

**Documents tabled on 14 May 2008:**

**National Interest Analysis [2008] ATNIA 14**

**with attachment on consultation**

**Agreement between the Government of Australia and  
the Government of the Russian Federation on  
Cooperation in the Use of Nuclear Energy for Peaceful Purposes,  
done at Canberra on 7 September 2007**

**[2007] ATNIF 28**

**Regulation Impact Statement**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### SUMMARY PAGE

#### **Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes, done at Canberra on 7 September 2007 [2007] ATNIF 28**

#### **Nature and timing of proposed treaty action**

1. It is proposed that Australia enter into a Nuclear Cooperation Agreement (“the Agreement”) with the Russian Federation. Under the terms of the proposed Agreement, upon entry into force it would terminate the Agreement between the Government of Australia and the Government of the Union of Soviet Socialist Republics concerning the Peaceful Uses of Nuclear Energy (“the 1990 Agreement”) of 15 February 1990 ([1990] ATS 43). The Agreement was signed by the then Minister for Foreign Affairs and the Head of the Russian Federal Atomic Energy Agency in Sydney on 7 September 2007.

2. Pursuant to Article XVIII of the Agreement, the Agreement will enter into force upon the date of the last notification by which Australia and Russia communicate to each other in writing that all domestic procedures for entry into force for the Agreement have been completed. It is anticipated that Australia will advise Russia of this as soon as practicable after consideration of the Agreement by the Joint Standing Committee on Treaties (JSCOT).

#### **Overview and national interest summary**

3. Nuclear cooperation agreements such as this serve Australia’s national interests by enhancing our commercial position as a supplier of an important energy resource commodity, as well as setting a high international standard through the application of strict conditions. All of Australia’s bilateral nuclear agreements, including the proposed new Agreement with Russia, establish strict safeguards and physical protection arrangements designed to ensure Australian uranium is used exclusively for peaceful purposes. By virtue of our extensive network of agreements, Australia’s strict conditions apply to a significant proportion of uranium in peaceful use worldwide, hence contributing to raising overall standards.

4. The proposed Agreement is modelled closely on Australia’s other bilateral nuclear agreements with nuclear-weapon states, particularly the recent agreements with the People’s Republic of China (entered into force 3 February 2007 – [2007] ATS 4).

5. The 1990 Agreement is more limited than Australia’s other bilateral nuclear agreements in that it provides for processing (e.g. enrichment) of Australian uranium in Russia for eligible third states, but does not allow for the use of Australian uranium in Russian nuclear power plants, and does not have specific provisions on cooperation in peaceful uses of nuclear technology. The proposed new Agreement would bring the nuclear cooperation relationship between Australia and Russia into line with Australia’s other nuclear agreements by allowing for the use of Australian uranium in jointly accepted Russian nuclear power plants and establishing a broad framework for cooperation between Australia and Russia in relation to the peaceful uses of nuclear technology. Areas of cooperation could include collaborative projects in nuclear safeguards and security with the Australian Safeguards and Non-Proliferation Office (ASNO).

## **Reasons for Australia to take the proposed treaty action**

6. The Government considers that the proposed Agreement with Russia would provide specific benefits to Australia, namely:

- enabling the transfer of nuclear material between Australia and Russia subject to nuclear safeguards and appropriate controls consistent with Australia's long-standing policies and international obligations to prevent the proliferation of nuclear weapons;
- assisting Russia to reduce greenhouse gas emissions and atmospheric pollution through the use of nuclear power, especially given Russia's high projected growth in electricity demand; and
- consolidating Australia's position as a reliable supplier of energy resources.

7. More broadly, the proposed Agreement would contribute to strengthening Australia's bilateral ties with Russia. Russia is expanding international nuclear cooperation through the conclusion of a number of new nuclear cooperation agreements (e.g. with the United States, the European Union, and Japan). The combination of these agreements and the proposed Australian agreement with Russia will further develop engagement between Russia and the international community in the important areas of non-proliferation, nuclear security and nuclear safety.

### *Export of uranium to Russia*

8. Russia is seeking secure, long-term sources of uranium to satisfy its expanding nuclear energy program. There is strong commercial interest in the long term amongst Australian uranium producers in supplying uranium to Russia. Russia is proposing at least a two-fold increase in its nuclear energy output by 2020. Although Russia currently sources most of its uranium from domestic stocks, it will need to import uranium to fuel its expansion. Australia is the world's second largest exporter of uranium and has the world's largest uranium resources. Australia possesses 27% of the world's "medium cost" uranium resources (those resources recoverable at costs of less than US\$80 per kilogram of uranium). As such, Australia is well placed to provide long-term secure supplies of uranium to Russia.

