusion of that, we will hear from you on the agreement with the United States.

Mr Thompson—I will firstly make some opening comments. These three treaties basically pertain to the exports of Australia's uranium to other countries. Friends of the Earth, along with the Australian Conservation Foundation, has an opposition to the export of Australia's uranium—as do most of the major parties in Australia, apart from the present government. That is an ethical position that we have and that we share with a number of other environment organisations across the world. With respect to the actual pragmatic impacts of the export of uranium to Hungary and the Czech Republic, the issues involved here are the exports of Australia's uranium to what are Soviet designed reactors, which have significant safety concerns above and beyond the usual concerns that environment groups have with Western designed reactors and modern reactors.

I would like to share a statement from the Friends of the Earth organisation in the Czech Republic. The statement reads:

Czech Nuclear Power Plants are built upon outdated Soviet-designed reactor blocks:

Dukovany Nuclear Power Plant, comprising four reactors started in 1985-1987 is not equipped with basic safety measures, such as containment structures. Therefore the protection of environment in a case of heavy accident is insufficient.

Temelin Nuclear Power Plant with two reactors under construction is currently the most controversial nuclear project in Europe. Despite its extensive upgrades, Temelin is still suffering from a numerous technical defects and its overall reliability is lower by magnitude than comparable Western reactors. The European Parliament already twice passed a resolution calling on the Czech government to cancel the project (1999 2000).

Recent decision making processes were not open to the public. Last spring, a coalition of 150 Czech civic initiatives—
or community organisations—

CHAIR—Mr Thompson, could I interrupt you there. I think this statement is included in the submission of the Friends of the Earth. I do not think it is necessary for you to read it through to us, because the committee members have it in their papers.

Mr Thompson—I think they are quite significant points.

CHAIR—If there was something specific you wanted us to consider—

Mr Thompson—Maybe I could paraphrase. The European parliament has already twice passed a resolution that has called on the Czech government to cancel this project. Community organisations in that country have called for a referendum, and they received 120,000 valid signatures, which is a reasonable petition to any government on any issue. Despite this, the parliament has rejected a proposal that would demand a referendum.

One of the issues which they put forward, which is quite similar to Hungary, is the unresolved issue of spent nuclear fuel. Like Australia, Hungary and the Czech Republic—as with most other nations in the world—do not have a permanent solution to their radioactive waste. The present functioning of that is to export their radioactive waste to Russia, to Chelyabinsk, to a plant my colleague referred to earlier—the Mayak facility. There are significant concerns I would like to go into on those issues in a minute.

On a conceptual level, we are extremely concerned that the Australian government intends to sign a treaty with the Czech government, because several European governments—apart from the European parliament—have condemned the Temelin reactor. There are two main power plants in the Czech Republic—the Temelin and the Dukovany plants. If you have a significant number of European communities, and parliaments of those communities, which are suggesting that this is a dodgy set-up, then it seems a strange position for Australia to be facilitating that project by the export of the fundamental fuel that it operates on.

With regard to Hungary on these same matters, there are four nuclear reactors of Soviet design, which are similar to those in the Czech Republic, operated by a group called PAKS. Utility directors on 1 February 2001 approved a 10- to 20-year extension of the plant, over a current assumed life of 30 years. So we are talking about quite old Russian reactors in very uncertain safety conditions, by Western standards, being allowed to extend their operation for a significant percentage of their existing operational life. This is despite European Commission

assessment that states that full compliance could be expected only in the long to very long term. So basically they are saying that these reactors will not be compliant to Western standards in what they say is a long to very long term—what we would assume to be greater than 10 years.

On the issues of radioactive waste for both the countries, on 4-5 January 1998, an agreement was signed for the transportation of spent fuel from Hungary to Chelyabinsk in Russia. Yet in 1995 Russian legislation forbade the transport of spent nuclear fuel from foreign states into Russia for reprocessing without the return to those states of the resulting waste. There are a few themes going through this morning. The issue of radioactive waste is a fundamental issue—not just here, not just to the community of South Australia, but to communities across the world. No-one has sorted out that final resting place for the waste or is capable of dealing with the interim management, which involves conditioning and reprocessing.

The governor of Chelyabinsk, Pyot Kasyanov, sent a letter to the Russian Prime Minister, Mikhail Kasyanov, in August 2001 stating that liquid waste storage of radioactive waste in reservoirs at the Mayak reprocessing plant would overflow in the next three to four years, and warning of a disaster affecting the Iset, Tobo and Ob rivers, which lead into tributaries into the Arctic Ocean. Mayak is the only plant in Russia capable of accepting and reprocessing overseas radioactive waste.

There are very few plants in the world that actually accept overseas radioactive waste. The two main plants in Western countries are the La Hague facility, where Australia is presently exporting its radioactive waste, and the Sellafield facility in England. Until 1995, Australia sent its radioactive waste to the Dounreay facility in Scotland. The reason we do not send it there any more and are now sending it to France is that the plant was closed on environmental grounds. It was an untenable project. The two largest nuclear polluters in the world, by anybody's standard, are the La Hague facility, for gaseous emissions of radioactive waste, and the Sellafield facility, which has liquid discharge into the Irish Sea and is contested by the Irish government and opposed by the OSPAR committee. Shutting down those two facilities—which is potentially feasible in the next 20 to 30 years—partly comes into the previous discussion about where Australia sends its radioactive waste and Argentina being a potential option if we are unable to send radioactive waste to La Hague.

