

## Agreement with the United States concerning Peaceful Uses of Nuclear Energy

### Introduction

- 4.1 The proposed agreement provides for cooperation with the United States in peaceful uses of nuclear energy and governs the supply of Australian uranium. It will succeed an existing 1979 agreement that is due to expire on 15 January 2011.<sup>1</sup>
- 4.2 Australia's bilateral safeguards agreements are intended to provide assurance that Australian Obligated Nuclear Material is used solely for peaceful purposes and not diverted to nuclear weapons or other military uses. Australia currently has 22 safeguards agreements in place, which allow the transfer of Australian material to 39 countries and Taiwan. The agreements complement the International Atomic Energy Agency's (IAEA) safeguards system.<sup>2</sup>
- 4.3 Australia concluded its first nuclear cooperation agreement with the United States in 1956. This agreement was replaced in 1979 with the existing agreement, which reflected Australia's uranium export policies at the time.<sup>3</sup>
- 4.4 The existing 1979 agreement is considered to have worked well, with the Government not experiencing any significant problems with its

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1 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 30.

2 National Interest Analysis (NIA), para. 9.

3 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, pp. 30-31.

implementation.<sup>4</sup> The new agreement retains most of the provisions of the 1979 agreement, but has been updated in accordance with Australia's current policies and practices concerning nuclear safeguards.<sup>5</sup>

- 4.5 The agreement is also consistent with Australia's other bilateral nuclear agreements with nuclear weapon states.<sup>6</sup>
- 4.6 All cooperation between the two countries will be in accordance with the new agreement, relevant treaties, national laws and regulations, and will be subject to safeguards in accordance with each country's safeguards agreement with the IAEA.<sup>7</sup>

## Reasons to take treaty action

- 4.7 The Government considers that the agreement will provide economic benefits to Australia on the basis of both current exports and forecast growth in nuclear power in the United States and worldwide. Australia's uranium exports are currently worth more than \$1 billion per year, with 36 per cent of this uranium supplied to the United States. The United States is also a major processor of uranium supplied by Australia to other countries.<sup>8</sup> Almost half of all Australian Obligated Nuclear Material is in the United States at any time.<sup>9</sup>
- 4.8 The Australian Safeguards and Non-Proliferation Office (ASNO) told the Committee that the new agreement:
- ... addresses all of Australia's relevant policy requirements. It provides stringent safeguards and security requirements designed to ensure Australian uranium is used exclusively for peaceful purposes and is consistent with Australia's other bilateral nuclear agreements with nuclear weapon states.<sup>10</sup>
- 4.9 The new agreement also supports ongoing technical cooperation between the two countries through a strengthened international legal framework.<sup>11</sup>

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4 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

5 NIA, para. 4.

6 NIA, para. 4.

7 NIA, para. 12.

8 NIA, para. 7; Article 1.

9 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

10 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

11 NIA, para. 7.

- 4.10 The proposed agreement refers explicitly to the IAEA's Additional Protocol, underscoring efforts by Australia and the United States to promote the Additional Protocol as the internationally recognised safeguards standard.<sup>12</sup> The physical protection of nuclear material is also linked to relevant international standards.<sup>13</sup>
- 4.11 Without a new agreement, Australia would no longer be able to transfer nuclear material to the United States, either for its own use or for processing on behalf of countries with a bilateral agreement with Australia.<sup>14</sup>

## Obligations

### Substantive changes from the 1979 agreement

- 4.12 The Committee was informed of a number of substantive changes in the new agreement:
- the existing lapsing provision has been replaced with an initial duration of 30 years and rolling extensions of five years;
  - Article 8 is amended to make explicit that the production of tritium for nuclear explosive purposes is prohibited;
  - Article 8 also includes a definition of 'military purpose' that is consistent with Australia's other bilateral safeguards agreements;
  - the scope of technical cooperation is updated in line with current activities;
  - provision for the protection of intellectual property has been added; and
  - provisions relating to the settlement of disputes have been included.<sup>15</sup>
- 4.13 A number of 'housekeeping' changes have also been made, largely to update terminology in accordance with current treaty making practice and include reference to treaties concluded since the 1979 agreement.<sup>16</sup>

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12 NIA, para 8.

