Report 179

Reprocessing Nuclear Fuel-France; PACER Plus Agreement

Joint Standing Committee on Treaties

May 2018
CANBERRA
Executive Summary

This report contains the Committee’s review of two treaty actions:

- Agreement between the Government of Australia and the Government of the French Republic Concerning the Reprocessing in France of Australian Irradiated Nuclear Fuel Elements (Canberra, 23 November 2017); and
- Pacific Agreement on Closer Economic Relations Plus (PACER Plus), (Nuku’alofa, 14 June 2017).

The Agreement between the Government of Australia and the Government of the French Republic Concerning the Reprocessing in France of Australian Irradiated Nuclear Fuel Elements is necessary to satisfy the requirements of French domestic law before reprocessing of spent nuclear fuel from the Open Pool Australian Lightwater (OPAL) research reactor can be undertaken in France. French domestic law requires that radioactive waste arising from reprocessing of spent nuclear fuel not be stored in France past an agreed date. The Agreement meets these requirements.

The Committee considered several issues of broader concern outside the remit of the Agreement including the merits of reprocessing spent nuclear fuel and the long term storage of nuclear waste in Australia. The Committee acknowledges the important work being undertaken at the OPAL reactor and concludes that the ongoing operation of the reactor is essential. The Committee accepts that reprocessing the spent fuel from the OPAL reactor is the best option currently available to the Australian Nuclear Science and Technology Organisation (ANSTO) and that the arrangement with France will provide certainty in the foreseeable future. The Committee therefore recommends that binding treaty action be taken.

Although the Committee is satisfied with the safety of the current arrangements for the interim storage of the returned reprocessed intermediate-level waste held at Lucas Heights, it urges the Government to expedite the establishment of the proposed National Radioactive Waste Management Facility (NRWMF) to alleviate the uncertainty over a final pathway for disposal of nuclear waste in Australia. The
Committee is aware of the growing stockpile of radioactive waste across the country, not only from the ANSTO facility but from other sources. Although the need for the NRWMF may not appear pressing at the moment, there is some urgency considering the past difficulties this project has encountered and possible future delays.

The Pacific Agreement on Closer Economic Relations Plus (PACER Plus) principally concerns free trade between Australia and New Zealand and Pacific Island countries. The Committee considers that the absence of Papua New Guinea and Fiji from PACER Plus significantly diminishes the utility of the Agreement for Australian business. However, the Committee accepts that every effort is being made to encourage both countries to join the Agreement.

The Committee acknowledges the development assistance aspects of PACER Plus but notes that this assistance is coming from the existing aid budget. This suggests that it may have been expended as aid to Pacific Island countries anyway. Therefore it is not clear how tying this expenditure to PACER Plus implementation is likely to provide a greater benefit to Pacific Island countries than it otherwise would have had.

The Committee is concerned about the impact of PACER Plus on the already limited revenues of Pacific Island Governments. The combination of the impact of reduced revenue on public health capacity and access to tariff free products that cause harm has been a significant issue in the inquiry. While the Committee supports ratification of the Agreement it also recommends that part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the Agreement, and where necessary, provide funds to Pacific Island countries to assist relevant development outcomes.

The Report also contains the Committee’s review of the following two minor treaty actions:

- amendments to the Code of the Maritime Labour Convention 2006 approved at Geneva on 9 June 2016; and
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<td>ACTU</td>
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<td>AFTINET</td>
<td>Australian Fair Trade and Investment Network</td>
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<td>ANM</td>
<td>ANSTO Nuclear Medicine Facility</td>
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<td>ANSTO</td>
<td>Australian Nuclear Science and Technology Organisation</td>
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<td>ANU</td>
<td>Australian National University</td>
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<td>ARPANSA</td>
<td>Australian Radiation Protection and Nuclear Safety Agency</td>
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<td>AusYGN</td>
<td>Australian Young Generation in Nuclear</td>
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<td>CSIRO</td>
<td>Commonwealth Scientific and Industrial Research Organisation</td>
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<td>Department of Foreign Affairs and Trade</td>
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<td>Euratom</td>
<td>European Atomic Energy Community</td>
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<td>Gross Domestic Product</td>
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<td>HIFAR</td>
<td>High Flux Australian Reactor</td>
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<td>IIS</td>
<td>Department of Industry, Innovation and Science</td>
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<td>ILW</td>
<td>Intermediate-Level Waste</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>JSCOT</td>
<td>Joint Standing Committee on Treaties</td>
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<td>LLW</td>
<td>Low-Level Waste</td>
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<td>MLC</td>
<td>Maritime Labour Convention</td>
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<td>Mo-99</td>
<td>molybdenum-99</td>
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<td>Acronym</td>
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<td>NHMRC</td>
<td>National Health and Medical Research Council</td>
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<td>NIA</td>
<td>National Interest Analysis</td>
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<td>NRWMF</td>
<td>National Radioactive Waste Management Facility</td>
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<td>OPAL</td>
<td>Open Pool Australian Lightwater Research Reactor</td>
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<td>PACER Plus</td>
<td>Pacific Agreement on Closer Economic Relations Plus</td>
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<td>PHAA</td>
<td>Public Health Association of Australia</td>
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<td>PIC</td>
<td>Prior Informed Consent</td>
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<td>RIS</td>
<td>Regulation Impact Statement</td>
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<td>United Kingdom</td>
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<td>UNSW</td>
<td>University of New South Wales</td>
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<td>United States of America</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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Members

