

2.3 – Report 199 – Australian Parliament

December 2021

The Joint Standing Committee on Treaties of the Australian Parliament published this report of its review of the ENNPIA. The committee declared its support for the agreement and recommended that Parliament and the government take binding treaty action. The committee completed its review action in just seven days (rather than the standard 20).

Other key points:

- The analysis points out that there is **no provision for exchange of equipment.**
- **Training or secondment activities will need additional negotiated agreements.**
- There is no dispute settlement mechanism.
- \$300 million was approved for the operation of the Nuclear-Powered Submarine Task Force (134 staff) to help determine the optimal “viable pathway.”
- Australia notified the IAEA of its intent in the AUKUS partnership and will continue to engage the IAEA for at least 18 months.
- Nuclear propulsion is considered a non-proscribed military activity within the NPT regime. Non-proscribed military activities are *not* prohibited by the NPT.
- Only six countries, all of them nuclear-armed, operate nuclear-powered submarines.

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Report 199

Agreement for the Exchange of Naval Nuclear Propulsion Information

Joint Standing Committee on Treaties

December 2021
CANBERRA

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Contents

Members	v
Terms of reference	ix
Abbreviations	xi
List of recommendations	xiii
Executive summary	xv
1 Introduction.....	1
Conduct of the Committee’s review	2
2 Exchange of Naval Nuclear Propulsion Information Agreement	3
Introduction	3
Background	4
AUKUS.....	4
Nuclear-powered submarines and Australia’s national interest	5
Requirement for the proposed Agreement	5
Provisions of the proposed Agreement.....	6
Preamble	6
Key articles in the proposed Agreement	7
Information to be communicated or exchanged	7
Naval nuclear propulsion information.....	7
Nuclear weapons and other exclusions.....	7
Sharing of information is subject to defence and security considerations	8

Additional laws or arrangements that apply to activities under the proposed Agreement	8
No indemnity or guarantee as to accuracy or completeness of information.....	9
Protecting and disseminating information	9
Security annex.....	10
International Atomic Energy Agency safeguards.....	11
Intellectual property.....	11
No dispute settlement mechanism.....	13
Entry into force and duration.....	13
Termination	13
Return or destruction of information.....	13
Provisions to remain in effect	14
Implementation.....	14
Cost.....	14
Amendment.....	15
Nuclear non-proliferation	15
Views on the proposed Agreement	19
Nuclear non-proliferation.....	20
Environmental issues	21
Committee view	21
3 Minor treaty action.....	23
Background.....	23
The proposed treaty action	24
Reasons to take the treaty action.....	25
Conclusion	26
Australian Greens Dissenting Report.....	27
Appendix A. Submissions	33
Appendix B. Witnesses.....	37

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Terms of reference

The Committee's resolution of appointment empowers it to inquire into and report on:

- matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament
- any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the Committee by:
 - either House of the Parliament
 - a Minister
- such other matters as may be referred to the Committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.

Abbreviations

AGD	Attorney-General’s Department
ATNIA	Australian Treaty National Interest Analysis
ATNIF	Australian Treaty Not yet In Force
ATS	Australian Treaty Series
AUKUS	Enhanced trilateral security partnership between Australia, the United Kingdom, and the United States
CCWA	Conservation Council of Western Australia
DFAT	Department of Foreign Affairs and Trade
ENNPIA	Exchange of Naval Nuclear Propulsion Information Agreement
IAEA	International Atomic Energy Agency
ICAN	International Campaign to Abolish Nuclear Weapons
IPAN	Independent and Peaceful Australia Network
JSCOT	Joint Standing Committee on Treaties
NIA	National Interest Analysis
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
UNESCO	United Nations Educational, Scientific and Cultural Organization
UK	United Kingdom
US	United States
WADA	World Anti-Doping Agency

List of recommendations

Recommendation 1

- 2.88 The Committee supports the proposed *Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information* and recommends binding treaty action be taken.

Executive summary

This report reviews one proposed treaty action: *Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information* (the proposed Agreement/ENNPIA).

The proposed Agreement relates to the acquisition by Australia of nuclear-powered submarines for the Royal Australian Navy. This would be the first initiative of the AUKUS enhanced trilateral strategic partnership between Australia, the United Kingdom and the United States announced in September 2021.

The proposed Agreement would establish a legally-binding framework for the disclosure and use of information related to naval nuclear propulsion among the three nations, without which it would not be possible for Australia to determine the optimal pathway to deliver the submarine capability.

Given the 18-month timeframe established for determining the optimal pathway, the Committee agreed to a request from the Defence Minister for expedited consideration of the proposed Agreement. The Committee completed its inquiry within 7 rather than the standard 20 joint sitting days.

While the Committee acknowledges significant matters remain to be determined during the 18-month consultation process, the proposed Agreement itself does not raise any significant concerns for the Committee. Any transfers of equipment, materials or technology that follow would be the subject of a subsequent agreement and further Committee scrutiny.

Importantly, the Committee found there would be no weakening of Australia's commitment to its nuclear non-proliferation obligations as a result of this agreement, which is limited to the exchange of information. While Australia is

seeking the optimal pathway to obtaining nuclear-powered submarines, it would not be acquiring nuclear weapons, and sharing knowledge for this purpose is specifically ruled-out by the proposed Agreement.

The Committee acknowledges that non-proliferation issues arise in relation to the proposed acquisition of nuclear-powered submarines, and will seek to remain informed of the Australian Government's ongoing engagement with the International Atomic Energy Agency.

The Committee supports this treaty action and recommends binding treaty action be taken.

This report also contains the Committee's review of one minor treaty action: 2021 Amendment to Annex I of the *International Convention against Doping in Sport*.

The Committee supports this minor treaty action and agreed binding treaty action be taken.

1. Introduction

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the *Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information* (Canberra, 22 November 2021).
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in the Parliament.
- 1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australia will not arise.
- 1.4 Prior to tabling, major treaty actions are subject to a National Interest Analysis, prepared by the Australian Government. This document considers the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with state and territory governments, federal, state and territory agencies, and with industry or non-government organisations.
- 1.5 The Committee takes account of this document in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.6 A copy of the treaty considered in this report and the associated documentation may be accessed through the Committee's website at:
 - www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/ENNPJA.

- 1.7 This report also contains the Committee's review of one minor treaty action: 2021 Amendment to Annex I of the *International Convention against Doping in Sport*.

Conduct of the Committee's review

- 1.8 The major treaty action reviewed in this report was advertised on the Committee website from the date of referral. Submissions for the treaty action were requested by 26 November 2021. 106 submissions were received.
- 1.9 The Committee held two public hearings in Canberra and by videoconference/teleconference on Monday, 29 November 2021 and Friday, 3 December 2021. The transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website.
- 1.10 A list of submissions received is at Appendix A and a list of witnesses who appeared at the public hearings is at Appendix B.

