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**Australian Government**

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**Australian Safeguards and Non-Proliferation Office**

22 July 2008

Mr Kelvin Thomson MP  
Chair  
Joint Standing Committee on Treaties  
Parliament House  
CANBERRA ACT 2600

Dear Mr Thomson,

I am writing in connection with JSCOT's review of the Australia-Russia nuclear cooperation agreement. I would like to take this opportunity to respond to some of the published comments on the agreement. I will focus primarily on the Australian Conservation Foundation (ACF) Policy Brief 2.6.1, *Nuclear Treaty with Russia Would Compromise the Commission on Nuclear Non-Proliferation and Disarmament* which it has provided to ASNO. ACF's policy brief is a relatively condensed summary of claims raised in the submissions to JSCOT by both ACF and Friends of the Earth (FOE). The submissions mostly repeat claims to which ASNO has provided detailed responses in the recent past (e.g. see ASNO's submissions 30 and 30.1 under JSCOT report 81 on the Australia-China nuclear agreements). As such I propose here to restrict my response to new claims from ACF and FOE that I have not addressed previously.

ACF's and FOE's critiques of Australia's bilateral safeguards system suggest that Australia's safeguards policies and practices are not up to international standards. In fact it is quite the opposite. Australia's safeguards policies, practices and implementation under bilateral safeguards agreement, such as the agreement under review here, have always represented world's best practice. To use an example, it is a requirement under the new Australia-Russia nuclear cooperation agreement that all facilities using Australian uranium be on Russia's eligible facility list under its safeguards agreement with the IAEA. There are very few bilateral safeguards or cooperation agreements around the world that have such a requirement.

## **ACF claim that the nuclear treaty with Russia compromises the Commission on Nuclear Non-Proliferation and Disarmament**

The International Commission on Nuclear Non-Proliferation and Disarmament (ICNND) has been established with the objective of reinvigorating international efforts on nuclear non-proliferation and disarmament. A wide range of countries has welcomed establishment of the Commission, which is being co-chaired by Australia and Japan.

Australia is able to launch initiatives such as ICNND because it is regarded internationally as an energetic and practical contributor on nuclear non-proliferation and disarmament issues. Our influence on these issues stems from Australia's contribution over decades to the development and maintenance of the nuclear non-proliferation regime and our position as one of the world's major uranium exporters under strict non-proliferation conditions. Provision of uranium for peaceful purposes is also one of the main ways Australia gives effect to its commitment under Article IV of the NPT to facilitate the peaceful applications of nuclear energy.

The nuclear safeguards agreement with Russia is fully consistent with Australia's long-established support for the global nuclear non-proliferation regime. The agreement supports the ICNND's non-proliferation goals by enabling wider application of strict Australian non-proliferation controls to nuclear material in civil use. Regarding nuclear disarmament, the ICNND goal of reaffirming international commitment to a nuclear weapon free world will be best advanced through productive engagement with the nuclear weapon states.

While there is disagreement within the NPT over the pace of nuclear disarmament, NPT parties have not determined Russia to be in breach of its NPT nuclear disarmament commitments. The Government continues to make clear its expectation of further reductions in the arsenals of all nuclear weapon states leading to the ultimate goal of a nuclear weapon free world.

### **Australia's obligations under the NPT's nuclear disarmament provision**

ACF's submission to JSCOT (also referred to in Policy Brief 2.6.1) quotes an opinion regarding the Nuclear Non-Proliferation Treaty (NPT) Article VI disarmament obligation<sup>1</sup> suggesting that by conducting nuclear trade with Russia, Australia runs the risk of being in non-compliance with its NPT Article VI obligations. This opinion highlights that attempting to interpret a treaty narrowly on the basis of one article can lead to incorrect conclusions.

One of the key pillars of the NPT is to encourage nuclear cooperation. Australia's proposed nuclear trade with Russia (as with Australia's nuclear trade with all the other nuclear-weapon states (NWS)) is completely consistent with Australia's NPT obligations. All of Australia's uranium exports are subject to strict safeguards conditions given legally binding effect through bilateral treaty-level agreements. Given the NPT does not require IAEA safeguards apply to uranium exports to NWS, it is clear that the bilateral safeguards conditions Australia applies to nuclear exports go well beyond NPT requirements. The operation of Australia's uranium export policy has always (and continues to) represent world's best practice, so following this opinion to its conclusion, all the major nuclear material and equipment

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<sup>1</sup> NPT Article VI: "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control"

supplying countries around the world would be at risk of non-compliance with their NPT Article VI obligations.

### **Additional Protocol**

Both the ACF and FOE submissions devote a few pages to importance of the IAEA's Additional Protocol on strengthened safeguards, and they believe ratification by Russia should be a pre-condition for concluding the agreement. Russia has in fact ratified the Additional Protocol and it entered into force on 16 October 2007. This information has been on the IAEA's Additional Protocol web site (the primary resource for Additional Protocol updates) since the end of 2007.

### **Conditionality clauses on rule of law, democracy and human rights**

ACF Policy Brief 2.6.1 and its JSCOT submission refer to a further legal opinion that the agreement with Russia should include 'human rights and democracy clauses'.

It is not international practice, nor Australian practice, to include in nuclear cooperation and safeguards agreements clauses, such as human rights clauses, which are not germane to the subject matter of non-proliferation and safeguards. Australia takes very seriously allegations of human rights abuses wherever they occur and pursues Australia's human rights interests in relevant international fora, including in our bilateral relations with other countries.