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Hon Stuart Robert MP

Deputy Chair
Hon Michael Danby MP

Members
Mr John Alexander OAM, MP
Senator Slade Brockman
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Committee Secretariat

Ms Julia Morris, Committee Secretary

Dr Narelle McGlusky, Inquiry Secretary
Mr Kevin Bodel, Inquiry Secretary
Ms Cathy Rouland, Office Manager
Terms of Reference

The Resolution of Appointment of the Joint Standing Committee on Treaties allows 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, or
  - a Minister; and
  - 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.
List of Recommendations

Recommendation 1

2.42 The Committee supports the Agreement between the Government of Australia and the Government of the French Republic Concerning the Reprocessing in France of Australian Irradiated Nuclear Fuel Elements, and recommends that binding treaty action be taken.

Recommendation 2

3.62 The Committee recommends that part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the Agreement, and where necessary, provide funds to Pacific Island countries to assist relevant development outcomes.

Recommendation 3

3.63 As previously recommended in Reports 165 and 172, the Committee again recommends that the Government commission independent economic analysis of all trade agreements to improve the transparency and quality of their assessment.

Recommendation 4

3.65 The Committee supports the Pacific Agreement on Closer Economic Relations Plus, and recommends that binding treaty action be taken.
1. Introduction

Purpose of the report

1.1 This report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- Agreement between the Government of Australia and the Government of the French Republic Concerning the Reprocessing in France of Australian Irradiated Nuclear Fuel Elements, (Canberra, 23 November 2017); and
- Pacific Agreement on Closer Economic Relations Plus (PACER Plus), (Nuku’alofa, 14 June 2017).

1.2 The Committee’s resolution of appointment empowers it to inquire into any treaty action to which Australia has become a signatory, on the treaty being tabled in Parliament.

1.3 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 (NIA), prepared by the Government. This document considers arguments for and against the treaty and outlines the treaty obligations and any consultations undertaken with State and Territory Government, Federal and State and Territory agencies, and with industry and non-government organisations.

1.5 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties examined in this report did not require a RIS.
1.6 Copies of the treaty actions considered in this report and their associated documentation may be obtained from the Committee Secretariat or accessed through the Committee’s website at:

- https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/NuclearFuel-France/Treaty_being_considered; and

1.7 This report also contains the Committee’s views on two minor treaty actions:

- amendments to the Code of the Maritime Labour Convention 2006 approved at Geneva on 9 June 2016; and

### Conduct of the Committee’s review

1.8 The treaty actions reviewed in this Report were advertised on the Committee’s website from the date of tabling. The Committee received seven submissions for the inquiry into the reprocessing of Australian irradiated nuclear fuel elements in France and thirteen submissions for the PACER Plus inquiry.

1.9 The Committee held one public hearing for the inquiry into the reprocessing of Australian irradiated nuclear fuel elements in France in Canberra on 12 February 2018, and conducted a site inspection of the Open Pool Australian Lightwater (OPAL) Research Reactor at Lucas Heights in Sydney on 13 March 2018.

1.10 The Committee held two public hearings for PACER Plus inquiry. Both were held in Canberra: one on the 12 February 2018 and the other on 26 March 2018.

1.11 Transcripts of the evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee’s website. A list of submissions received is at Appendix A and exhibits received at Appendix B. A list of witnesses who appeared at the public hearing is at Appendix C.
2. Reprocessing Nuclear Fuel-France

Introduction

2.1 This Chapter reviews the Agreement between the Government of Australia and the Government of the French Republic Concerning the Reprocessing in France of Australian Irradiated Nuclear Fuel Elements (the Agreement). The treaty action was signed in Canberra on 23 November 2017 and tabled in the Parliament on 29 November 2017.

Background

2.2 The Agreement is necessary to satisfy the requirements of French domestic law before reprocessing of spent nuclear fuel from the Open Pool Australian Lightwater (OPAL) research reactor can be undertaken in France. Evidence to the Committee suggests that there is broader concern over the merits of reprocessing spent nuclear fuel and the long term storage of nuclear waste in Australia. In addition to its regular practice\(^1\), the Committee conducted a site inspection of the OPAL research reactor at Lucas Heights in Sydney in order to familiarise itself in greater detail with the current arrangements for the storage of radioactive waste and matters raised about the issue more generally.