2. Exchange of Naval Nuclear Propulsion Information Agreement

Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information

Introduction

- 2.1 This chapter examines the *Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information* (ENNPIA/proposed Agreement), which was signed in Canberra on 22 November 2021 and tabled in the Parliament later on the same day.¹
- 2.2 The proposed Agreement would establish a legally-binding framework for the disclosure and use of information related to naval nuclear propulsion

¹ *Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information* (Canberra, 22 November 2021) [2021] ATNIF 10, hereafter ENNPIA.

among the governments of Australia, the United States (US) and United Kingdom (UK).²

Background

2.3 According to the National Interest Analysis (NIA), the proposed Agreement relates to the acquisition by Australia of nuclear-powered submarines for the Royal Australian Navy, which is the first initiative of the AUKUS (Australia, United Kingdom, United States) enhanced trilateral security partnership.³

AUKUS

2.4 The AUKUS enhanced trilateral security partnership was announced jointly by Australia, the UK and US on 16 September 2021. Through AUKUS, the three governments undertook to:

- promote deeper information and technology sharing
- foster deeper integration of security and defence-related science, technology, industrial bases and supply chains
- deepen cooperation on a range of security and defence capabilities including cyber, artificial intelligence, quantum technologies and undersea capabilities.⁴

2.5 With regard to the partnership's first initiative, the acquisition by Australia of nuclear-powered submarines, the announcement stated there would be a 'trilateral effort of 18 months to seek an optimal pathway to deliver this capability', with Australia to leverage expertise from the US and UK.⁵

2.6 In the announcement, Australia undertook to adhere to 'the highest standards for safeguards, transparency, verification, and accountancy

² National Interest Analysis [2021] ATNIA 7 with attachment on consultation, *Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information* (Canberra, 22 November 2021) [2021] ATNIF 10, hereafter NIA, paragraph 3.

³ NIA, paragraph 4.

⁴ The Hon Scott Morrison MP, Prime Minister of Australia, 'Joint Leaders Statement on AUKUS', Media Release, 16 September 2021, www.pm.gov.au/media/joint-leaders-statement-aukus, viewed 23 November 2021.

⁵ The Hon Scott Morrison MP, Prime Minister of Australia, 'Joint Leaders Statement on AUKUS', Media Release, 16 September 2021, www.pm.gov.au/media/joint-leaders-statement-aukus, viewed 23 November 2021.

measures to ensure the non-proliferation, safety, and security of nuclear material and technology'.⁶ Australia stated it remained 'committed to fulfilling all of its obligations as a non-nuclear weapons state, including with the International Atomic Energy Agency'. And together, the three nations stated their deep commitment to upholding their leadership on global non-proliferation.⁷

Nuclear-powered submarines and Australia's national interest

- 2.7 In announcing the enhanced trilateral security partnership, the three countries stated AUKUS would 'help sustain peace and stability in the Indo-Pacific region ... to protect our shared values and promote security and prosperity'.⁸
- 2.8 Submarines, according to the NIA, are an essential part of Australia's naval capability and provide a 'strategic advantage in terms of surveillance and protection of our maritime approaches'.⁹
- 2.9 In comparison to conventionally powered submarines, nuclear-powered submarines are said by the NIA to exhibit superior stealth, speed, manoeuvrability, survivability, and endurance, such that they can 'deter actions against Australia's interests'.¹⁰

Requirement for the proposed Agreement

- 2.10 The NIA stated disclosure of naval nuclear propulsion information is restricted under US domestic law. It is only when there is an agreement such as ENNPIA in force that such information can be disclosed to a foreign nation. Due to its pre-existing treaty obligation with the US, the UK is equally restricted from disclosing naval nuclear propulsion information. The

⁶ The Hon Scott Morrison MP, Prime Minister of Australia, 'Joint Leaders Statement on AUKUS', Media Release, 16 September 2021 www.pm.gov.au/media/joint-leaders-statement-aukus, viewed 23 November 2021.

⁷ The Hon Scott Morrison MP, Prime Minister of Australia, 'Joint Leaders Statement on AUKUS', Media Release, 16 September 2021, www.pm.gov.au/media/joint-leaders-statement-aukus, viewed 23 November 2021.

⁸ The Hon Scott Morrison MP, Prime Minister of Australia, 'Joint Leaders Statement on AUKUS', Media Release, 16 September 2021, www.pm.gov.au/media/joint-leaders-statement-aukus, viewed 23 November 2021.

⁹ NIA, paragraph 5.

¹⁰ NIA, paragraph 5.

proposed Agreement would provide for Australia to receive naval nuclear propulsion-related information from the UK and the US.¹¹

2.11 The proposed Agreement, according to the NIA, is ‘critical to an intensive examination of the full suite of requirements that underpin the delivery of these submarines being considered as part of an 18-month consultation period’.¹²

2.12 The NIA foreshadowed that the proposed Agreement would also facilitate training and education for Australian civilian and military personnel on the safe and effective operation of naval nuclear propulsion technology.¹³ It would, therefore:

... enable Australia to develop the necessary skills and knowledge to create a world’s best practice regulatory and safety regime to guarantee the safe operation of naval nuclear propulsion and to ensure compliance with Australia’s international obligations, including under the Treaty on the Non-Proliferation of Nuclear Weapons.¹⁴

Provisions of the proposed Agreement

Preamble

2.13 Statements in the Preamble recall and affirm:

- the first initiative of AUKUS is a shared ambition to support Australia in acquiring nuclear-powered submarines for the Royal Australian Navy
- the Parties have embarked on a trilateral effort to seek an optimal pathway to deliver this capability
- common defence and security will be advanced by the exchange of naval nuclear propulsion information concerning military reactors
- the Parties’ respective obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).¹⁵

¹¹ NIA, paragraph 11.

¹² NIA, paragraph 5.

¹³ NIA, paragraph 8.

¹⁴ NIA, paragraph 9.

¹⁵ ENNPIA, preamble.

Key articles in the proposed Agreement

Information to be communicated or exchanged

- 2.14 Article II of the proposed Agreement provides for naval nuclear propulsion information to be communicated or exchanged as it is determined to be necessary to research, develop, design, manufacture, operate, regulate, and dispose of military reactors, or to facilitate such communication or exchange.¹⁶
- 2.15 The NIA confirmed visits, training and secondments of civilian and military personnel are included in the scope of Article II, where this involves access to naval nuclear propulsion information.¹⁷

Naval nuclear propulsion information

- 2.16 The proposed Agreement defines ‘naval nuclear propulsion information’ as:
- ... classified information and unclassified information concerning the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, or repair of the propulsion plants of naval nuclear-powered vessels and prototypes, including the associated shipboard and shore-based nuclear support facilities.¹⁸

Nuclear weapons and other exclusions

- 2.17 Under the proposed Agreement, ‘Reactor’ is defined to exclude nuclear weapons:
- ... an apparatus, other than an atomic weapon, in which a self-supporting fission chain reaction is maintained and controlled by utilizing uranium, plutonium, or thorium, or any combination of uranium, plutonium, or thorium.¹⁹
- 2.18 The NIA confirmed the proposed Agreement would not authorise or support the sharing or transfer of any information related to nuclear weapons.²⁰

¹⁶ ENNPIA, article II.

¹⁷ NIA, paragraph 25.

¹⁸ ENNPIA, article IX(B).

¹⁹ ENNPIA, article IX(F).

²⁰ NIA, paragraph 14.