### *Nuclear safeguards*

9. Australian uranium and nuclear material derived from its use (e.g. plutonium) is termed Australian Obligated Nuclear Material (AONM). Australia's bilateral safeguards agreements provide assurance that AONM is used solely for peaceful purposes and is not diverted to nuclear weapons or other military uses. At present, Australia has 22 bilateral safeguards agreements in place, providing for the transfer of AONM to up to 39 countries, plus Taiwan. These agreements complement the International Atomic Energy Agency's (IAEA) safeguards system in order to assure the peaceful and non-explosive use of Australian nuclear material. The agreements also serve Australia's nuclear non-proliferation security interests by establishing a high standard of bilateral safeguards conditions and controls over a significant proportion of the world's uranium in peaceful use. These bilateral agreements require that AONM be subject to IAEA safeguards, as provided for under the *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT), for the full life of the AONM.

10. The proposed Agreement includes all the essential elements of Australia's policy for the control of nuclear materials. These elements include:

- an assurance, in Article VII, that AONM supplied to Russia will be used exclusively for peaceful purposes and will not contribute in any way to any military purpose;
- an assurance, in Articles VI and VIII, that AONM supplied to Russia will be subject to Russia's safeguards agreement with the IAEA for the full life of the material, or until the material is transferred in accordance with Article X of the Agreement, or safeguards are terminated in accordance with Article VI of the Agreement;
- the provision for fallback safeguards in Article VIII which will apply in the event that, for any reason, IAEA safeguards no longer apply;
- the requirement, in Article X, for prior Australian consent before any transfer of AONM to a third party, any enrichment to 20% or more in the isotope uranium-235, or reprocessing of AONM;
- an assurance, in Article XIII, that adequate and effective physical protection measures which satisfy accepted international standards are applied to all AONM during use, storage and transport;
- the right, under Article XV for the supplier Party to suspend or cancel further transfers of nuclear material, material, equipment, components or technology, in the event of the receiver Party not complying with certain key provisions of the Agreement (e.g. not complying with IAEA safeguards arrangements); and
- the provision for a Memorandum of Understanding (usually known as an "administrative arrangement" in Australia's other bilateral nuclear agreements) setting out procedures for accounting for and reporting on AONM. Pursuant to Article XII, this is to be concluded between ASNO and its counterpart, the Russian Federal Atomic Energy Agency (Rosatom).

11. The Australian Government regards these aspects of the proposed Agreement as integral elements of its broader policy against the proliferation of nuclear weapons. The maintenance of multilateral, regional, and bilateral arrangements that operate to counter nuclear proliferation is a matter of high priority for Australia. The proposed Agreement would reinforce Australia's security interests and non-proliferation policies.

12. Under the proposed Agreement, facilities proposed for the use of AONM must be jointly accepted by ASNO and Rosatom, and must be subject to the Russia-IAEA safeguards agreement. Monitoring of AONM would be based on both the safeguards procedures applied in accordance with the Russia-IAEA safeguards agreement and the procedures under this Agreement. ASNO would cross-check reports on AONM provided by Russia for consistency with information from the IAEA and other sources.

#### *Greenhouse gas emissions*

13. Currently Russia has 31 operating nuclear power plants providing about 16% of its electricity demand. By 2020 overall electricity demand in Russia is projected to double, which Russia plans to meet in part by building up to 40 new nuclear power plants – more than doubling the total electricity generating capacity of nuclear power. Meeting part of Russia's increasing electricity demand by expanding its nuclear energy program will help mitigate future levels of greenhouse gas emissions and air pollution, not only in Russia but globally.

## **Obligations**

14. The key obligation on both Parties would be to ensure that no nuclear material transferred under the Agreement is ever used for, or diverted to, any military purpose.

15. Articles II and III outline the areas and forms of cooperation covered by the Agreement. Any such cooperation between designated legal authorities in Australia and Russia must be accompanied by arrangements outlining protection of intellectual property rights, where such rights arise. Should an area or form of cooperation outside those outlined in Articles II and III be proposed, the Parties must first agree in writing through diplomatic channels (a treaty-level action).