Ultimately—and I appreciate the comments made by Senator Tchen earlier about respect for developing countries or economies which are, if I can put it so boldly, cash-strapped—we are seeing today a shift and a pressure to impose the burden of radioactive waste on countries which are seeking some quick cash hits. One of those is Russia, and this is why a series of negotiations are taking place for European countries to export radioactive waste to Russia to be reprocessed. The catch with all of these countries is that they do not actually have a permanent site for the return of that waste. I know there has been discussion about what is hypothetical and what is real; but, if a country does not have a real facility for that waste to return to, there is an imposition on that country to accept and manage that waste for an indefinite period of time. We see those sorts of issues—apart from the environmental consequences, which are quite outlined in Russia—as very significant ones that an Australian government has a direct and indirect relationship with.

CHAIR—Mr Noonan, do you have anything to add to that?

Mr Noonan—ACF is not proposing to make a statement.

CHAIR—On that basis, we will deal with the Czech Republic agreement. Specifically, you were saying that the Czech Republic needs to resolve the issue of spent nuclear waste. It has not. Could you reiterate for me its current position in relation to spent nuclear waste, in terms of management facilities.

Mr Thompson—Each government, on the expansion of its nuclear industry, makes statements that within the next seven, 10 or 14 years it must have a permanent and safe storage method for its radioactive waste. The present government of the Czech Republic has made such a statement. It has said that in the next seven to 10 years they have to establish a return storage—at least an interim storage if not a long-term storage. The present situation, though, is that—

Senator SCHACHT—Have the various states of the Czech Republic had referendums to say they do not want it in their back yard?

Mr Thompson—I am sorry?

Senator SCHACHT—Have the various provincial premiers, or equivalents, of the Czech Republic carried resolutions to have referendums saying, ‘We do not want the repository in our backyard’?

Mr Thompson—I am not as sure of the exact matters that are going to—

Senator SCHACHT—They are lucky they do not have state governments in the Czech Republic, I think.

Mr Thompson—It is a scenario that is happening across the world.

Senator SCHACHT—I am sorry to interrupt; it is just my black sense of humour about state-federal relations in Australia.

CHAIR—I assumed you were being serious, Senator.

Senator SCHACHT—I am in favour of abolishing the states, that is true.

Mr Thompson—It is quite a clear point that communities across the world do not really accept the imposition of radioactive waste, nor do most communities accept the imposition of the actual production facility. In a lot of cases Friends of the Earth would put forward that these are decisions that are made without clear consultation with or the consent of the communities that are affected. They do have serious scenarios which play out after decisions are made, down the track, whether it is five years, 10 years or 20 years—there is a burden of responsibility that lasts for a significant amount of time.

CHAIR—What do you say specifically about their statement that they are going to do this within the seven- to 10-year time frame?

Mr Thompson—I guess what it comes back to—and this becomes the broader position of environment groups on radioactive waste—is that since the 1970s, since the great commercialisation of the nuclear industry, nuclear utilities and governments that have supported that industry have said, ‘We will solve the radioactive waste problem in permanent storage.’ The most advanced nuclear state in the world—the USA—does not yet have a permanently approved facility for its radioactive waste. Japan does not have—

Senator SCHACHT—They have synroc, which is the panacea for every form of disposal of nuclear waste.

Mr Thompson—I guess what we are saying is that if the United States of America, in its operation of its nuclear industry in the last 40 years, has not been able to establish a permanent storage for radioactive waste, it seems unlikely that Hungary, the Czech Republic or Australia will actually achieve that. The impediments are not just political—they are not just the community’s opposition, which we believe is a very legitimate one. There are significant technical difficulties that are unresolved as to how you actually encapsulate this stuff for the length of time that it remains dangerous to the environment and to humans.

CHAIR—How advanced are the United States, then, putting aside perhaps the political-social perspective and looking at the technological-scientific side of it?

Mr Thompson—It is very contentious. The most advanced site is the Yucca Mountain facility, which some members of the committee may be aware of. The Yucca Mountain facility has been highly contentious politically, partly due to transportation of waste that would come from reactors across the nation. There is concern about transportation because transportation basically exposes the waste to a series of risk scenarios. In terms of final siting, basically the Yucca Mountain is quite advanced in its actual physical substance as a facility. There is a decline that would locate radioactive waste about 500 metres below the surface.

There are ongoing concerns and technical concerns about groundwater issues. One strangely illustrative situation is the movement of transuranic particles, which are basically radioactive material derived from spent fuel. The area is near the Nevada testing range, which was used for open-air atmospheric testing. Taking core samples 50 metres down in the region where the Yucca Mountain facility is to be located, particles of plutonium were found in the last two years by scientists who were working on that project. This is quite a shocking thing when you think about atmospheric fallout that occurred in the 1950s from testing. Those particles of plutonium do not exist naturally—they can only be derived from the nuclear reaction—and they were found 50 metres down in what was considered a very dry and arid area. There is a series of uncertainties about the burial of radioactive waste that are unresolved and they provide not just oppositional arguments in the United States but actually serious concerns with that project continuing.

CHAIR—I guess what you are asking us to be concerned with is the Czech Republic’s ability to come to terms with the safety issues. What impact do you think the European Union impetus would have?

Mr Thompson—It is a statement from the European Parliament. I am not completely aware of the situation, but I understand there is a difference between the powers of the parliament and

the powers of the European Union. I would say, however, that it is a serious indication of the desire of those other countries. These are led by countries which are neighbouring the Temelin plant—Germany, Austria and other countries which are in that region are concerned for their communities and have a legitimate right to state that. I am unaware whether the new structure of the European Union allows for a veto of that project. I would not believe that sovereign right would be extinguished by the union.

Senator SCHACHT—Does the European Parliament indicate in that resolution that the Czech Republic's future membership of the European Union is dependent on sorting out the safety issues of the old Soviet reactors that they are using and the disposal of waste?