2.19 Further, the proposed Agreement ‘does not support the transfer of any equipment or technology, nor does it support the sharing or transfer of any information on civil nuclear matters, beyond those incidentally related to naval nuclear propulsion’.²¹

Sharing of information is subject to defence and security considerations

2.20 Parties would be able to communicate and exchange information under the proposed Agreement, provided the ‘communicating Party determines that such cooperation will promote and will not constitute an unreasonable risk to its defense and security’.²²

2.21 The technical annex of the proposed Agreement, which sets out implementing provisions with regard to the communication or exchange of naval nuclear propulsion information, provides that cooperation must not adversely affect the resources of each Party’s naval nuclear propulsion program.²³

2.22 Other provisions in the technical annex include:

- the authority in each jurisdiction to control cooperative efforts and communication or exchange of any information under the Agreement
- liability for the use of information to be assumed by the receiving Party
- the need for participation by persons in any aspect of the Agreement to be agreed in advance by all Parties.²⁴

2.23 The annex also makes provisions with regard to administrative controls for the handling of information under the proposed Agreement.²⁵

Additional laws or arrangements that apply to activities under the proposed Agreement

2.24 Article IV, which specifies various conditions on the proposed Agreement, provides for cooperation under the proposed Agreement to be carried out by

²¹ NIA, paragraph 12.

²² ENNPIA, article I.

²³ ENNPIA, Technical Annex (section I(B)).

²⁴ ENNPIA, Technical Annex (section I).

²⁵ ENNPIA, Technical Annex (section II).

each of the Parties in accordance with each Party's applicable laws.²⁶ These applicable laws are not specified or otherwise limited.

- 2.25 The proposed Agreement does not preclude communication or exchange of naval nuclear propulsion information under other arrangements or agreements between the Parties.²⁷
- 2.26 Parties may enter into implementing arrangements for the provisions of the proposed Agreement but where there is any inconsistency, the provisions of the proposed Agreement would prevail.²⁸
- 2.27 Implementing arrangements are likely, according to the NIA, for specific activities, engagement and access to information authorised by the proposed Agreement.²⁹
- 2.28 In particular, the NIA stated that where training or secondment activities occur under the proposed Agreement, these would be subject to implementing arrangements made under the proposed Agreement or provided for under 'separate agreements or arrangements'.³⁰

No indemnity or guarantee as to accuracy or completeness of information

- 2.29 The use of information communicated or exchanged under the proposed Agreement is the responsibility of the Party receiving the information. The originating Party does not provide any indemnity, warrant the accuracy or completeness of the information, or warrant the suitability or completeness of the information for any particular use or application.³¹

Protecting and disseminating information

- 2.30 Under the proposed Agreement, Parties make a range of guarantees with regard to the security of information provided according to Article II,

²⁶ ENNPPIA, article IV(A).

²⁷ ENNPPIA, article IV(B).

²⁸ ENNPPIA, article X(D).

²⁹ NIA, paragraph 28.

³⁰ NIA, paragraph 25.

³¹ ENNPPIA, article III.

including that conditions applied by the receiving Party be no less stringent than those of the originating Party.³²

2.31 Parties would consult to maintain mutually determined classification policies.³³

2.32 While the proposed Agreement would not restrict consultation or cooperation in defence with other nations or international organisations, no Party could communicate or exchange naval nuclear propulsion information provided under the proposed Agreement to any other nation, foreign or international entity, or individual who is not a national of the Parties.³⁴

2.33 Further, the proposed Agreement would not allow for any Party to communicate or exchange information made available by another Party under the proposed Agreement to an individual who is not its national and who is a national of another Party, without the consent of that other Party.³⁵

Security annex

2.34 The proposed Agreement contains a security annex. Section I of the security annex deals with access to naval nuclear propulsion information and security clearance procedures for personnel. It includes the requirement that no individual is to be granted access unless it is affirmatively determined such access will not endanger national security or pose an undue risk to common defence and security. The annex specifies the considerations that must be taken prior to affording a person access to naval nuclear propulsion information.³⁶

2.35 Section II deals with arrangements for the physical security of the information exchanged or communicated under the proposed Agreement including the requirement that it be protected physically against espionage, sabotage, unauthorised access or any other hostile activity.³⁷

³² ENNPPIA, article V.

³³ ENNPPIA, article VII.

³⁴ ENNPPIA, article VI.

³⁵ ENNPPIA, article VI.

³⁶ ENNPPIA, Security Annex (section I).

³⁷ ENNPPIA, Security Annex (section II).

- 2.36 Section III specifies document and information control programs for classified information, including the authority to classify naval nuclear propulsion information and rules for classification.³⁸
- 2.37 Section IV contains provisions for security assurances; security of classified contracts; security education; actions in the case of loss or compromise of naval nuclear propulsion information; reports; and records of facilities where naval nuclear propulsion information may be stored.³⁹
- 2.38 Section V allows for reciprocal visits of security personnel to achieve an understanding of the adequacy and reasonable comparability of each Party's security system.⁴⁰

International Atomic Energy Agency safeguards

- 2.39 Cooperation under the proposed Agreement requires Australia to maintain its International Atomic Energy Agency (IAEA) NPT safeguards agreements with respect to all nuclear material in all peaceful nuclear activities within the territory of Australia, under its jurisdiction, or carried out under its control.⁴¹
- 2.40 Australia would fulfill this requirement by maintaining the following existing agreements with regard to peaceful nuclear activities:
- *Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Vienna on 10 July 1974*
 - *Protocol Additional to the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Vienna on 23 September 1997.*⁴²

Intellectual property

- 2.41 The provisions with regard to intellectual property in the proposed Agreement operate without prejudice to any future agreements or

³⁸ ENNPPIA, Security Annex (section III).

³⁹ ENNPPIA, Security Annex (section IV).

⁴⁰ ENNPPIA, Security Annex (section V).

⁴¹ ENNPPIA, article IV(C).

⁴² ENNPPIA, article IV(C).

arrangements in the context of the design, construction, operation, regulation, and disposal of a naval nuclear-powered vessel.⁴³

2.42 If there is an invention or discovery made by the recipient Party during the period the Agreement is in force, that employs information provided under the Agreement, and where the rights are owned by the recipient Party:

- the recipient Party retains ownership of the rights in the invention or discovery in their jurisdiction
- all right, title and interest in and to the invention or discovery, patent application or patent in the country of the originating Party is to be transferred and assigned to the originating Party, subject to:
 - the recipient Party retaining a royalty-free, non-exclusive, irrevocable licence for governmental purposes and for the purposes of mutual defence
 - the recipient Party granting to the other non-originating Party a royalty-free, non-exclusive, irrevocable licence for governmental purposes and the purposes of mutual defence.⁴⁴

2.43 With respect to any invention or discovery, patent application or patent, licence or sublicense covered by the provisions above, each Party:

- may to the extent of its right, title and interest, deal in its own country as it may desire, but cannot discriminate against citizens of any Party in respect of granting any licence or sublicense under the patents owned by it in its own or any other country
- waives any and all claims against any Party for compensation, royalty, or award and releases the other Parties from all such claims.⁴⁵

2.44 No patent application with respect to any classified invention or discovery employing classified information exchanged or communicated under the proposed Agreement, may be filed:

- in a country of any Party except in accordance with agreed conditions
- in any country not a Party to the proposed Agreement.⁴⁶

⁴³ ENNPIA, article VIII.

⁴⁴ ENNPIA, article VIII(A).

⁴⁵ ENNPIA, article VIII(B).

⁴⁶ ENNPIA, article VIII(C).