16. Article V of the proposed Agreement would oblige the Parties to apply the requirements of the Agreement to all nuclear material transferred between Australia and Russia for peaceful non-explosive purposes, regardless of whether it is transferred directly or through a third country. This includes nuclear material produced in Russia by irradiation of nuclear material subject to the Agreement. Further, Article V applies to any nuclear material where material, equipment (including equipment produced through the application of transferred technology) or components subject to this Agreement have a direct and major connection to the production, processing or use of that nuclear material transferred between Australia and Russia.

17. Under Article VI, nuclear material would remain subject to the Agreement until certain specified conditions had been satisfied, namely, that the material was no longer useable for any nuclear activity, was practically irrecoverable (a determination made by the IAEA or through mutual decision between the competent authorities, in accordance with the IAEA's principles), or had been transferred beyond the territorial jurisdiction of the Party in accordance with the provisions of the Agreement, unless the Parties otherwise agree.

18. Article VII would oblige the Parties not to use nuclear material, material, equipment, components and technology subject to the Agreement for: the manufacture of nuclear weapons or other nuclear explosive devices; research on or development of nuclear weapons or other nuclear explosive devices; or any other military purpose or in any way to further any military purpose. The combination of Article VII and the definition of "peaceful purposes" in Article I would proscribe uses of nuclear material such as the production of tritium for military purposes, military nuclear propulsion, or direct military non-nuclear applications such as depleted uranium munitions.

19. Article VIII would oblige the Parties to place all nuclear material subject to this Agreement under their safeguards agreements with the IAEA. In the event that IAEA safeguards cease to apply in either Party's jurisdiction, the Parties would be required to arrange forthwith for the application of alternative (fallback) safeguards which will conform to IAEA principles and procedures to provide reassurance equivalent to that of the IAEA safeguards system.

20. The Parties would also be obliged, by Article IX of the proposed Agreement, to protect exchanged information at a level equivalent to the protection applied by the supplying Party and not to disclose or transfer such information to a third party without the written consent of the supplying Party.

21. Article X would require Australia and Russia to obtain consent from the other Party before: transferring nuclear material supplied by the other Party to a third country; enriching uranium to 20% or greater in the isotope uranium 235; or reprocessing spent nuclear material for the separation of plutonium. These provisions are included in all of Australia's safeguards agreements to provide additional controls on these proliferation-sensitive activities.

22. Under the proposed Agreement, Russia would be obliged to ensure that AONM was processed, used or stored only at facilities included in the Eligible Facilities List under Russia's safeguards agreement with the IAEA, and within a program mutually accepted by both Australia and Russia. Article XI includes a provision (similar to that contained in Annex B of the Australia-China Nuclear Material Transfer Agreement) whereby in certain circumstances mutually accepted by the competent authorities of the Parties, a proposal by Russia to undertake conversion or enrichment of AONM in a facility not on its Eligible Facilities List will require that the AONM in question be directly substituted in a manner that ensures AONM remains in facilities on the Eligible Facilities List and within the mutually accepted program. This provision strengthens considerably the corresponding safeguards provision contained in the 1990 Agreement.

23. Under Articles XII and XIV of the Agreement the Parties would also be obliged to establish and maintain a system of accounting for and control of all nuclear material subject to the Agreement and to consult regularly to ensure effective implementation of the Agreement. Further, the competent authorities of the Parties would be required to conclude a Memorandum of Understanding (MoU) to facilitate effective implementation of the Agreement (in Australia's other bilateral nuclear agreements this is usually referred to as an administrative arrangement). At the time of this NIA being tabled the MoU had not been completed. The MoU will be of less-than-treaty status. The MoU will specify reporting, material accounting and other implementation details, and will utilise and mirror existing and well-established arrangements which Australia has in place with other bilateral agreement partners.

24. Article XIII would oblige the Parties to ensure that adequate physical protection measures, consistent with the current international standards, cover nuclear material, material, equipment, components and technology subject to the Agreement within their jurisdiction, and while in transport until responsibility is properly transferred to another state.

25. The proposed Agreement also imposes a binding dispute settlement mechanism on the Parties. This mechanism consists of provisions for the appointment of a three-member arbitral tribunal, the decisions of which will be binding on the Parties. This provision reflects those in Australia's other safeguards agreements.