Mr Thompson—Certainly safety issues are a requirement of the European Commission. The concern is that, as with a lot of these things, the time lines get spread out. As I understand it, the European Commission has asked for those standards to be improved within seven years.

Senator SCHACHT—In seven years?

Mr Thompson—Yes. An independent report—I will have to get the exact description for you—has said that to improve the safety within seven years is quite unfeasible. Negotiations, I am sure, will continue over relationships within the European Union; yet the pragmatic fact is that there is a reactor sitting there that has not been able to advance its safety capacity.

Mr MARTYN EVANS—The economics of all this is that the Czech Republic is an exporter of energy. Are there any economic considerations coming from those other countries?

Mr Thompson—I think there is an ethical issue that comes from that. The Czech Republic has an overcapacity of electricity. It is selling to what is becoming an increasingly networked grid through Europe. While a lot of western European countries are saying no to nuclear power on the grounds that we believe are quite reasonable and valid, electricity is still being sourced for what are, I guess, the Russian built reactors which are of questionable safety standards and which are being propped up. In this case, the Temelin plant is actually being refabricated by the US giant Westinghouse. Westinghouse would not be able to build this plant in Germany. It certainly would not be able to built it in the USA. For that company, it is a viable investment, due to exchange rates and those sorts of things, to actually advance a plant which will be able to export its electricity to the greater European area.

Senator SCHACHT—Sorry, did you say that they bought the plant or that they are redeveloping it?

Mr Thompson—They are in a contractual agreement with the Czech government to refurbish it. The Temelin plant was a Russian design that never really saw the light of day. Since the change of government, Westinghouse have come in and said that they will refurbish and finally switch on that plant.

CHAIR—So it is actually a plant but it has never been—

Mr Thompson—The Temelin plant has four nuclear reactors. One of those was switched on on 11 October last year.

Senator SCHACHT—Apart from the safety factor and the disposal issue, has any of the uranium exported from Australia since the fall of the Wall or 1989 and the democratisation of the Czech Republic ended up being used in what one could describe as questionable safety nuclear energy plants in the Czech Republic?

Mr Thompson—I am not aware that that has happened. It may well be that the issue before your treaty committee is a precedent issue as to whether Australian uranium may be used in nuclear power plants that do not comply with Western standards.

Senator SCHACHT—That is what I wanted to come to. So you are not sure whether they have not bought our uranium because (1) the price is not right for them, (2) because they do not meet out safety requirements or (3) they have other long-term contracts from the old Soviet Union or somewhere? Which is it—a mixture of all three?

Mr Thompson—My understanding—and I could be proved incorrect—is that they would have had existing arrangements through Russia. These are countries which are post the Soviet bloc which are being broken up. I would assume Australia would not have had an agreement to export its uranium to the Soviet Union—

Senator SCHACHT—Does this treaty make it easier for us to export uranium to the Czech Republic for use?

Mr Noonan—Yes. I understand that prior to this treaty it has not been possible for Australia to export uranium to Czechoslovakia but that, if this treaty were authorised by the Australian processes, in the future it may be a first and a precedent issue of the export of Australian uranium to reactors that do not comply with Western standards.

Senator SCHACHT—The treaty does not prevent us imposing bilateral safety conditions on any export of uranium to the Czech Republic.

Mr Noonan—Nor does the treaty contain or envisage—

Senator SCHACHT—I know, but I am trying to get to whether the Australian government unilaterally could impose conditions on the export of uranium to the Czech Republic, saying, ‘Until you get your nuclear reactors to a certain standard of safety, which you haven’t at the moment, sales are banned.’

Mr Noonan—That is another one of those hypothetical matters. The treaty, as it is comprised and as it is before you, does not contain those clauses.

Senator SCHACHT—I am going to give you a leading question, a dorothy dixer. Would you want us to write into the treaty the safety conditions before uranium could be sold from Australia to the Czech Republic?

Mr Noonan—Yes.

Mr WILKIE—Are you aware of any conditions of that nature that we have in existing treaties at the moment for countries that purchase our uranium for energy production?

Mr Thompson—I guess the main areas Australia exports to at the moment are western Europe—Germany and some other countries in that region—South Korea and Japan. About 50 per cent of Australia's uranium is divided between South Korea and Japan. Friends of the Earth oppose all of that stuff; it is our position. To answer the question, there are clearly identified—and this is not from environment groups but from people in the field of the nuclear industry—substantial differences in safety standards between reactors operating in those countries and reactors presently operating in the Eastern bloc countries. Further to that, I think that there are bilateral agreements with those countries and also exchanges of nuclear technology and expertise, which ensure and advance what we see as better positions. There are relationships between those countries for the maintenance and upkeep of those standards.

CHAIR—The obligations under the treaty refer to various safeguards and IAEA standards and the like. Are you saying that the proposed agreement infringes internationally agreed nuclear safety measures relating to the treatment of nuclear waste?

Mr Thompson—I would need to refer to the IAEA regulations and, as I understand it, that would be the baseline for operation. Yet, if you have a reactor that would not be approved in the United States or in a western European country or in Australia, aside from what are internationally accepted standards, Friends of the Earth believes that there is an ethical question about whether Australia should be supplying its uranium to that facility.

CHAIR—I guess we have to apply benchmarks or standards, don't we? The agreement obliges the parties to ensure safety standards, protection and the like and, if they do not, somebody is in breach of the agreement. The onus is on the parties very much to have the capacity—again, I use that word—to enter into this agreement because it obliges them to ensure internationally agreed nuclear safety measures and standards.