No dispute settlement mechanism

2.45 Parties agree to settle any disagreements with regard to the implementation or interpretation of the proposed Agreement through ‘mutual consultations and negotiations without recourse to any dispute settlement mechanisms’.⁴⁷

Entry into force and duration

2.46 The proposed Agreement would enter into force for all Parties on the date of the last notification that each Party has completed all domestic requirements for the entry into force of the Agreement.⁴⁸

2.47 Evidence to the Committee suggests Australia, the US and UK would complete their respective domestic processes during the course of January 2022.⁴⁹

2.48 Provisions in the proposed Agreement mean it could remain in force until 31 December 2025. The proposed Agreement would:

- remain in force until 31 December 2023
- automatically extend for four additional periods of six months each unless superseded by a subsequent agreement or otherwise terminated.⁵⁰

Termination

2.49 Any Party may terminate the proposed Agreement by giving at least six months written notice to the other Parties.⁵¹

Return or destruction of information

2.50 If any Party materially breaches, terminates or abrogates the proposed Agreement, other Parties have the right to require the return or destruction of any naval nuclear propulsion information communicated or exchanged under the Agreement.⁵²

⁴⁷ ENNPPIA, article X(E).

⁴⁸ ENNPPIA, article X(A).

⁴⁹ Mr Scott Dewar, Former First Assistant Secretary, International Policy and Agreements, Department of Defence, *Committee Hansard*, Canberra, 29 November 2021, page 5.

⁵⁰ ENNPPIA, article X(A).

⁵¹ ENNPPIA, article X(A).

⁵² ENNPPIA, article X(B).

Provisions to remain in effect

2.51 Notwithstanding the suspension, termination or expiration of the proposed Agreement or cessation of cooperation for any reason, the following Articles would continue in effect so long as any naval nuclear propulsion information communicated or exchanged remains in the recipient Party or recipient Party's jurisdiction or control:

- Article III—Responsibility for use of information
- Article V (A, B, D)—Guaranties
- Article VI—Dissemination of information
- Article VII—Classification policies
- Article VIII—Intellectual property.⁵³

Implementation

2.52 The Department of Defence would lead Australia's implementation of the proposed Agreement, in consultation with the Department of Foreign Affairs and Trade (DFAT) and the Attorney-General's Department (AGD).⁵⁴

2.53 No legislative or regulatory measures are required for the proposed Agreement to be implemented in Australia.⁵⁵

Cost

2.54 As there are no provisions in the proposed Agreement with regard to costs, each Party would bear their own incidental costs.⁵⁶

2.55 According to the Department of Defence, the Australian Government has approved funding of up to \$300 million for the operation of the Nuclear-Powered Submarine Task Force. As of 25 November 2021, the task force had 134 staff, including secondees from the Department of the Prime Minister and Cabinet, DFAT, AGD, the Australian Nuclear Science and Technology Organisation, the Australian Radiation Protection and Nuclear Safety Agency, the Department of Education, Skills and Employment, and 10 contractors.⁵⁷

⁵³ ENNPPIA, article X(C).

⁵⁴ NIA, paragraph 28.

⁵⁵ NIA, paragraph 29.

⁵⁶ NIA, paragraph 30.

⁵⁷ Department of Defence, *Submission 105*, pages [3-4].

2.56 There are no anticipated regulatory costs.⁵⁸

Amendment

2.57 There are no provisions in the proposed Agreement that provide for amendments to be made to the Agreement.

2.58 Under international law, Parties could though jointly agree to amend the proposed Agreement, and any such amendment for Australia would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by the Committee.⁵⁹

Nuclear non-proliferation

2.59 Because of the destructive power of nuclear weapons, the international community has imposed a strong regulatory regime on the possession and trade in nuclear materials and the industrial machinery used to process, refine and store those materials. Two of the treaties involved in this regulation are relevant to the Committee's inquiry into the proposed Agreement:

- the NPT⁶⁰
- the *Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons* (safeguards agreement).⁶¹

2.60 The NPT establishes an international framework that is intended to prevent non-nuclear weapon states from acquiring nuclear weapons, while permitting the development of 'research, production and use of nuclear energy for peaceful purposes'.⁶²

⁵⁸ NIA, paragraph 32.

⁵⁹ NIA, paragraph 33.

⁶⁰ *Treaty on the Non-Proliferation of Nuclear Weapons* (London, Moscow, Washington, 7 January 1968) [1973] ATS 3, hereafter NPT.

⁶¹ *Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968* (Vienna, 10 July 1974) [1974] ATS 16, hereafter safeguards agreement. Australia is party to a number of other nuclear non-proliferation treaties that are not relevant to the consideration of ENNPIA.

⁶² NPT, article IV.

- 2.61 The NPT requires that a non-nuclear weapon state concludes a ‘safeguards agreement’ with the IAEA for the purpose of verifying that it is complying with the obligations of the NPT.⁶³ Parties to the NPT cannot transfer nuclear material or related equipment to a non-nuclear weapon state unless that nuclear material or equipment is subject to a safeguards agreement.⁶⁴ For Australia, this is the safeguards agreement referred to above.
- 2.62 While the proposed Agreement contains an article specifically stating that in implementing ENNPIA, Australia will comply with its nuclear non-proliferation obligations,⁶⁵ the proposed Agreement itself is limited to the exchange of naval nuclear propulsion information.⁶⁶ The relevant non-proliferation treaties to which Australia is party do not prohibit the exchange of this type of information, and so the proposed Agreement itself presents no challenge to Australia’s obligations under the non-proliferation treaties.
- 2.63 Non-proliferation obligations become relevant to the proposed Agreement because the purpose of the proposed Agreement is to support the acquisition of nuclear-powered submarines. The preamble to the proposed Agreement states:

Recalling their leaders’ announcement of an enhanced trilateral security partnership among the Parties called AUKUS, of which the first initiative is a shared ambition to support Australia in acquiring nuclear-powered submarines for the Royal Australian Navy ...⁶⁷

- 2.64 At the hearing on 29 November 2021, Mr Scott Dewar, Former First Assistant Secretary, International Policy and Agreements, Department of Defence, stated:

The first major initiative under AUKUS is to support Australia's acquisition of conventionally armed nuclear-powered submarines for operation by the Royal Australian Navy. Acquiring nuclear powered submarines is a major decision for Australia.⁶⁸

⁶³ NPT, article III(1).

⁶⁴ NPT, article III(2).

⁶⁵ NIA, paragraph 14.

⁶⁶ ENNPIA, article II.

⁶⁷ ENNPIA, preamble.

⁶⁸ Mr Dewar, Department of Defence, *Committee Hansard*, Canberra, 29 November 2021, page 1.

2.65 Article 14 of Australia's safeguards agreement with the IAEA sets out the conditions under which Australia can use nuclear material for a non-proscribed military activity that is not in conflict with Australia's non-proliferation obligations. Article 14 states:

If Australia intends to exercise its discretion to use nuclear material which is required to be safeguarded under this Agreement in a nuclear activity which does not require the application of safeguards under this Agreement, the following procedures shall apply:

- (a) Australia shall inform the Agency of the activity, making it clear:
 - (i) That the use of the nuclear material in a non-proscribed military activity will not be in conflict with an undertaking Australia may have given and in respect of which Agency safeguards apply, that the nuclear material will be used only in a peaceful nuclear activity; and
 - (ii) That during the period of non-application of safeguards the nuclear material will not be used for the production of nuclear weapons or other nuclear explosive devices;
- (b) Australia and the Agency shall make an arrangement so that, only while the nuclear material is in such an activity, the safeguards provided for in this Agreement will not be applied. The arrangement shall identify, to the extent possible, the period or circumstances during which safeguards will not be applied. In any event, the safeguards provided for in this Agreement shall apply again as soon as the nuclear material is reintroduced into a peaceful nuclear activity. The Agency shall be kept informed of the total quantity and composition of such unsafeguarded nuclear material in Australia and of any export of such nuclear material; and
- (c) Each arrangement shall be made in agreement with the Agency. Such agreement shall be given as promptly as possible and shall relate only to such matters as, inter alia, temporal and procedural provisions and reporting arrangements, and shall not involve any approval or classified knowledge of the military activity or relate to the use of the nuclear material therein.⁶⁹

⁶⁹ Safeguards agreement, article 14.