The Open Pool Australian Lightwater (OPAL) research reactor

2.3 The Australian Nuclear Science and Technology Organisation (ANSTO) has operated the OPAL research reactor since 2006. According to the National

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\(^1\) As noted in Chapter One and in accord with its regular practice, the Committee called for submissions for the inquiry (receiving seven submissions) and held one public hearing for the inquiry in Canberra.
Interest Analysis (NIA), through the OPAL reactor, ANSTO provides critical health, scientific and economic capabilities to the Australian public. Such capacity includes the provision of over 10,000 doses of nuclear medicine per week as well as production and export of neutron transmutation-doped silicon for use in high-end electronic equipment. It also includes nuclear science capabilities that are used to conduct cutting-edge research in fields as diverse as materials science, environmental and climate change research, food and agriculture, industrial applications and human health. The reactor produces a small amount of spent nuclear fuel, which requires safe management.²

2.4 ANSTO elaborated on the work being conducted at OPAL, explaining that it exports nuclear medicines to a number of countries and stating that, on average, ‘one in two Australians will require a nuclear medicine produced at ANSTO during their lifetime’.³ Plans are in hand to increase production of nuclear medicine to meet increased demand worldwide and secure domestic supply:

The most widely used nuclear medicine manufactured at ANSTO is molybdenum-99 (Mo-99), the decay product of which, technetium-99m, is used in over 80 per cent of all nuclear medicine procedures globally. ANSTO is currently in the process of commissioning the new ANSTO Nuclear Medicine (ANM) Facility, which will increase the amount of Mo-99 the organisation is able to produce. This will ensure ongoing secure domestic supply, in addition to meeting up to 25 per cent of global needs; this could see Mo-99 produced at ANSTO benefitting over 10 million patients every year.⁴

2.5 ANSTO also conducts environmental research using ‘highly sensitive, state of the art isotope instruments to study how environmental systems function and interact’.⁵ ANSTO provided the following examples of the type of environmental issues this research is aimed at addressing:

- Water resource sustainability—the Isotopes for Water project applies isotopic and nuclear techniques to effectively manage groundwater and rivers,

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³ Australian Nuclear Science and Technology Organisation (ANSTO), Submission 7, p. [1]; Australian and New Zealand Society of Nuclear Medicine Limited, Submission 1, p. [1].

⁴ ANSTO, Submission 7, p. [1].

⁵ ANSTO, Submission 7, p. [2].
freshwater ecosystems. A key focus of the project is groundwater recharge rates, which can be used to plan for sustainable use of this finite resource. ANSTO researchers recently partnered with the Government of Western Australia as part of this project.\(^6\)

- Air pollution—ANSTO has been tracking and publishing data on fine particle pollution from key sites around Australia, and internationally, for more than 20 years. This pollution, originating from both man-made (trucks, coal-fired power stations and cars) and naturally-occurring (sea spray and wind-blown soil) sources, can have damaging effects on human health and contribute to climate change. The results from [ANSTO’s] analysis of the samples collected by ANSTO are utilised by local councils, state environmental agencies, industry groups and Australian universities, [to] inform mitigation strategies.\(^7\)

2.6 Positive support for the work carried out at the OPAL reactor came from a range of submitters. The radioactive compounds produced at the reactor play an important role in the production of radiopharmaceuticals and a reliable domestic source of these products in Australia is considered essential.\(^8\) The training and employment opportunities offered by the continuing operation of the reactor are seen as crucial to the ongoing development of Australia’s nuclear industry:

As a result of the wide variety of services and research enabled through the use of the OPAL reactor, it is a critical component in facilitating work for young professionals in diverse careers such as engineering services, mining and mineral processing, research, nuclear medicine and numerous other scientific and enabling services. The ongoing operation of OPAL will ensure that there are continuous opportunities for young professionals seeking careers and professional development in the nuclear industry.\(^9\)

**Nuclear waste holdings**

2.7 In a submission to the Committee, ANSTO identified two levels of waste generated by the OPAL Research Reactor:

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\(^6\) ANSTO, *Submission 7*, p. [2].

\(^7\) ANSTO, *Submission 7*, p. [2].


\(^9\) AusYGN, *submission 4*, p. [1].
Ninety-two per cent of the waste generated by and stored at ANSTO is classified as Low-Level Waste (LLW) and is generally made up of paper, plastic, gloves, clothes and filters which contain small levels of radioactivity. This waste is shredded and compressed into 200 litre drums and radioactivity is monitored using a scanning system.

The remaining eight per cent of waste is classed as Intermediate-Level Waste (ILW) and is generated by ANSTO’s radiopharmaceutical production and reactor operations.\(^\text{10}\)

2.8 This Agreement is dealing with the latter produced from the approximately 30 spent nuclear fuel assemblies created per year by the OPAL reactor. The NIA states that this spent nuclear fuel is managed by initially storing it for a period of some years in the OPAL service pool for cooling before being sent for reprocessing.\(^\text{11}\)

2.9 Reprocessing is the practice by which spent fuel assemblies are dissolved to separate unfissioned uranium and the small amounts of plutonium produced during the operation of the reactor from the fission products. The unfissioned uranium and plutonium are typically reused in new, fresh fuel for power or research reactors, and the fission products are treated as waste.\(^\text{12}\) The vitrified residue will be returned for storage, reducing the volume of waste:

What comes back is a waste form which has got the extracted material that is radioactive that cannot be reused. That is vitrified in a glass, so it is distributed finely in the glass. Those glass packages are within a stainless steel container. The stainless containers are in a bigger cask, and that is returned in a shipment—there will be two in the course of the agreement—to Australia. That reduces the volume of the waste. The spent fuel has a bigger volume than the volume of the waste, so you get about one-quarter of the total volume of waste.\(^\text{13}\)

2.10 Some countries choose to directly dispose of spent nuclear fuel from power reactors in geologic repositories. However the NIA claims that spent nuclear fuel produced from research reactors such as that produced by Australia is not suitable for storage given its chemistry. Therefore the NIA advises that

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\(^{10}\) ANSTO, *Submission 7*, p. [2].