Mr Thompson—If you have the neighbouring German and Austrian governments saying that this reactor should be cancelled on its safety grounds, I think that is an issue that Australia—which has relationships with a number of other governments and communities in the world—should be seriously mindful of.

Mr WILKIE—But are they competing with the Czech Republic for the supply of electricity? Are they competitors in that same market?

Mr Thompson—Their positions are quite clearly grounded in the safety aspects, as I understand it.

Mr WILKIE—Yes, but are they still competitors in the same market for the supply of electricity?

Mr Thompson—I am sorry, I am not an expert in the new energy market in Europe.

Senator SCHACHT—More likely, do you know whether Austria imports power from one of these reactors in the Czech Republic?

Mr Thompson—It possibly may. I do not think that they would be shooting themselves in the foot if they were opposing it.

CHAIR—In a competitive market, it would not be beyond one nation state to condemn somebody else's plant and equipment.

Mr Thompson—I guess that is potentially a concern in a competitive market. What we see in a lot of cases in industry, where they are potentially opened up to privatisation, is that the standards do drop and they have a capacity to provide a cheaper tender if they do not have the same scrutiny of safety standards. It is one of the significant cost impediments to the nuclear industry establishing new reactors. There has not been a new reactor built for power in the United States for 20 years. There have been very few reactors coming on line in the West. One of the significant cost impediments that no private enterprise is willing to bear is the cost of safety and containment.

The situation in the Czech Republic is that of a government which has the largesse of community finance to facilitate these projects coming on line. It is quite clear that Westinghouse would not be able to construct this reactor in the United States on a safety level, but it also would not construct the reactor in the present day on a commercial level. There is not the money in nuclear power.

CHAIR—What do you base that on? Obviously, Westinghouse has taken on this refurbishment job, but what do you base your opinion on that they would not be able to do it in the United States?

Mr Thompson—On a cost or commercial basis?

CHAIR—Either. You said that they would not be able to do it in the United States. I am just trying to find out the basis upon which you say they could not.

Mr Thompson—The Soviet designed reactor would not be approved. The Nuclear Safety Agency in the United States would not approve this reactor; it would not get off the drawing board.

Mr ADAMS—There are seals and containment issues.

Senator SCHACHT—Some of them do not even have a double containment wall, do they?

Mr Thompson—They do not at present. There is a difference between—

Senator SCHACHT—So what it needs is a containment wall around it.

Mr Thompson—There is a fundamental difference in the set-up—and this is getting a little bit technical—and the relationship of the core, which is where radioactive fuel is loaded in the heart of the reactor. In respect of the operation mechanism that actually shuts that reactor down during an emergency, there are some fundamental differences between the advancing designs that were developed in the 1950s and 1960s, coming out of the United States and the Soviet

Union, which were the main champions of designs which are now in commercial operation. There is a series of after-market safety measures that are trying to be applied. With most of these, you cannot retrofit fundamental design changes. You can apply a series of safety mechanisms, with shut-down valves and computer monitoring maintenance, but you cannot totally redesign the engineering of the core containment facility.

Mr CIOBO—They would have to put in place the refurbishment that you are referring to?

Mr Thompson—Yes.

CHAIR—I want to look at the adverse comments, if you like, by Germany and Austria. Has there been any response from the IAEA to the German and Austrian comments?

Mr Thompson—I am not aware of any correspondence but I would be happy to find that out and table it for the committee.

CHAIR—I think that would be useful.

Senator SCHACHT—You would reckon the IAEA would have some idea. They are based in Vienna, aren't they? They are just up the road. So, if nothing else, self-interest should clarify their brain.

Mr ADAMS—I think that is a very important point that we need to establish on this treaty: that it reaches the same standard. The evidence that we have been receiving is that this is well below it.

CHAIR—That is the allegation under the treaty.

Mr ADAMS—Yes, that is right.

CHAIR—So it is fundamental.

Senator TCHEN—Mr Thompson, the committee has been told previously that all the nuclear activities of both Hungary and the Czech Republic are subject to the full scope of safeguards applied by the International Atomic Energy Agency. In your submission you have said that the facilities, particularly the nuclear reactors, of both Hungary and the Czech Republic are in fact substandard. Are you suggesting the possibility that the International Atomic Energy Agency's standards are inadequate or that their management is inadequate?

Mr Thompson—This deals with two issues. Safeguards pertain particularly to arrangements for the safeguarding of radioactive material from military use. So safeguarding in the language of the nuclear industry is reasonably specific to whether that material—Australia's uranium exports—can be used for military purposes. There are quite strong bilateral agreements between countries and also broad agreements in United Nations resolutions on these matters. In terms of safety, as I understand it, the IAEA sets standards but it is a UN committee, and you get into that blurry area of state sovereignty and the right to operate. Russian reactors have been of significant concern to the European Community, but a series of reviews by the IAEA over the

last 20 years have shown there is greater access to those facilities now that the Soviet Union has broken up. As it is incorporated into the European Union, that scrutiny and that level of work have increased.

The reality is that these reactors would not be approved under the IAEA standard if they were to be built from scratch. Once something has an incumbent momentum—ultimately, the facility is built; it has been operating for 20 years—it is very hard for an international committee or the parliament of another country to leverage a member state or a sovereign nation to actually shut down its facilities on the basis that it does not accord with their safety standards. What we as an individual country can apply is an ethical consideration of the principle that it is clearly not a standard that we would accept in our own country, and therefore that poses an ethical question for the committee. Also, if there is not necessarily a clear pragmatic need, if the country has overcapacity, then there is a further impetus that this is an export that Australia does not need to engage in.