- 2.66 During the Committee hearing on 29 November 2021, Ms Katrina Cooper, First Assistant Secretary and Head, AUKUS Taskforce, DFAT, affirmed Australia's ongoing commitment to the nuclear non-proliferation regime:

Australia is unwavering in its support for the global non-proliferation regime, with the nuclear non-proliferation treaty as its cornerstone. Our AUKUS partners are equally committed. Australia is a foremost proponent of the nuclear non-proliferation treaty. We have exemplary credentials, and we stand by our record. In undertaking AUKUS cooperation, we'll comply fully with our non-proliferation obligations and commitments, including under the South Pacific Nuclear Free Zone Treaty. Our record outside the NPT is also longstanding and strong, including our work on the Non-Proliferation and Disarmament Initiative, the Proliferation Security Initiative and the Australia Group. We'll continue to adhere to the highest standards of safeguards for transparency and verifications.⁷⁰

- 2.67 The Committee heard evidence that there are complex and unresolved non-proliferation issues. Professor Donald Rothwell referred to the 'novelty of the AUKUS arrangement' with respect to its NPT implications.⁷¹ Mr Jesse Clarke, Assistant Secretary, Office of International Law, AGD, advised, 'we will grapple with the many issues that arise under the nuclear non-proliferation treaty regime with the IAEA in our pursuit of our steadfast commitment to maintain our obligations under the nuclear non-proliferation treaty regime'.⁷²

- 2.68 Ms Cooper advised the Committee that discussions with the IAEA concerning Australia's non-proliferation obligations in relation to nuclear-powered submarines had commenced and were underway:

We notified the International Atomic Energy Agency of our plans in relation to AUKUS at the outset, and we will continue to engage closely with the IAEA throughout the 18-month consultation period. The Prime Minister recently met with the IAEA director-general, Raphael Grossi, and underlined the strength of our ongoing commitment to non-proliferation and to working closely with the IAEA.⁷³

⁷⁰ Ms Katrina Cooper, First Assistant Secretary and Head, AUKUS Taskforce, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 29 November 2021, page 3.

⁷¹ Professor Donald Rothwell, *Committee Hansard*, Canberra, 3 December 2021, page 3.

⁷² Mr Jesse Clarke, Assistant Secretary, Office of International Law, Attorney-General's Department (AGD), *Committee Hansard*, Canberra, 29 November 2021, page 10.

⁷³ Ms Cooper, DFAT, *Committee Hansard*, Canberra, 29 November 2021, page 3.

2.69 Mr Clarke stated:

I think it's clear that naval nuclear propulsion is considered a non-proscribed military activity within the non-proliferation treaty regime. I should emphasise that such activities, non-proscribed military activities, are not prohibited by the NPT regime. A non-proscribed military activity does not include the use of nuclear material in nuclear weapons or other explosive devices.⁷⁴

Views on the proposed Agreement

2.70 The Committee received 106 submissions to the inquiry, the significant majority of which addressed the broader policy of the AUKUS enhanced trilateral security partnership and the perceived desirability or otherwise of Australia's acquisition of nuclear-powered submarines. This section confines itself to the views presented on the proposed Agreement itself, rather than seeking to cover the many other issues raised.

2.71 Professor Rothwell, in his evidence to the Committee, noted the proposed Agreement 'can properly be characterised as one that seeks to provide for an exchange of information with respect to naval nuclear propulsion information'.⁷⁵ It is 'an agreement to potentially agree on something more substantive at some undefined point in the future'.⁷⁶

2.72 Some submissions and witnesses expressed concern that the intention to acquire nuclear-powered submarines would affect Australia's strategic independence, and expressed concern the decisions had the potential to raise tensions in the region. This included, the Medical Association for Prevention of War (Australia), the Independent and Peaceful Australia Network (IPAN), People for Nuclear Disarmament, and Australians for War Powers Reform.

2.73 Some submitters raised concerns about the acquisition of submarines drawing Australia into US war planning, destabilising the region, causing an arms build-up, and potentially leading to war with China.⁷⁷

⁷⁴ Mr Clarke, AGD, *Committee Hansard*, Canberra, 29 November 2021, page 8.

⁷⁵ Professor Donald Rothwell, *Committee Hansard*, Canberra, 3 December 2021, page 1.

⁷⁶ Professor Donald Rothwell, *Committee Hansard*, Canberra, 3 December 2021, page 1.

⁷⁷ For a range of views, see: Mr Bevan Ramsden, Committee Member, Independent and Peaceful Australia Network (IPAN), *Committee Hansard*, Canberra, 3 December 2021, page 7; Dr Sue Wareham, President, Medical Association for Prevention of War, *Committee Hansard*, Canberra,

Nuclear non-proliferation

- 2.74 A number of submissions discussed the nuclear non-proliferation implications of the proposed Agreement.
- 2.75 Many of these submissions identified the prospect of Australia making use of Article 14 of Australia's safeguards agreement as a concern. BaseWatch Darwin, for example, stated:

Nuclear propelled submarines have long been recognised as a well defined loophole to the NPT framework. Australian entanglement risks further expanding the loophole, and in doing so inviting others to stretch the definition yet again. A number of international voices have expressed concern that this move by Australia may amount to a weakening of the NPT framework, and may fuel a regional arms race.⁷⁸

- 2.76 The Medical Association for Prevention of War (WA Committee) discussed the precedent Australia's use of Article 14 of the safeguards agreement could set:

Only six countries, all of them nuclear-armed, operate nuclear-powered submarines. It is unprecedented for a non-nuclear armed nation like Australia to acquire nuclear-powered submarines. The exchange of this extremely sensitive information around the fuel and the technology that is needed to make nuclear weapons is a dangerous global precedent that other nations are likely to follow.⁷⁹

3 December 2021, page 9; Niall McLaren, *Submission 8*, page 1; Hunter Peace Group, *Submission 26*, page [1]; Jonathan Pilbrow, *Submission 28*, page [1]; David Noonan, *Submission 40*, page 4; Jane Brownrigg, *Submission 41*, page 1; IPAN, *Submission 43*, page [2]; Nick Deane, *Submission 45*, page [1]; Catharine Clements, *Submission 56*, page 1; Lorel Thomas, *Submission 60*, page [3]; Dr Sharon Matthews, *Submission 64*, page [1]; Christine Venner-Westaway, *Submission 68*, page [1]; Sydney Anti-AUKUS Coalition, *Submission 74*, pages [1-2]; Katherine Purnell, *Submission 77*, page [1]; Professor Emeritus Frank Stilwell, *Submission 83*, page [1]; Kathryn Kelly, *Submission 89*, page 2; Julie Marlow, *Submission 92*, page 1; Roger Jowett, *Submission 94*, page [1]; Paul Pearce and Ingrid Strewé, *Submission 104*, pages [1-2].