\(^{11}\) NIA, para 7.

\(^{12}\) NIA, para 8.

\(^{13}\) Dr Adrian Paterson, Chief Executive Officer, Australian Nuclear Science and Technology Organisation (ANSTO), *Committee Hansard*, Canberra, 12 February 2018, p. 1.
reprocessing is considered the most efficient, most economic and safest option for this type of spent nuclear fuel. The Nuclear engineering research group from the University of New South Wales, supports this view:

The silicide-based chemistry of the OPAL reactor fuel, which is distinctly different from that of commercial power reactors, makes it less suitable for indefinite storage. Thus, there is no clear alternative to reprocessing the used fuel.\textsuperscript{15}

2.11 ANSTO claims that reprocessing is considered best practice:

Reprocessing is widely acknowledged as international best practice in this regard, as it allows the unspent nuclear material to be reused in new fuel, significantly reduces the volume of resultant radioactive waste and encapsulates the waste in a safe form. Specifically for OPAL we anticipate that reprocessing will result in less than nine cubic metres of intermediate-level waste over the course of its 40-year lifespan.\textsuperscript{16}

2.12 However, the Committee heard that there is debate over the merits of reprocessing versus direct disposal of spent nuclear fuel. The Committee was told that worldwide reprocessing services are in decline and, contrary to ANSTO’s claims, the process is not considered international best practice due to economic, environmental and security concerns. France is currently the only country operating a commercial-scale reprocessing plant. The United Kingdom (UK) which provided reprocessing services for Australia for the waste from High Flux Australian Reactor (HIFAR) is expected to end its reprocessing program by 2020. There is concern that this could present a risk for the Agreement if the political or commercial environment changes in France.\textsuperscript{17}

Reasons to undertake proposed treaty action

2.13 The NIA explains that under French domestic law, an Intergovernmental Agreement is mandatory before any spent nuclear fuel is allowed to enter French territory. French domestic law requires that the agreement state that radioactive waste arising from reprocessing of spent nuclear fuel in France will not be stored in France past an agreed date. The NIA advises that the

\textsuperscript{14} NIA, para 8.
\textsuperscript{15} UNSW Nuclear engineering research group, \textit{Submission 2}, p.1
\textsuperscript{16} Dr Paterson, ANSTO, \textit{Committee Hansard}, Canberra, 12 February 2018, p. 1.
\textsuperscript{17} Mr David Noonan, \textit{Supplementary Submission 5.1}, pp. 1–2.
Agreement would meet these requirements, thus enabling the sending of spent nuclear fuel from OPAL to France and its reprocessing in France.\(^{18}\)

2.14 The reprocessing of the used nuclear fuel from OPAL will guarantee the ongoing operation of the reactor.\(^{19}\) If the fuel is not reprocessed the reactor may be forced to shut down:

If the fuel is not reprocessed, the storage ponds for used fuel may reach their limit and the reactor will be forced to shut down prematurely due to licensing restrictions.\(^{20}\)

2.15 The NIA advises that the Australian Government has chosen the French company Areva NC\(^{21}\) to reprocess the spent nuclear fuel from the OPAL reactor. The Committee questioned whether an Australian company could provide this service and were told that no Australian company has the capacity or access to the necessary technology to reprocess waste nuclear fuel.\(^{22}\)

2.16 Globally, there are only a few companies that provide reprocessing of spent nuclear fuel. The NIA claims that of these companies, Areva NC offers the most reliable, most economic and safest option. Areva NC has a long history of safely reprocessing spent nuclear fuel from both the extensive French nuclear power program as well as that from power plants and research reactors in many other countries. They reprocessed much of the fuel from Australia’s first research reactor, the HIFAR, with the resultant waste safely returned to Australia in 2015. France also manufactures fresh fuel for the OPAL reactor, so they are most familiar with its technical requirements. The French safety regulator has recently approved a reprocessing process for the modern silicide-based fuel that OPAL uses. Australia also has long-standing Nuclear Cooperation Agreements with France and with Euratom to ensure that any nuclear material arising from reprocessing will be used exclusively for peaceful purposes (that is, use in fresh fuel produced by Areva NC). For these reasons, as part of the 2016 budget process, the NIA advises that the Australian Government endorsed ANSTO’s 2016 proposal to enter into a contract with Areva NC for the reprocessing of spent fuel from OPAL. This

\(^{18}\) NIA, para 4.

\(^{19}\) NIA, para 5.


\(^{21}\) ANSTO noted that the company is now called Orano. (Dr Paterson, ANSTO, Committee Hansard, Canberra, 12 February 2018, p. 1.)