### **The principle of "substitution" and the use of non-IAEA safeguarded facilities**

ACF Policy Brief 2.6.1 criticises the application in the agreement of the principle of substitution to Australian uranium. The substitution of equivalent quantities of nuclear material in one facility for another is a standard international nuclear practice that has always been applied to nuclear material obligated under bilateral safeguards agreements. It reflects the fact that uranium is a fungible commodity and as such safeguards do not, and cannot, track individual atoms of uranium. A detailed description of how substitution applies in the agreement is included in ASNO's frequently asked questions (FAQ) page on the agreement at <http://www.dfat.gov.au/geo/russia/treaties/faq.html>.

### **Processing of Australian uranium in non-IAEA safeguarded facilities**

ACF's policy paper also criticises the fact that the agreement allows for Australian uranium to be processed, in some circumstances, in facilities not subject to IAEA safeguards, with the implication that Australian uranium could be used in Russia's military program.

The first point I would make is that Russia ceased production of fissile material for nuclear weapons many years ago, and has an extensive program of down-blending weapons-grade uranium (equivalent to thousands of warheads) for use in the civil nuclear power industry, primarily in the US. Further, the IAEA as a general rule limits its safeguards activities in NWS, preferring to focus most of its efforts on ensuring compliance by non-NWS to non-proliferation obligations.

The limited provision in the agreement for some non-safeguarded facilities to process Australian uranium is a continuation of a practice that Australia has applied for some thirty years for uranium exports to NWS in circumstances where IAEA safeguards are not applied. Under the existing agreement Australia has with Russia there is no requirement of IAEA

safeguards on facilities (e.g. enrichment facilities) processing Australian uranium, provided the product is transferred expeditiously to a country within Australia's bilateral safeguards network, and the tails are placed under IAEA safeguards or other safeguards arrangements suitable to ASNO. The processing time of Australian uranium in such a facility could be lengthy, during which time it would not be subject to IAEA safeguards. The equivalent provisions in the new safeguards agreement on the other hand are stronger. Under the new agreement, in circumstances where a conversion or enrichment facility is not subject to IAEA safeguards, Australian uranium must be substituted directly for an equivalent quantity of product and tails in facilities subject to IAEA safeguards.

### **Reprocessing**

ACF's Policy Brief 2.6.1 claims that the agreement "explicitly provides Australian consent to the reprocessing, separation and stockpiling of weapons-usable plutonium from spent nuclear fuel ...". This is incorrect and misleading on a number of points.

First, the agreement does not provide consent for reprocessing, rather Article X of the agreement states that "Nuclear material subject to this Agreement shall not be ... reprocessed without the prior written consent of the supplier Party".

It is not expected that Russia will seek to reprocess Australian nuclear material for a number of years, however if a request is made it will be assessed at the time on the basis of the same strict safeguards and non-proliferation criteria that Australia applies to other bilateral partners. Reprocessing of Australian nuclear material in the UK, France and Japan has been ongoing for decades, and the separated Australian plutonium is not simply stockpiled (as claimed by ACF), rather it is mixed with uranium into mixed oxide fuel (MOX) for further use for nuclear power generation.

Second, ACF's claim assumes that all plutonium is equally as usable for weapons production, which is simply not the case. Plutonium generated through the normal use of a nuclear power plant has elevated proportions of isotopes such as plutonium-240 and plutonium-238 and as such is not used for weapons production. Further details on this topic can be found in ASNO's 2006 paper on reactor grade plutonium at [www.asno.dfat.gov.au/index\\_pubs.html](http://www.asno.dfat.gov.au/index_pubs.html).

### **Russia is a long-term uranium exporter**

ACF's policy paper questions the need for Russia to import Australian uranium, on the basis that it believes that Russia is itself a long-term uranium exporter. ACF uses as evidence a new agreement that Russia has with the US to supply "20 per cent of US reactor fuel from 2014 until 2020, with all limits to be phased out after 2021". The agreement to which ACF refers does not relate to the export to the US of Russian uranium from Russian uranium mines, rather it relates to the use of Russian enrichment facilities to produce low enriched uranium for the US. The feed uranium into Russian enrichment facilities under this agreement will likely be from many countries (e.g. Australia, Canada, etc).

While it is the case that Russia has relatively large resources of uranium compared to most other countries around the world, these resources are unlikely to be sufficient for its ambitious nuclear energy expansion plans. Further, for any country with large electricity needs and infrastructure, it makes sense for energy security purposes to diversify the supply of key energy commodities.

### **Amendment to the Convention of the Physical Protection of Nuclear Material (CPPNM)**

The submission by FOE incorrectly states that Russia has not adopted the recent amendment to the CPPNM. However, Russia, along with Australia and the other CPPNM states parties involved in negotiating the Amended CPPNM, adopted the text of the Amendment in July 2005. This information is readily available on the IAEA's web site on the CPPNM.

Under the terms of the Amendment, it does not enter into force until two thirds of states parties have ratified. Currently 17 out of 136 states parties have ratified the Amendment, so entry into force will likely take a number of years. Clearly it would not be sensible to make the Amended CPPNM a pre-condition for concluding an agreement. In fact the Amended CPPNM is contemplated in the Australia-Russia nuclear cooperation agreement, as the provision in the agreement to apply the CPPNM to Australian nuclear material also includes "any amendments that are in force for each Party ...".

The Committee may be aware that Australia has just (on 17 July 2008) deposited its instrument of ratification of the amended CPPNM with the IAEA, making Australia the 17<sup>th</sup> country to ratify (this was reported by Mr Stephen Smith MP in a press release on 18 July). I am pleased to report that Russia has also announced this month that its parliament has approved the ratification of the amended CPPNM.

I trust that this will be of some use to the Committee in completing its review of the agreement. Should the Committee have any further questions or require any further clarifications I am happy to provide further information.

Yours sincerely

John Carlson  
Director General