## **Implementation**

26. The legislative framework already in place in relation to nuclear transfers will be sufficient to provide for the terms of the Agreement. However, it will be necessary to promulgate regulations pursuant to the *Nuclear Non-Proliferation (Safeguards) Act 1987* to add the Agreement to the list of "prescribed agreements" under that Act, and to take similar action under the *Australian Radiation Protection and Nuclear Safety Act 1998*. No changes to the existing roles of the Commonwealth or the States and Territories will arise as a consequence of implementing the Agreement.

## **Costs**

27. The costs associated with the Agreement would be limited to travel to Russia by ASNO officers to facilitate proper operation of the nuclear material accounting system. ASNO expects to be able to manage these costs within its Departmental (DFAT) allocation.

## **Regulation Impact Statement**

28. The Office of Regulation Review (Productivity Commission) has reviewed the attached Regulation Impact Statement (RIS) and has advised that the RIS contains an adequate level of analysis and is suitable for tabling.

## **Future treaty action**

29. Article XVII of the Agreement provides that the Agreement may be amended by agreement between the Parties. Such amendments would be subject to Australia's domestic treaty processes, including consideration by JSCOT, before entering into force.

30. No future legally binding instruments connected with the Agreement are envisaged at this stage. As noted at paragraph 23 above, the Agreement contains provision for the conclusion of a MoU of less-than-treaty status, to deal with the details of implementing the Agreement. This provision is standard Australian practice where bilateral safeguards agreements are in place.

## **Withdrawal or denunciation**

31. Article XVIII of the Agreement provides that it will remain in force for an initial period of thirty years. There is provision for either Party to terminate the Agreement by written notification to the other Party. Any decision to terminate the Agreement would be subject to Australia's domestic treaty processes. Termination would not release either Party from obligations in respect of nuclear material transferred while the Agreement was in force.

## **Contact details**

Nuclear Accountancy and Control Section  
Australian Safeguards and Non-Proliferation Office  
Department of Foreign Affairs and Trade.

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## **CONSULTATION**

1. The proposed Agreement is unlikely to have any general impact on businesses or Government agencies in Australia. There is a possibility that this Agreement could result in an increase in the volume of uranium exported from Australia over time.
2. States and Territories were consulted through the Standing Committee on Treaties at its meeting on 26 September 2007. No comments with respect to this treaty were registered by the Committee.
3. Commonwealth agencies participated actively in the negotiations (two formal rounds of negotiations, 23-26 April 2007, and 30 May – 1 June 2007), inter-departmental committee meetings, and briefings to the Government. Other relevant Commonwealth agencies were also briefed through the Nuclear Agencies Consultative Committee meetings on 27 February and 22 August 2007. No objections to the Agreements were raised in any of these fora.
4. There has been public consultation since consideration of a new bilateral safeguards agreement with Russia was first announced by the then Minister for Foreign Affairs in a press release on 27 April 2007. On the day the Agreement was signed (7 September 2007) during the Asia-Pacific Economic Cooperation (APEC) meetings in Sydney, a media conference was held by the then Prime Minister, Mr John Howard MP, and the then President of the Russian Federation, Mr Vladimir Putin, at which the Agreement was announced. This announcement was followed, on the same day, with the release of a fact sheet and a Joint Statement between Mr Howard and Mr Putin, as well as the publication on ASNO's web site ([www.asno.dfat.gov.au](http://www.asno.dfat.gov.au)) of the text of the Agreement along with comprehensive details and Frequently Asked Questions. Public enquiries related to the Agreement have been handled by ASNO, the Europe Division and International Security Division (DFAT), and the Uranium Industry Section of the Department of Industry, Tourism and Resources (now the Department of Resources, Energy and Tourism).
5. In the months following announcement of the consideration of an agreement, around thirty enquiries have been received. Relevant government departments replied to enquiries that sought information (approximately 60%). Rather than addressing the substance of the nuclear agreements, most correspondents raised concerns about human rights and the rule of law in Russia. In responding, DFAT explained the Government's approach to pursuing such issues with Russia. Where safeguards-related issues were raised, published materials were drawn on, including ASNO's annual reports, to explain the operation of the nuclear non-proliferation regime, the work of the IAEA, and the practical application of nuclear safeguards in the transfer and use of nuclear material. For safety issues, DFAT explained that Russia has committed to meeting international standards and is a party to relevant international agreements and conventions on nuclear safety, security and safeguards. Facilities proposed to use Australian uranium must be in a program determined in the consultation process between Australia and Russia. Should Australia have any concerns about the safety of a particular facility, this could be taken up in this consultation process.