\(^{22}\) Dr Paterson, ANSTO, Committee Hansard, Canberra, 12 February 2018, p. 1.
contract is expected to cover reprocessing of spent fuel over the life of OPAL’s operation.\textsuperscript{23}

**Long term storage of intermediate-level waste**

2.17 Concerns were raised regarding the final disposal pathway for ILW.\textsuperscript{24} ANSTO told the Committee that many countries do not have a final disposal pathway:

Many countries don’t [have a final disposal pathway] for intermediate-level waste. It’s expected that technological solutions from underground final storage to directional drilling technologies and other things will be used for intermediate-level waste in the future, but we have taken the approach that the final disposal pathway should be one where we work with other countries as they develop them.\textsuperscript{25}

2.18 Currently, the returned ILW from HIFAR is stored at Lucas Heights in Sydney. However, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), has made it clear that this is an interim measure designed only to accommodate the waste from HIFAR.\textsuperscript{26} Under the existing licence for this storage facility, ANSTO is required to review the safety of the facility every 10 years and to ‘submit a plan, by no later than June 2020, for removal of the waste stored in the facility’.\textsuperscript{27} The existing licence does not cover the returned ILW from the OPAL reactor.\textsuperscript{28}

2.19 According to ARPANSA, the intention is to store the returned waste from OPAL in the proposed National Radioactive Waste Management Facility (NRWMF).\textsuperscript{29} The Department of Industry, Innovation and Science (IIS) is responsible for establishing a final disposal pathway for all of Australia’s ILW under the *National Radioactive Waste Management Act 2012*. Asked about the progress of the establishment of the NRWMF, ANSTO explained that IIS is in the process of identifying suitable sites for the facility:

\textsuperscript{23} NIA, para 9.

\textsuperscript{24} Mr David Noonan, *Submission 5*, p. 5.

\textsuperscript{25} Dr Paterson, ANSTO, *Committee Hansard*, Canberra, 12 February 2018, p. 2.

\textsuperscript{26} Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), *Submission 6*, p. 1.

\textsuperscript{27} ARPANSA, *Submission 6*, p. 1.

\textsuperscript{28} ARPANSA, *Submission 6*, p. 2.

\textsuperscript{29} ARPANSA, *Submission 6*, p. 2.
There are a number of interested parties in South Australia, and they are currently going through a process of evaluation of the sites. There’s also a newer site, which is not yet under evaluation but in the earlier phase of public consultation. Assuming that all of those sites proceed, they will proceed through an evaluation phase. The evaluation phase allows a down selection of the most appropriate site from a geological and other point of view of developing the engineering case.30

2.20 The Committee queried, given previous delays, what options were available if the NRWMF was not operational by the time that the ILW from OPAL is returned to Australia. ANSTO sees no risk to the Agreement. It is satisfied that the interim storage arrangements in place for the ILW from HIFAR would be suitable for the waste from OPAL if necessary:

The important part of the option is that there are defined periods for return in the agreement. If there is no facility it does not affect the ultimate structure of the agreement, so the agreement does not inhibit returning the reprocessed residues back. Should there be no political consensus over the full period out to 2040, interim storage would be the logical thing to continue. However, I’m pretty optimistic that the processes that are in train and the type of approach that’s been taken could yield a committed site. I note also that the sites currently are in South Australia, but there have been other interested parties previously. I think that the structure of the agreements – the approach taken – is very good.31

2.21 It was suggested that the existing interim arrangements could be continued indefinitely for the ILW from both HIFAR and OPAL, without risk.32 However, ANSTO stressed that any decision on interim storage to cover a delay in the establishment of the NRWMF would be in the hands of the regulator, ARPANSA.33 ARPANSA reiterated that the intention for future storage of the reprocessed waste from the OPAL reactor was the proposed NRWMF.34

Obligations

30 Dr Paterson, ANSTO, Committee Hansard, Canberra, 12 February 2018, p. 2.
31 Dr Paterson, ANSTO, Committee Hansard, Canberra, 12 February 2018, p. 3.
32 Mr David Noonan, Submission 5, p. 7; Mr David Noonan, Submission 5.1, p. 4.
33 Dr Paterson, ANSTO, Committee Hansard, Canberra, 12 February 2018, p. 3.
34 ARPANSA, Submission 6, p. 2.
2.22 The NIA states that broadly the obligations under the Agreement are that France agrees to accept spent nuclear fuel from Australia for the purpose of reprocessing between entry into force of the Agreement and 31 December 2030, and Australia agrees to accept the return of radioactive waste arising from that reprocessing.\textsuperscript{35}

2.23 The preamble refers to legal frameworks relevant to the Agreement, including the \textit{French Environment Code} which requires an Intergovernmental Agreement between France and Australia to enter into force before spent nuclear fuel can be shipped to France, the \textit{Nuclear Cooperation Agreement between Australia and France}, the \textit{Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Co-operation in the Peaceful Uses of Nuclear Energy}, and the \textit{Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management}, to which both Australia and France are States Parties.\textsuperscript{36}