Mr MARTYN EVANS—As you have clearly stated, Mr Thompson, the difference regarding what the treaty addresses relates to the safeguards for the processing of the material so that it does not fall into military usage. That is what the safeguards under the treaty refer to. The treaty does not deal with the inherent safety of any of the facilities that it might be used in.

CHAIR—Such as the transfers.

Mr MARTYN EVANS—Yes. The only thing the treaty and the international community deal with is the safeguarding of the nuclear material from entering into the military stream, not the actual safety of the material once it is in a country. Obviously, if it is being shipped between countries, there are international agreements, but once it is in a country the safety of that material in terms of it escaping into the environment or affecting the local community is a matter for that country. When we ship coal, we do not actually determine the air pollution standards. We ship a lot of coal to countries that have air pollution standards that are less rigorous than ours, but we do not require, with the shipment of that coal, that their air pollution standards be the same as ours. That is the problem we face here: to what extent do we actually impose our standards on another country in relation to the use of material, when we do not require it in any other area, be it coal, steel or anything else?

CHAIR—We are not actually looking at the prospect of military use because—

Mr MARTYN EVANS—That is what the treaty deals with.

CHAIR—The Czech Republic is a party to the non-proliferation treaty.

Mr MARTYN EVANS—Yes, exactly.

Senator SCHACHT—But, as Mr Noonan made very explicit in his simple answer to my question, there is nothing to stop the committee recommending that, if there were a unique situation in the Czech Republic, where clearly a number of people—not just the anti-uranium lobby, Friends of the Earth, the Conservation Foundation et cetera, but people who are less dogmatic about it, and I am not saying that in a pejorative sense—were concerned about those reactors, I do not think it would be impossible for us to recommend a clause in this treaty to say

that our uranium cannot be sold until certain safety operational factors have been resolved. It would be a new step to take, but I cannot see that there is a reason why we should not do that. It is our uranium.

CHAIR—On that basis, we have got, according to our brief, 15 bilateral nuclear safeguards agreements in existence now. I do not know if we are doing an analysis that, if you put them on a scale of one to 10, the Czech Republic is the worst and—

Senator SCHACHT—I was going to ask about Hungary but, as I understand it, the Czech Republic, Bulgaria and maybe the Ukraine, for obvious reasons, do have problems. That is a point for the committee to discuss, and that is why I raised it. If the European parliament has carried resolutions, if it is clear that this plant could not be built in western Europe or North America because of safety considerations, then I think there is a bit of weight behind us saying, 'It is our uranium. We would like to have a safer regime.' I do not know whether they can afford to buy our uranium anyway, but that is another issue. But, theoretically, I think it is a reasonable position to consider.

Mr Noonan—The ACF would certainly recommend that the committee consider such a view and seek appropriate advice as to how you might be able to go about that so that uranium that might potentially be exported under the treaty you are considering should require safety standards of use which are at least to the level which is already the case in practice in the countries to which we currently export uranium. This treaty brings a precedent issue for Australia, in terms of our export of uranium, in that we are proposing here—it would appear—to export uranium for a lower standard of safety use.

CHAIR—We are imposing precisely the same obligations, as I understand it, in this treaty as in the other 15. They are in identical, or virtually identical, terms.

Senator SCHACHT—Is this the first treaty we are signing on bilateral arrangements on uranium and nuclear energy to the old Eastern bloc countries? Do we have a treaty with any other old Eastern bloc country, like Poland, Romania, Bulgaria, Slovakia or Hungary? I do not think we have.

CHAIR—I would have to find out with whom the previous 15 are signed.

Senator SCHACHT—I think the countries are all in what we would call the OECD West.

CHAIR—I will look into that anyway.

Mr Thompson—I understand. I would be very keen to research that, but, as I understand it, this is the first.

Mr WILKIE—I am of the view that, if we were going to go down the path of introducing something like that in this particular treaty, what we should be doing is having something that covers all future treaties, rather than just this one, because it would be a common clause then in all.

CHAIR—Just for interest, we have 15 bilateral safeguards agreements, but they cover 25 countries.

Senator SCHACHT—Do you know the 25 countries?

CHAIR—No, it does not list them. This is according to *Hansard* in August.

Senator TCHEN—I understand that both Hungary and the Czech Republic are applicant states to join the European Union. Wouldn't the European Union require that applicant states comply with their various environmental industry standards, including nuclear reactor safety? Instead of us trying to impose a standard as a supplier, can we not assume that an organisation like the European Union would be fully conversant with and aware of the need to impose the standards that they have in place?

Mr Thompson—At present they are not members; they are applicants. I understand that that process may take some time. Improving the safety standards to an acceptable western European level has been set out to be at least seven to 10 years work, and independent experts put it at a much longer period of time. So if you extended that—if you have concern with the present safety standards—it would be inappropriate, until those safety standards had been met by whatever device, for uranium to be exported.

Senator TCHEN—My question comes back to the point of this particular treaty, which is to enable Australia to export an Australian product. Whether or not you agree that we should export it is something else, but it does mean a certain income. Particularly, it will mean an injection into the economy of the Northern Territory. Can we not, in this situation, rely upon the people who actually have to live as neighbours to this new nuclear facility—which may or may not be safe—rather than try to impose our standards on it, thereby causing ourselves disadvantage?

Mr Thompson—I will not go into the economic benefit of the export of uranium, but I would put forward that Australia—which is in a situation where it actually has not just a treaty but a potential contract with that country—has possibly a greater position of influence than a neighbouring country at this point. It has an ability to acknowledge that neighbouring country's position—and Australia would have stronger relationships with those countries. It is actually in the position of recognising and possibly advancing their position by not exporting uranium on those grounds.