⁷⁸ BaseWatch Darwin, *Submission 51*, page [2]. See also: Adrian Glamorgan, *Submission 85*, page [2]; Australian Conservation Foundation, *Submission 87*, pages 2–3; People for Nuclear Disarmament, *Submission 21*, page [5]; Kathryn Kelly, *Submission 89*, page [1].

⁷⁹ Medical Association for Prevention of War (WA Committee), *Submission 58*, page 1. See also: Dr Graham Freeman, *Submission 11*, page [1]; Dr Philip White, *Submission 16*, page [3]; Jonathan Pilbrow, *Submission 28*, page [1]; Jane Brownrigg, *Submission 41*, page [1]; Dallas de Brabander, *Submission 42*, page [1]; Name Withheld, *Submission 47*, page [1]; Dr Sharon Matthews, *Submission 64*, page [1]; Sydney Peace and Justice Coalition, *Submission 66*, page [1].

2.77 On the other hand, Professor Rothwell pointed out that the proposed Agreement deals with the exchange of information and does not provide for the transfer of technology. According to Professor Rothwell, though there is broader debate on whether the AUKUS partnership could lead to NPT issues, he was of the view the proposed Agreement ‘does not cause ... any direct alarm in terms of inconsistency of this agreement with the NPT’.⁸⁰ Nevertheless, Professor Rothwell was of the view a stronger statement reaffirming Australia’s NPT obligations would have been appropriate.⁸¹

Environmental issues

2.78 Environmental issues raised by submitters went to two broad issues beyond the provisions of the proposed Agreement: Australia’s capacity to deal with a nuclear incident, and the disposal of nuclear materials.

2.79 The Conservation Council of Western Australia stated the risks of nuclear submarine accidents are significant, and the environmental and wider impacts on Western Australia’s coast, marine life and community in the event of an accident or incident could be devastating.⁸²

2.80 The Independent and Peaceful Australia Network argued building, operating and supporting the maintenance of nuclear-powered submarines could lead to the establishment of a nuclear industry in Australia, something it opposed. Such an industry, IPAN argued, would bring a range of dangerous issues associated with highly enriched, weapons-grade uranium and the disposal of radioactive waste.⁸³

Committee view

2.81 The AUKUS enhanced trilateral security partnership is a significant strategic development for Australia, as is the decision by the Australian Government to seek an optimal pathway for the acquisition of nuclear-powered submarines. Whilst these developments have a number of policy and

⁸⁰ Professor Donald Rothwell, *Committee Hansard*, Canberra, 3 December 2021, page 3.

⁸¹ Professor Donald Rothwell, *Committee Hansard*, Canberra, 3 December 2021, page 3.

⁸² Conservation Council of Western Australia (CCWA), *Submission 48*, page [1]; Ms Mia Pepper, Nuclear Free Campaigner, CCWA, *Committee Hansard*, Canberra, 3 December 2021, page 8.

⁸³ IPAN, *Submission 43*, page [2]. See also: Marrickville Peace Group, *Submission 57*, page [2]; Sydney Anti-AUKUS Coalition, *Submission 74*, page [2]; Australian Conservation Foundation, *Submission 87*, pages 3-4.

political elements, and have attracted a deal of community interest, the Committee is conscious that the scope of this inquiry is limited to the proposed Agreement before the Committee, concerning the exchange of naval nuclear propulsion information.

- 2.82 The Committee is reassured by undertakings in the NIA and those provided by Australian Government witnesses that the proposed Agreement is only intended to facilitate the sharing of naval nuclear propulsion information and that a subsequent agreement would be required to support transfers of equipment, materials or technology. Any such agreement would be subject to Australia's domestic treaty-making requirements, including consideration by the Committee.⁸⁴
- 2.83 Given the early stage of the project, much concern about the proposed Agreement expressed during the inquiry, while understandable and legitimate, was to some degree speculative or pre-emptive.
- 2.84 It is the case significant matters remain to be determined during the 18-month consultation process and any future action will be subject to further Committee scrutiny.
- 2.85 The Committee notes the concerns expressed by some submitters about Australia's commitment to the NPT. The Committee found no evidence to suggest Australia's steadfast commitment to its NPT obligations was wavering.
- 2.86 The Committee heard evidence that there are complex and unresolved non-proliferation issues raised by the proposal to acquire nuclear-powered submarines. On that basis, the Committee will seek to remain informed of the Australian Government's ongoing engagement with the IAEA.
- 2.87 The Committee is of the view the proposed Agreement is in the national interest and accordingly recommends binding treaty action be taken.

Recommendation 1

- 2.88 The Committee supports the proposed Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information and recommends binding treaty action be taken.**

⁸⁴ NIA, paragraph 34.

3. Minor treaty action

2021 Amendment to Annex I of the International Convention against Doping in Sport

- 3.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest. They are presented to the Committee with a short explanatory statement and are listed on the Committee's website.
- 3.2 The Committee can choose to formally inquire into these treaty actions, or accept them without a formal inquiry and report. Once considered they are incorporated into a formal report of the Committee at the next opportunity.
- 3.3 The Committee has been asked to consider the 2021 Amendment to Annex I of the *International Convention against Doping in Sport*.

Background

- 3.4 The proposed treaty action is an amendment to Annex I of the United Nations Educational, Scientific and Cultural Organization (UNESCO) *International Convention against Doping in Sport* (the Convention). Annex I (Prohibited List – International Standard) identifies the substances and methods prohibited in sport and is an integral part of the Convention.
- 3.5 The Convention entered into force on 1 February 2007 and aims to 'harmonise anti-doping legislation, guidelines, regulations, and rules

internationally in order to provide a fair and equitable playing environment for all athletes'.¹

- 3.6 Under the World Anti-Doping Code and since 2004, the World Anti-Doping Agency (WADA) has published an annually updated list of Prohibited Substances and Methods (the Prohibited List).² The WADA consults widely on possible amendments and Australia contributes to the consultation process.³
- 3.7 Under Article 34 of the Convention, WADA amendments to the Prohibited List must be approved by the Conference of Parties. From the date of the UNESCO Director-General's notification of amendments, States Parties have 45 days to express their objection to the proposed amendment. Unless two thirds of States Parties express an objection, the proposed amendment is deemed to be approved by the Conference of Parties. Amendments approved by the Conference of Parties enter into force 45 days after the Director-General notifies the Conference of Parties that amendments have been approved.⁴
- 3.8 If a State Party notifies the Director-General that it does not accept an amendment, the state remains bound by the Annexes as not amended.⁵

The proposed treaty action

- 3.9 The proposed amendments to Annex I of the Convention would update the annex to reflect the 2022 Prohibited List, which was adopted by WADA on 14 September 2021.⁶

¹ United Nations Educational, Scientific and Cultural Organization (UNESCO), 'International Convention against Doping in Sport', en.unesco.org/themes/sport-and-anti-doping/convention, viewed 22 November 2021.

² World Anti-Doping Agency, 'The Prohibited List', www.wada-ama.org/en/what-we-do/the-prohibited-list, viewed 22 November 2021.