2.24 \textbf{Article 1} refers to a number of related documents that are relevant to the Agreement, including:

\begin{itemize}
  \item[a.] a contract agreed between ANSTO and Areva NC concerning the reprocessing of 3.6 tonnes of spent nuclear fuel from the OPAL research reactor (the Contract);
  \item[b.] an agreement between ANSTO and Areva NC regarding transfer of title of uranium and plutonium from any reprocessing conducted by Areva NC; and
  \item[c.] relevant laws enacted by either Australia or France in accordance with its constitutional arrangements.\textsuperscript{37}
\end{itemize}

2.25 \textbf{Articles 2 and 3} state the purpose and scope of the Agreement. Article 3 notes that the Agreement will be carried out in accordance with provisions of the French Environment Code and that spent fuel will enter France only for the purposes of reprocessing and radioactive waste arising from reprocessing of Australian spent nuclear fuel will not be stored in France.\textsuperscript{38}

2.26 \textbf{Articles 4 and 5} of the Agreement prescribe the timing of the shipment of spent nuclear fuel to France and that of the shipment of the waste arising

\textsuperscript{35} NIA, para 10.
\textsuperscript{36} NIA, para 11.
\textsuperscript{37} NIA, para 12.
\textsuperscript{38} NIA, para 13.
from the reprocessing operation. The former is to occur between the date of entry into force of the Agreement and 31 December 2030. The latter is to occur between 1 January 2019 and 31 December 2034.  

2.27 Pursuant to Article 6, Australia agrees to accept the return of radioactive waste resulting from the reprocessing of Australian spent nuclear fuel. Both Parties are obliged to use their best efforts to minimise the number of shipping operations required for the return of radioactive waste under the Agreement. Pursuant to Article 6(3), the final date for Australia to accept return of the resultant radioactive waste will be 31 December 2035 unless an extension to the Contract is signed by 31 December 2028 (in which case return of radioactive waste to Australia must occur by 31 December 2040).  

2.28 Article 7 obliges both Parties to adopt such measures as may be reasonably necessary and within their competence to enable the provisions of the Agreement to be implemented. Article 7(3) provides that Australia shall ensure compliance with time limits in relation to the authorisation procedures, permits and licences required for the shipment of radioactive waste to a storage or warehousing facility in Australia. Pursuant to Article 7(4), Australia will be responsible for safe storage of radioactive waste arising from the reprocessing.  

2.29 Article 8 requires both Parties to carry out the transport of the radioactive waste in accordance with applicable laws and regulations.  

2.30 Article 9 pertains to the management of transferred spent fuel and the uranium and plutonium that is extracted from the spent nuclear fuel during reprocessing. This material will be governed by the Contract and the agreement between ANSTO and Areva NC. In addition, this material shall be treated in accordance with the relevant laws and regulations and with Nuclear Cooperation Agreements between both Australia and France, and Australia and Euratom.  

2.31 Article 10 sets out the procedure for the resolution of disputes arising under the Agreement. Should a dispute arise the Parties shall consult one another.

39 NIA, para 14.  
40 NIA, para 15.  
41 NIA, para 16.  
42 NIA, para 17.  
43 NIA, para 18.
with a view to settling the dispute speedily through negotiation, mediation, conciliation or any other peaceful means.\textsuperscript{44}

**Implementation**

2.32 According to the NIA, no new legislation or regulation is required to implement the Agreement. The relevant existing legislation includes the *Australian Radiation Protection and Nuclear Safety Act 1998*, the *Environmental Protection and Biodiversity Conservation Act 1999*, the *National Radioactive Waste Management Act 2012*, and the *Nuclear Non-Proliferation (Safeguards) Act 1987*.\textsuperscript{45}

**Costs**

2.33 The NIA claims that the Agreement will not place additional financial costs on Australia.\textsuperscript{46} It states further that costs associated with shipment of spent nuclear fuel to France and its return to Australia are a normal operating cost for operating a research reactor and would be required with or without the Agreement.\textsuperscript{47}

2.34 However, submissions to the inquiry claim that an option to dispose of the waste from OPAL in the United States of America (USA) could have provided a cheaper alternative for ANSTO:

> These wastes were [to] be retained in the US without any associated return of equivalent wastes to Australia and the financial cost involved was only for the one-way shipment to the US—significantly less than the now additional cost in reprocessing and in required in-perpetuity management and final disposal of this first decade of OPAL reactor produced nuclear fuel wastes in Australia.\textsuperscript{48}

2.35 It was also suggested that ANSTO had not given due attention to contingencies that may arise if this Agreement is jeopardised and alternative arrangements for the storage and/or disposal of the waste from the OPAL

\textsuperscript{44} NIA, para 19.  
\textsuperscript{45} NIA, para 20.  
\textsuperscript{46} NIA, para 22.  
\textsuperscript{47} NIA, para 23.  
\textsuperscript{48} Mr David Noonan, Submission 5, p. 4.
reactor need to be considered. These alternative arrangements could entail considerable extra costs.\(^{49}\)

2.36 The NIA expects no additional costs from storage of radioactive waste returned from France, as it is anticipated that the material would be stored at the facility to be established under the *National Radioactive Waste Management Act 2012*.\(^{50}\)

2.37 Concerns were raised that this expectation may be over-optimistic considering the difficulties already faced in establishing the NRWMF.\(^{51}\)

**Conclusion**

2.38 The Committee acknowledges the important work being undertaken at the OPAL research reactor and its contribution to a range of diverse fields, including its critical role in nuclear medicine. It appears essential to guarantee the ongoing operation of the reactor and avoid any threat of it being shut down prematurely.