Senator TCHEN—What you are suggesting is perhaps what Senator Schacht was foreshadowing—that in fact it would be more powerful and effective for Australia to try to impose some kind of bilateral requirement within the contract, or within the treaty, rather than saying, 'No, we will not sign the treaty,' because, unless you have such a treaty in place, you cannot hope to influence the other party.

Senator SCHACHT—I think the point is that you could say in the treaty that the actual contract will contain the details, which we hold to ourselves, and then say, 'If you don't meet these arrangements we will not sign the contract.'

CHAIR—The overall effect being to move the Czech Republic toward higher standards?

Senator SCHACHT—Yes, to higher standards.

Mr Thompson—I guess that would be an issue for the committee to deliberate on. Our position is that we should not export uranium and therefore we should not have a treaty.

Senator SCHACHT—We understand that.

Mr Thompson—Obviously, that is not a position which is necessarily shared, so we are not going to say we agree. But that would obviously be an interesting issue for the committee.

Mr MARTYN EVANS—That is a shame—your support could have swayed us!

Mr Thompson—To us these are not issues of dogma at all; to us these are issues of ethics and principle which, we believe, have been overstepped by industry involvement in what we see as an untenable industry. We see this as another step—where an unsustainable industry is pushing on its waste to Russia, which is incapable of dealing with that waste. The direct result of sending Australia's uranium to the Czech Republic is that radioactive waste will end up in Chelyabinsk and potentially in the Arctic Ocean, because the country is incapable of managing it. We see that not as an issue of dogma but as a moral question for Australia to consider. It does not weigh up against the export income that Australia derives from it.

Senator SCHACHT—With the Westinghouse company making itself a quid by making a deal with the Czech government to 'refurbish'—I think that is the word the chairperson has used, which is probably the most correct one we could get—these reactors, has anybody in the American Congress or the American community raised the issue that this operation of the Westinghouse company may be in breach of some American law? I will be staggered if one of your groups over there has not thought of something like that—if there is not a class action, a protest movement or the lobbying of congressmen.

Mr Thompson—I am sure that stuff has been in train, Senator.

Senator SCHACHT—If there is any evidence of, or information about, criticism of Westinghouse, particularly if it has been raised in the US Congress, would you take it on notice and provide it to the committee?

Mr Thompson—I would be happy to pass that on.

CHAIR—You may have already answered this but I missed it: if Australia does not supply the uranium, where is the likely source of uranium for the Czech Republic?

Mr Thompson—At the moment, about 50 per cent of the world's uranium is being supplied from mining operations. The other 50 per cent is being supplied from what is basically the stockpiling of weapons grade material. The primary storage of that is in Russia, who are presently, as I understand, supplying most of the uranium for—

Senator SCHACHT—If 50 per cent is coming from decommissioned nuclear weapons, the other 50 per cent comes from which countries that are mining it? Is it coming from Russia or

from places like Niger—I do not think Niger is a country that has uranium sources—or from South African countries which have uranium sources?

Mr Thompson—For these specific facilities?

CHAIR—For the Czech Republic.

Mr Thompson—I would have to take that on notice.

CHAIR—That was just another issue, if you would not mind taking that up. On the basis that Australia did not supply it, what is the most likely source of the supply for the Czech Republic?

Mr ADAMS—The politics of the nuclear industry is about the waste, isn't it? That has not been solved. The main thing that is being said now is that within seven or 14 years each country is to look after its own waste. Is that the present political position of countries that export or use nuclear waste?

Mr Thompson—I would have to find the source, as I have been reading through the issues around the Temelin reactor. The seven years pertains to an agreement they have with Russia—or a commitment by the parliament—that they will, over the next seven years, as part of the refurbishment of the Temelin plant and the export of waste to be reprocessed in Russia, advance a final storage solution. As we have talked about before in discussions about the general situation in the industry, that issue has never been resolved in any individual country. What we have seen here in Australia is the potential for industry to develop what are called regional or international storage facilities. Australia was in the line of sight for the Pangea proposal, which was very controversial in Australia. Russia is one of the other countries being sourced for international storage. In exchange for cash it will basically provide security for its existing weapons facilities, which are becoming dilapidated—the government cannot pay the soldiers' wages, let alone keep them fed. This is to actually safeguard against the potential for material to go into the wrong hands.

One of the deals that is presently being negotiated is to basically—ironically—send waste from the West and give money to provide security. These are quite absurd situations that the modern world has got itself into. In a broader context, in terms of the other siting, Australia was viewed as a potential site on the basis of what were said to be geological conditions. Ironically, the other main site that Pangea was looking at was Argentina, which is not necessarily known for its geologic stability. The case has been, time and time again, that sites for radioactive waste usually end up at the point of least resistance.

Mr ADAMS—Do you think that is a good thing or a bad thing?

Mr Thompson—It is certainly an outrageous situation.

Mr ADAMS—But do you think your organisation reinforces that position?

Mr Thompson—The environment groups have a principled position and we try very hard to express the reasons why we are opposed to the continued production of radioactive material. We also put what limited resources we have into investigating safer methods of handling the waste.

It is unfortunately a very hard thing for non-government organisations that represent community interest to solve what has been a flawed situation from the start. I appreciate the line of questioning to my colleague earlier but, ultimately, what we are trying to do is to advance a principled position. There are going to be some problems. This is not an ideal world. In radio interviews I get asked, 'Mr Thompson, what do you do with radioactive material? It is there; what are you going to do about it?' The situation is that it is there. In a global sense, and also in an Australian political sense, it is very hard to have a consensus that involves community consent and discussion—as well as technical input—about what we should do with it while we continue to produce it. It is the classic cart before the horse situation that the industry, at every point—whether it is in Australia, Russia or the United States—has failed. It has always failed. Sure, it is the big issue for environment groups to pursue, but it is the fundamental issue for future generations to resolve.