³ Explanatory Statement 6 of 2021, 2021 Amendment to Annex I of the *International Convention against Doping in Sport*, hereafter Explanatory Statement, paragraph 3; World Anti-Doping Agency, *World Anti-Doping Code International Standard: Prohibited List 2022*, page 3.

⁴ *International Convention against Doping in Sport* (Paris, 19 October 2005) [2007] ATS 10, hereafter the Convention, article 34(1)–(3).

⁵ The Convention, article 34(4).

⁶ Explanatory Statement, paragraph 2.

3.10 The UNESCO Director-General notified States Parties of the proposed amendments to Annex I on 1 October 2021. The Explanatory Statement advised Australia did not intend to object to the amendments and the proposed amendments would enter into force for Australia on 1 January 2022.⁷

Reasons to take the treaty action

3.11 According to the Explanatory Statement, harmonising the regulation of anti-doping arrangements across sports globally provides certainty and consistency for Australian athletes who are required to comply with WADA's Prohibited List.⁸

3.12 If a discrepancy came to exist between the Australian Government's agreed Prohibited List (Annex I of the Convention) and WADA's Prohibited List, Sport Integrity Australia stated it would be 'restricted in its ability to implement its anti-doping regime in accordance with the requirements of the World Anti-Doping Code'.⁹

3.13 The Explanatory Statement suggested the proposed treaty action would not impact significantly on the national interest and it would have negligible practical, legal or financial effect on Australia.¹⁰

3.14 Compliance with the proposed amendment to Annex I of the Convention would not require legislative amendment as the existing legislative framework incorporates the Prohibited List, as adopted by WADA and in force at the time.¹¹

⁷ Explanatory Statement, paragraph 7.

⁸ Explanatory Statement, paragraph 8.

⁹ Explanatory Statement, paragraph 9.

¹⁰ Explanatory Statement, paragraph 4.

¹¹ Explanatory Statement, paragraphs 10–11.

Conclusion

- 3.15 The Committee supports this minor treaty action and agreed that binding treaty action be taken.

Mr Dave Sharma MP

Chair

15 December 2021

Australian Greens Dissenting Report

Summary of position

- 1.1 The Australian Greens do not support the acquisition of nuclear-powered submarines. We hold grave concerns that this procurement, and the trilateral AUKUS agreement facilitating it, will undermine peace, stability and safety in the Indo-Pacific region and indeed globally.
- 1.2 Further, we are particularly alarmed by the unjustified speed at which this committee process is being undertaken. The Morrison Government's disregard of due democratic process is deeply troubling—as is the Labor party's acquiescence on the matter—and fails to adequately prioritise community engagement on a matter of such significant public importance.

Key issues

- 1.3 The Australian Greens maintain that the proposed acquisition of nuclear-powered submarines is highly provocative, and will dangerously escalate tensions in the Indo-Pacific region.¹
- 1.4 In addition, we are concerned that the AUKUS agreement and the procurement of nuclear-powered submarine technology for military purposes significantly risks nuclear arms proliferation among non-nuclear armed states. We strongly support the concerns raised during the inquiry

¹ International Campaign to Abolish Nuclear Weapons (ICAN), 'Nuclear-Powered Submarines: Briefing Note', icanw.org.au/nuclear-powered-submarines-briefing-note/, viewed 23 November 2021.

hearings that Australia's actions set a precedent for other nations that may seek to acquire nuclear technology for arms development.²

- 1.5 We contend that the presence of nuclear-powered submarines in Australia would make Australia a military target and increase the risk of domestic terrorism incidents and we note submitters to the inquiry share this view.³
- 1.6 Further, the Greens are alarmed that both the United States (US) and United Kingdom (UK) nuclear-powered submarines are reportedly fuelled with weapons-grade enriched uranium,⁴ with Article II of the treaty inferring that Australia would acquire this same technology.⁵
- 1.7 We note that witnesses representing both the Department of Foreign Affairs and Trade and the Department of Defence at the first inquiry hearing were unable to definitively answer whether Australia would acquire this nuclear technology within the International Atomic Energy Agency's (IAEA) safeguards regime, or whether it would exploit the so-called non-proliferation 'loophole'⁶ and therefore be exempt from inspection and compliance. The International Campaign to Abolish Nuclear Weapons' (ICAN) submission to the inquiry maintains the latter scenario would be invoked, and we share ICAN's concern that the Exchange of Naval Nuclear Propulsion Information Agreement (ENNPIA) significantly weakens the IAEA's important goal of restricting sensitive nuclear material and technology.⁷
- 1.8 We have significant concerns about the safety of nuclear-powered submarines. The catastrophic potential of nuclear power poses an unacceptable risk to our communities and the environment. The potential for long-term radiological contamination is significant, and the full impact of

² Dr Marianne Hanson, Vice-Chair, ICAN, *Committee Hansard*, Canberra, 3 December 2021, page 9.

³ ICAN, 'Nuclear-Powered Submarines: Briefing Note', icanw.org.au/nuclear-powered-submarines-briefing-note/, viewed 23 November 2021.

⁴ ICAN, 'Nuclear-Powered Submarines: Briefing Note', icanw.org.au/nuclear-powered-submarines-briefing-note/, viewed 23 November 2021.

⁵ *Agreement between the Government of Australia, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information* (Canberra, 22 November 2021) [2021] ATNIF 10, article II.

⁶ ICAN, 'Nuclear-Powered Submarines: Briefing Note', icanw.org.au/nuclear-powered-submarines-briefing-note/, viewed 23 November 2021.

⁷ ICAN, *Submission 67*, page [2].

radiation from nuclear-powered submarines on marine ecosystems is as yet unknown.

1.9 Additionally, we have serious reservations about the nuclear reference accident upon which the decision to allow nuclear-powered warships to visit Australia is assessed.⁸ In our view it is extremely conservative in scope and fails to consider marine impacts or long-term repercussions of a nuclear incident on human life.

1.10 The Australian Greens are extremely concerned about how the storage and disposal of nuclear waste generated by submarines procured through this exchange of information would be managed. We share the concerns raised by a witness speaking on behalf of the Conservation Council of Western Australia (CCWA) in the second ENNPPIA hearing that the procurement of nuclear-propelled submarines will cost tens of billions of dollars, a cost that has not been considered by the government in its deliberations, and that:

... it can safely be assumed that nuclear waste would be dumped on Aboriginal land ... without the consent of affected traditional owners ... [noting] there's no repository for high-level nuclear waste anywhere in the world.⁹

1.11 We also express concerns about the significant relative costs associated with acquiring such technology. Australia does not at present have the domestic nuclear infrastructure to support nuclear-powered submarines, which we are concerned will increase our military and foreign policy reliance on the US and UK. Further, we do not support the establishment of a domestic nuclear industry, which would be extraordinarily expensive and deeply problematic on environmental, social and economic grounds. This view is supported by witnesses representing the Independent and Peaceful Australia Network (IPAN), who gave evidence at the committee hearing expressing their belief that the plan would 'require the establishment of a nuclear services industry' in Australia.¹⁰ It is our view that the considerable diversion of resources that this capability acquisition will require could be better and more efficiently spent on other community-building projects that

⁸ Australian Radiation Protection and Nuclear Safety Agency, *The 2000 Reference Accident Used to Assess the Suitability of Australian Ports for Visits by Nuclear Powered Warships*, December 2000, www.arpansa.gov.au/sites/default/files/ref_acc.pdf, viewed 23 November 2021.