2.39 The Committee accepts that reprocessing the spent fuel from the OPAL reactor is the best option currently available to ANSTO and that the arrangement with France will provide certainty in the foreseeable future.

2.40 While the Committee is satisfied with the safety of the current arrangements for the interim storage of the returned reprocessed ILW from HIFAR at Lucas Heights, it urges the Government to expedite the establishment of the NRWMF to alleviate the uncertainty over a final pathway for disposal of the nuclear waste. The Committee is aware of the growing stockpile of radioactive waste across Australia, not only from the ANSTO facility but from other government agencies, such as CSIRO, and other commercial facilities. Although the need for the NRWMF may not appear pressing at the moment, there is some urgency considering the past difficulties this project has encountered and possible future delays.

2.41 The Committee supports the Agreement and recommends that binding treaty action be taken.

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\(^{49}\) Mr David Noonan, *Submission 5*, p. 6.

\(^{50}\) NIA, para 24.

\(^{51}\) Mr David Noonan, *Submission 5*, p. 2.
Recommendation 1

2.42 The Committee supports the Agreement between the Government of Australia and the Government of the French Republic Concerning the Reprocessing in France of Australian Irradiated Nuclear Fuel Elements, and recommends that binding treaty action be taken.
3. PACER Plus Agreement

Background

3.1 The Pacific Agreement on Closer Economic Relations Plus (PACER Plus) is described in the National Interest Analysis (NIA) as:

... a comprehensive, [World Trade Organisation (WTO)]-consistent regional economic integration agreement, which covers goods, services and investment and establishes rules and commitments.1

3.2 The purpose of PACER Plus is to promote:

... economic growth and development in [Pacific Island countries] through strengthening their capacity to trade, to benefit from trade, to facilitate trade and to attract and retain investment.2

3.3 PACER Plus principally concerns free trade between Australia and New Zealand and Pacific Island countries. Trade between Pacific Island countries is already tariff free under a separate free trade agreement, called the Pacific Islands Countries Trade Agreement.3

Overview of the Agreement

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2 NIA, para 8.
3.4 The bulk of Pacific Island countries face particular economic barriers related to population size and isolation. Consequently, while PACER Plus is a WTO consistent Agreement, a number of PACER Plus’ provisions are different to those normally encountered in a trade agreement. These are discussed briefly below.

**Related Agreements**

3.5 In addition to PACER Plus, two less than treaty status agreements were negotiated between the Parties:

- the Implementing Arrangement for Development and Economic Cooperation; and
- a Labour Mobility Arrangement.4

3.6 The Implementation Arrangement for Development and Economic Cooperation contains the provisions for the dispersement of the funds committed by Australia and New Zealand discussed at paragraph 3.46.5

3.7 Australia, the Cook Islands, Kiribati, Nauru, New Zealand, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu have also signed a Labour Mobility Arrangement.6

3.8 The arrangement in the Labour Mobility Arrangement are in addition to the Movement of Natural Persons provisions in PACER Plus and is discussed in greater detail later in this Chapter.7

**Tariffs**

3.9 If PACER Plus is fully implemented it will eliminate Pacific Island countries’ tariffs on 91.5 per cent of tariff lines on imports from Australia and New Zealand.8 Eighty-eight point five per cent of Australia’s exports to the region will be tariff free.9

3.10 Tariff reductions are scheduled to take place over a longer time frame than would usually be the case in trade agreements. With the exception of the Cook Islands, Kiribati, Niue, Samoa, and Tonga, none of the tariff reductions

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4 NIA, para 7.
5 NIA, para 33.
6 NIA, para 31.
7 NIA, para 32.
8 NIA, para 10.
9 NIA, para 10.
will commence until 2029, and the expected date for the final removal of tariffs is later than 2053.\footnote{NIA, Table 1.}

3.11 PACER Plus contains exemptions to the tariff schedule for Pacific Island countries, including:

- if a country is considered to be one of the least developed countries by the WTO, it is allowed to apply relevant preferences in relation to WTO decisions on duty free and quota free treatment of goods;
- allowing countries to apply preferences available in regional trade agreements exclusively applying to Pacific Island countries, such as the Pacific Islands Countries Trade Agreement; and
- allowing Parties to apply preferences available in trade agreements exclusively applying to developing countries.\footnote{NIA, Attachment II: summary of Key Obligations, p. 18.}

3.12 Pacific Island countries can also deviate from the tariff reductions in the PACER Plus in the following circumstances:

- if the reduction in tariffs causes such an influx of a particular good that it threatens serious injury to a domestic industry; and
- if development measures are required for specific industries.\footnote{NIA, Attachment II: summary of Key Obligations, p. 19.}