I know this is not very detailed in reference to the treaties, but we have governments and companies making decisions about the production who have failed in their moral responsibility to deal with the problem. In Australia, we have a reactor that is approved and we have heard a series of government representatives say, 'Ultimately, that is a problem that will be resolved down the track.' Some of those people will not be in power and some of them will not be active members of the community that has to resolve the problem. Environment groups will be around, trying to sort out the mess. It is a very hard problem to sort out. There is no elegant solution to the problem.

Mr ADAMS—We need to find that.

Mr Thompson—We do.

Mr ADAMS—In international terms.

Mr Thompson—Environment groups do not just want to stop the nuclear industry; we want to actually safeguard the environment for a clean future. A fundamental part of that is an ongoing engagement by environment groups in finding the best solution. Above-ground storage at the site of production is the least worst solution at the moment.

Mr CIOBO—One of your concerns, as I understand it, is that Westinghouse is involved with this. You made the statement that private industry leads to a diminution of safety standards. Could you provide some further evidence of that? I am interested in contrasting it with Chernobyl, for example. I am wondering what the basis of the statement is.

Mr Thompson—In terms of Westinghouse?

Mr CIOBO—In terms of private industry being inferior and leading to a diminution of safety standards, over government-owned sites.

Mr Thompson—Our concern is the involvement of private enterprise in overseas contracts in which they would not be able to involve themselves in their own countries. We have seen an attempt in Australia—which was unfortunately dismissed by the parliament—to put through legislation for a code of conduct for Australian mining companies overseas. Environment

groups have a similar issue: that a company is able to conduct operations overseas that it would not be able to conduct in its home country.

That that extends into the nuclear industry is clear by the recent push for the involvement of nuclear power in what was called the clean development mechanism and in aspects of the Kyoto protocol negotiations. There were three countries that were pushing for the inclusion of nuclear power as a clean development mechanism, which basically allows for the development of nuclear reactors in Indonesia, with the support of their country. For example, Westinghouse would build nuclear reactors in Indonesia with lesser safety standards required. The US government would put money into the project and in return it would receive carbon credits. That was knocked out, but the three countries notably were Australia, Canada and the United States, along with some support initially from Japan. It is not necessarily a judgment on private enterprise's ability to run an efficient business. That is more of a political dimension. It is a fundamental reality in the activities of those companies presently on the ground in countries that have lower environmental standards.

CHAIR—If we could move on to the other two, is there anything about the treaty, with respect to Hungary, that you would like to bring to our attention? You have identified the particular problems with the Czech Republic, but is there anything different that you would like to bring to our attention in relation to Hungary?

Mr Thompson—My understanding of the situation is that it is a very similar type of facility, that it is a Soviet design issue. My awareness of the Czech issue is strongly because of some correspondence with our Friends of the Earth group in the Czech Republic as well as that Temelin was being refurbished, so it was a current political issue that had ramifications in other countries. My understanding is that the Hungary facilities operated by the utility PAKS have similar concerns yet are not getting potentially the same public or political exposure.

CHAIR—So you do not have any documentation or evidence to table in relation to the Hungary plant, as you did with the Czech Republic?

Mr Thompson—No, not specifically.

Senator SCHACHT—Is the design of the plant in Hungary the same Soviet design that is in the Czech Republic?

Mr Thompson—It is a different model, but I guess it is a bit like they are from the Holden plant, if you will.

Senator SCHACHT—There is a Holden plant in a ministerial electorate. I do not think you should cast aspersions on the cars produced in his electorate, but I take the point.

Mr Thompson—Sorry, no offence to Australian cars.

CHAIR—You have not got any additional statements from Germany or Austria or the European parliament in relation to Hungary?

Mr Thompson—No, not before me.

CHAIR—In your submission you questioned whether Hungary is a legitimate or needed market for Western Mining Corporation, WMC. Upon what did you base that, that Hungary is not a legitimate market for WMC?

Mr Thompson—This area was noted in the national interest analysis document that it was an export of \$5 million which, to me personally, is a significant amount of money but to the company involved is not a significant export of product.

CHAIR—So it was in the context of the value of the contract to a company like WMC as opposed to any reflection on Hungary as a legitimate market?

Mr Thompson—Yes. It certainly was not an offence to the market.

Senator SCHACHT—There have been no contracts yet because we have not got the agreement, have we?

Mr Thompson—No. I would hope there has not because, as I understand it, we do not have a treaty yet.

CHAIR—Any other questions on the Czech Republic or Hungary because we can move now—

Senator SCHACHT—I have one for the record, and you might like to take this on notice, Mr Thompson. Are you aware that Western Mining—which I think are now the major producer in Australia of uranium—sought to sell uranium to the Czech Republic or to Hungary?

Mr Thompson—I am unaware that they would be actually pushing for a market. I would not think that they would be at this stage. I guess the interesting note—and I failed to put any evidence before the committee on this matter—is that I understand that some component for the INVAP contract to fulfil a reactor at Lucas Heights involves some nuclear exchange with Hungary. I understand that that is an aspect as a part of it. I have not been able to get detail on that because the contract and the details are commercial-in-confidence, but I understand that some parts of fitting out some of the electronics units for the Lucas Heights facility may be conducted in Hungary. I cannot direct the committee, but I suggest the committee clarify that area: whether this treaty with Hungary is actually really about the ability to import some components for the Lucas Heights reactor rather than what, in anyone's terms, is a very small amount of uranium export.

CHAIR—Let's move on to the agreement with the United States. Mr Noonan, did you say that you had a comment about that or was it Mr Thompson? Somebody was going to say something about it.