⁹ Dr Jim Green, *Committee Hansard*, Canberra, 3 December 2021, pages 11-12.

¹⁰ Mr Bevan Ramsden, Committee Member, Independent and Peaceful Australia Network (IPAN), *Committee Hansard*, Canberra, 3 December 2021, page 7.

actually address the root causes of instability and insecurity in the region and around the world (for instance, inequality, climate change).

- 1.12 The Australian Greens express serious concern about the expedited nature of this committee process. It is disappointing that this Committee, the majority of whom are from the Labor and Liberal/National parties, has denied the community the opportunity to meaningfully engage with this inquiry. We are not satisfied that the Morrison Government's request of this Committee to expedite consideration of this treaty is sufficiently justified. In our view, this inquiry should be extended to allow enough time for the community to properly engage. After all, it is the Australian community who are being asked to foot the bill—and bear the risk—for such an expensive and resource-intensive project.
- 1.13 We would like to note the bipartisanship of the Liberal/National and Labor parties on this issue. The Greens maintain that this habit of uncritically waving through matters relating to defence, foreign relations and security means that the public are not afforded the opportunity for meaningful and robust debate. It is our view that this diminishes the democratic process and provides no option for an alternative outcome, even if those alternatives better serve the public interest.
- 1.14 The Australian Greens further highlight the Government's 2019 report *Not without your approval: a way forward for nuclear technology in Australia* that emphasises that nuclear power would not be pursued without community support.¹¹ We contend that such a rushed committee process is discordant with this recent commitment, and therefore a longer committee process and engagement of the public is critical and necessary.
- 1.15 Finally, the Greens note and support the submissions to the Joint Standing Committee on Treaties (JSCOT) by individuals and community groups expressing their opposition to ENNPIA and the hasty committee process, including the People for Nuclear Disarmament, Friends of the Earth, the Medical Association for Prevention of War, ICAN, IPAN, CCWA, the Sydney Peace and Justice Coalition, and former senator and JSCOT committee member Scott Ludlam. The significant volume of submissions received in this extremely abbreviated timeframe clearly demonstrate the

¹¹ House of Representatives Standing Committee on the Environment and Energy, *Not without your approval: a way forward for nuclear technology in Australia*, December 2019, www.aph.gov.au/Parliamentary_Business/Committees/House/Environment_and_Energy/Nuclearenergy/Report, viewed 23 November 2021.

need for an extended committee process and meaningful community participation.

- 1.16 I would like to acknowledge Senator Steele-John's work on this dissenting report as the Australian Greens portfolio holder on Peace and Disarmament.

Recommendation 1

- 1.17 **The Australian Greens recommend that no binding treaty action be taken.**

Recommendation 2

- 1.18 **The Australian Greens recommend that the committee process is extended to ensure the community is given adequate time to engage in this issue of significant public interest.**

Senator Dorinda Cox
Member

A. Submissions

- 1 Scott Ludlam
- 2 Robert Heron
- 3 *Confidential*
- 4 Judith Morrison
- 5 *Name Withheld*
- 6 Colin Mitchell
- 7 Jennifer Forster
- 8 Niall McLaren
- 9 Keri James
- 10 Lawry Herron
- 11 Dr Graham Freeman
- 12 Andrew Williams
- 13 Benjamin Cronshaw
- 14 Goralyna Estarion
- 15 Dr John Paterson
- 16 Dr Philip White
- 17 Gabrielle Smith
- 18 Colin MacKenzie
- 19 Svyetlana Hadgraft
- 20 David Phelps

-
- 21 People for Nuclear Disarmament
 - 22 *Name Withheld*
 - 23 Daren McDonald
 - 24 George Dale Hess
 - 25 Bryan Milne
 - 26 Hunter Peace Group
 - 27 Simon Wood
 - 28 Jonathan Pilbrow
 - 29 Paul Carrick
 - 30 *Confidential*
 - 31 Noel McCarthy
 - 32 *Name Withheld*
 - 33 *Name Withheld*
 - 34 Pamela Collett and James Lindsay
 - 35 *Name Withheld*
 - 36 Darryl Nelson
 - 37 Philip Browne
 - 38 Richard Lloyd
 - 39 Professor Colin Apelt
 - 40 David Noonan
 - 41 Jane Brownrigg
 - 42 Dallas de Brabander
 - 43 Independent and Peaceful Australia Network (IPAN)
 - 44 Pamela Jones
 - 45 Nick Deane
 - 46 Kevin Walsh
 - 47 *Name Withheld*
 - 48 Conservation Council of Western Australia
 - 49 Dr Norma Wood

-
- 50 Richard Weatherley
- 51 BaseWatch Darwin
- 52 Diana Rickard and Greg Chapman
- 53 Australian Anti-Bases Campaign Coalition
- 54 *Name Withheld*
- 55 Australians for War Powers Reform
- 56 Catharine Clements
- 57 Marrickville Peace Group
- 58 Medical Association for Prevention of War (WA Committee)
- 59 Professor Donald Rothwell
- 60 Lorel Thomas
- 61 Jim Morris
- 62 David Cohan
- 63 Dr Christopher Crouch
- 64 Dr Sharon Matthews
- 65 Associate Professor Anitra Nelson
- 66 Sydney Peace and Justice Coalition
- 67 International Campaign to Abolish Nuclear Weapons (Australia)
- 68 Christine Venner-Westaway
- 69 Margaret Bryn-Burns
- 70 *Name Withheld*
- 71 Medical Association for Prevention of War (Australia)
- 72 Barbara Fletcher
- 73 Friends of the Earth Australia
- 74 Sydney Anti-AUKUS Coalition
- 75 Curtin University
- 76 Dr Peter Ross
- 77 Katherine Purnell
- 78 Graham Rayner

- 79 *Confidential*
- 80 Nikkoela Raffinde
- 81 Dr Peter Bennett
- 82 Dr Romaine Rutnam
- 83 Professor Emeritus Frank Stilwell
- 84 Grant Donohue
- 85 Adrian Glamorgan
- 86 Peter Griffin
- 87 Australian Conservation Foundation
- 88 Stephen Rix
- 89 Kathryn Kelly
- 90 Councillor Cath Blakey
- 91 *Name Withheld*
- 92 Julie Marlow
- 93 Dr Bronwen Evans
- 94 Roger Jowett
- 95 Dr Frederick Blamey
- 96 Dr Zohl Ishtar
- 97 Dr Marianne Hanson
- 98 *Name Withheld*
- 99 Julie Hart
- 100 Dr Andrew Mack
- 101 Geoff Maddox
- 102 Migrante Australia
- 103 M Marlee (Jewell)
- 104 Paul Pearce and Ingrid Strewe
- 105 Department of Defence
- 106 Katy Gerner

B. Witnesses

Monday, 29 November 2021

Canberra (by videoconference)

Department of Defence

Department of Foreign Affairs and Trade

Attorney-General's Department

Friday, 3 December 2021

Canberra (by videoconference/teleconference)

Professor Donald Rothwell

Australians for War Powers Reform

Conservation Council of Western Australia

Independent and Peaceful Australia Network (IPAN)

International Campaign to Abolish Nuclear Weapons (ICAN)

Medical Association for Prevention of War