13 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 32.

14 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 33.

15 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

16 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 31.

## The new agreement

4.14 The key elements of the proposed agreement are:

- an assurance that Australian Obligated Nuclear Material (AONM) will be used exclusively for peaceful purposes and not used for any military purpose (Article 8);
- an assurance that AONM supplied to the United States will be subject to the United States' safeguards agreement with the IAEA for the full life of the material (Article 9), or until it is re-transferred in accordance with Article 5;
- fallback safeguards in the event that IAEA safeguards no longer apply (Article 9 and the Agreed Minute);
- prior consent will be required before:
  - ⇒ any transfer of AONM to a third party;
  - ⇒ any enrichment to 20 per cent or more in the isotope uranium-235; and
  - ⇒ reprocessing of AONM for the separation of plutonium (Article 6).
- limits upon the quantities and types of nuclear material that can be transferred (Article 4);
- AONM must be subject to physical protection measures to accepted international standards during use, storage and transport (Article 7);
- material covered by the Agreement must be stored only in mutually determined facilities (Article 5);
- in the event of non-compliance with the agreement, rights to cease further cooperation, including:
  - ⇒ suspension or cancellation of further transfers of nuclear material; and
  - ⇒ requiring the return of material, equipment or components (Article 11); and
- provision for the protection of intellectual property rights (Article 14).

4.15 The agreement also provides for consultation on implementation of the agreement and establishment of administrative arrangements relating to accounting and control of material, equipment and components subject to

the agreement. The Committee understands that the arrangements established under the 1979 agreement will continue.<sup>17</sup>

- 4.16 The Committee notes that this agreement differs from the agreements recently negotiated with China and Russia, also nuclear weapon states, in that it does not include provision for determining which facilities will be eligible to handle or use AONM. The basis for this difference is that the United States has placed all civil facilities under its safeguards agreement with the IAEA. All civil facilities are therefore eligible for IAEA inspection, which is an Australian policy requirement.<sup>18</sup>

## Implementation and costs

- 4.17 Although the legislative framework is already in place, regulations to add the agreement to the list of prescribed agreements under the *Nuclear Non-Proliferation (Safeguards) Act 1987* and the *Australian Radiation Protection and Nuclear Safety Act 1998* will be required.
- 4.18 As noted above, the agreement provides that it will remain in force for an initial period of thirty years and will continue in force for additional periods of five years thereafter. The agreement can be terminated with six months advance notice at the end of the thirty year period or after any additional five year period. Obligations in respect of material transferred while the agreement was in force would continue.<sup>19</sup>
- 4.19 Costs will be incurred for ASNO officers' travel to the United States to facilitate proper operation of the nuclear material accounting system, which will be met from the Department of Foreign Affairs and Trade's resources.

## Consultation

- 4.20 ASNO consulted with relevant Commonwealth agencies<sup>20</sup> prior to and during negotiations for the agreement, and briefed other agencies at the

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17 NIA, para. 10(g).

18 Mr John Carlson, *Transcript of Evidence*, 21 June 2010, p. 34.

19 NIA, para. 27.

20 Attorney General's Department, Australian Nuclear Science and Technology Organisation, Department of Prime Minister and Cabinet, and the Department of Resources, Energy and Tourism.

Nuclear Agencies Consultative Committee meetings on 13 November 2009 and 19 February 2010. No objections to the proposed agreement were raised. The States and Territories were briefed at the Standing Committee on Treaties (SCOT) meeting on 12 October 2009.

## Conclusion and recommendation

- 4.21 The Committee acknowledges that the United States is a significant consumer of Australian uranium and that it is a major processor for other countries with which Australian has a bilateral agreement governing uranium supply. This agreement will therefore continue existing controls over a significant percentage of Australian Obligated Nuclear Material. The Committee supports binding treaty action being taken.

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### Recommendation 3

**The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy* and recommends that binding treaty action be taken.**