Mr Noonan—I am not proposing to make a statement about it, but I might engage in answering questions.

CHAIR—Mr Thompson, is there anything you wish to say in relation to that matter?

Mr Thompson—I do not have a great level of detail about this. Obviously, Australia does not recognise Taiwan as a country.

CHAIR—As a state.

Mr Thompson—As a state. Yet, we are keen to recognise them as an export market. Obviously, there are complexities in signing an indirect agreement with the United States. It is that bit less direct and there are generalist concerns that those issues of safeguards can be that bit less scrutinised in terms of the uses of the material. We have a role to respect the concerns of the Taiwanese environment groups, who we have met with over the last two years, in their opposition to the fourth nuclear power plant in that country, Taiwan plant No. 4 has actually been opposed by the incumbent president in his election campaign. Since then, as members of the committee and we, as presenters, would be well aware of, politics and the winds of change—

Senator SCHACHT—A bit of back sliding? Is that what you would say?

Mr Thompson—Yes.

CHAIR—Don't put words in his mouth!

Mr Thompson—Again, this involves a whole series of pressure by the Japanese company, Hyundai, to export its technology.

Mr ADAMS—What do the environmental groups say about the brown coal that we export to them?

Senator TCHEN—Brown coal? I do not think so. Black coal. Brown coal we keep for ourselves.

Senator SCHACHT—Low sulfur—very good. Lovely stuff.

CHAIR—Any questions on that one?

Senator SCHACHT—Taiwan has not signed the nuclear nonproliferation treaty, is that correct? And if it has, how can it be recognised by us, if we do not recognise them as a country?

Mr Thompson—We are recognising the United States.

Mr ADAMS—Yes, but I am asking the question: are you concerned that, because we do not recognise Taiwan as a sovereign state, going through a third party, the United States, raises concerns about their commitment to nuclear nonproliferation?

Mr Thompson—I do not want to bring judgment on the present Taiwanese political position but certainly these embed longer term relationships. There is a heightened concern. Environment groups and antinuclear groups have concerns that safeguards, ultimately, when it

comes down to it, will not fulfil the ideal that they purport to. In this specific case, this is not even a clear safeguard agreement that we directly have with that country.

Senator SCHACHT—With the treaty that we are proposing—which is an indirect treaty through the United States—are you confident that the treaties we have with other countries, with the direct nuclear treaties, whatever their faults may be, are better and more substantial in being able to impose and meet international obligations than the one with Taiwan?

Mr Thompson—It is very hard to judge and the political dimension globally is changing daily. Certainly, we have a whole series of contradictions with the United States, which has a relationship with Taiwan, but also has, you would say, a very hostile relationship with North Korea. The United States, which does not have an agreement on those tenets of nuclear safeguards, has just donated \$100 million to the North Korean government to build a reactor. It is a very clear fact.

Mr ADAMS—It is called business.

Mr Thompson—The issue with safeguards is that we have a whole series of paperwork agreements between countries that they will not use this material for military uses. If you have an effective propulsion system, which most advanced technological countries would be able to devise, the lead time in actually arming a nuclear weapon has come down to a matter of one to two months or less. The intent is to say that, while we have a whole series of safeguard agreements which are well intentioned, the politics which can put a country in a position to arm them can rapidly change or change over time, and the time frame can be very short. You are looking at a one- to two-month lead time and a piece of paper signed 15 years ago, as it may be, can be quite meaningless. The decisions ultimately about nonproliferation, we believe, come down to diplomatic input by the Australian government in an international arena.

CHAIR—Taiwan has a fairly unique position, does it not, both in terms of its nonproliferation status and in terms of its status generally? We can look at what it has done, given its non-status, if you like, in relation to nonproliferation and its cooperation with the IAEA, and the fact that it cannot at law be a party to the nonproliferation treaty. Have you got a comment on that?

Mr Thompson—We are not passing judgment on the present Taiwanese government or its intent to have a peaceful economy and relationship with the world. Ultimately, the specific reason that Australia, as a nation, does not recognise it as a state is due to what has been a very protracted political situation which has significant implications for the region.

Senator SCHACHT—Has the Taiwanese government indicated that, although we do not recognise them and they cannot sign up to the nuclear nonproliferation treaty, they will accept all the obligations of the treaty?

Mr ADAMS—That is their position.

Senator SCHACHT—Are you confident that that is a sustainable position on their part?

Mr Noonan—The relevant aspect is whether Australia is in a competent position through this treaty to judge, influence or exercise its due process in the case of Taiwan. We would think that

Australia is in less of a position to do so then we are with the other countries with which we have such treaties, because of the particular status of Taiwan. The committee should look not only at Taiwan's intentions and their situation but also at Australia's capacity to follow through on what we are putting in such treaties.

CHAIR—There is a mirror scenario with Canada and Taiwan.

Senator SCHACHT—The other matter for the committee to consider is that the People's Republic of China takes a pretty dim view of anybody selling uranium to Taiwan. That is another issue for broader diplomatic relations.

Mr Thompson—That would be a significant point to be mindful of. The other one is that my understanding is—and I am not totally familiar with this as I am new to the treaty process—this would involve an ongoing reliance on the United States in a formal capacity to observe the safeguards commitment. That assumes that an ANDUSIS treaty and other relationships remain. I would think it would be possibly negligent for the Australian government or parliament to sign a treaty that did not at least assert some level of ability to directly relate with a country which was exporting one of the world's most hazardous and controversial materials.

CHAIR—Thank you very much, Mr Thompson and Mr Noonan, for your time.

Committee adjourned at 12.33 p.m.