**Provisions**

3.13 Very briefly, the provisions of PACER Plus are as follows:

- the rules of origin under PACER Plus permit Parties to access preferential treatment provisions on goods that are obtained or produced in one or more of the Parties. In other words, goods that have value added across Parties to the Agreement still attract preferential treatment;
- Parties are encouraged to assist one another in implementing transparent, consistent and timely customs procedures and practice;
- the Agreement applies the WTO standard for sanitary and phytosanitary matters;
- the Agreement requires that technical standards, regulations and conformity procedures should not be a barrier to trade while protecting the rights of Parties to implement technical regulations necessary to
achieve legitimate regulatory objectives and standards and related conformity assessment procedures;

- Parties are obliged to treat foreign and local service supplies equally in an agreed set of service sectors;
- the Agreement ‘facilitates cross-border movement of skilled workers’;
- the Agreement obliges Parties to treat foreign investors from other Parties in a way consistent with the treatment of local investors; and
- Parties may make exceptions to the application of PACER Plus in the following circumstances: to protect public morals; to protect human, animal and plant life; to conserve exhaustible natural resources; and to allow a Party to meet its obligations in relation to maintain or restore national or international peace and security.\(^\text{13}\)

**Signatories**

3.14 According to the NIA, the following countries have signed PACER Plus:

- Australia;
- Cook Islands;
- Kiribati;
- Nauru;
- New Zealand;
- Niue;
- Samoa;
- Solomon Islands;
- Tonga;
- Tuvalu; and
- Vanuatu.\(^\text{14}\)

3.15 The Australian Government expects the following countries to also sign PACER Plus in the near future:

- Federated States of Micronesia;
- Palau; and
- Republic of the Marshall Islands.\(^\text{15}\)

**Issues**

\(^{13}\) NIA, *Attachment II: summary of Key Obligations*, pp. 20–31.

\(^{14}\) NIA, para 2.

\(^{15}\) NIA, para 2.
3.16 Evidence provided to the Committee revealed a number of issues related to PACER Plus, including PACER Plus’ impact on: Pacific Island economies; health; women; business capacity; aid; and labour mobility.

3.17 The most significant immediate issue with PACER Plus is the absence of Fiji and Papua New Guinea from the Agreement.\(^\text{16}\)

**Papua New Guinea and Fiji**

3.18 The submission from the Australian Fair Trade and Investment Network (AFTINET), amongst others, points out that, combined, Fiji and Papua New Guinea make up more than 80 per cent of the Gross Domestic Product (GDP) of Pacific Island nations.\(^\text{17}\)

3.19 Australia’s exports to Fiji in 2015 were worth approximately A$500m,\(^\text{18}\) and to Papua New Guinea approximately A$2.3b in the same year.

3.20 In contrast, the Department of Foreign Affairs and Trade (DFAT) submission indicates that, in 2016, Australia’s exports to the Cook Islands, Kiribati, Niue, Samoa and Tonga combined was valued at A$84m.\(^\text{19}\)

3.21 The absence of Fiji and Papua New Guinea therefore significantly impacts the scope of PACER Plus.

3.22 In evidence, Ms Alice Cawte, Assistant Secretary, Melanesia Branch, Pacific Division, DFAT, advised the Committee that:

> We negotiated from the start with Papua New Guinea and Fiji, and both are significant economies in the Pacific. Neither completed market access schedules, so we were not in a position to sign at the end. We continue our discussions with both Papua New Guinea and Fiji, both at officials and


\(^{17}\) AFTINET, *Submission 6*, p. 7.


ministerial level. We are hopeful that, in time, they will come to the agreement.\textsuperscript{21}

3.23 According to AFTINET, both Papua New Guinea and Fiji did not participate in PACER Plus because the benefits of the Agreement were heavily skewed towards Australian and New Zealand interests.\textsuperscript{22}

3.24 Other sources indicate that Papua New Guinea will not sign PACER Plus because it wishes to pursue bilateral free trade agreements with Australia and New Zealand, and that Fiji has not ruled out signing the Agreement, but is unhappy with provisions relating to the protection of infant industries and Most Favoured Nation status.\textsuperscript{23}

3.25 PACER Plus permits expedited access to the Agreement for Pacific Island Forum nations in future, which includes Papua New Guinea and Fiji. The NIA indicated the Australian Government continues to engage with these countries in an effort to encourage their participation.\textsuperscript{24}

\textbf{Impact on Pacific Island economies}

3.26 Pacific Island nations already have tariff free access to Australia and New Zealand for their exports, so all tariff reductions and consequent market access benefits will flow to Australia and New Zealand.\textsuperscript{25}

3.27 According to AFTINET, Pacific Island countries are particularly dependent on tariffs for Government revenue because low levels of income and consumption mean other sources of revenue are limited.\textsuperscript{26}

3.28 A 2007 estimate indicated that Fiji, Papua New Guinea, Samoa and Vanuatu would lose more than A$10m annually if tariffs were removed, and the Government revenue for the Cook Islands, Kiribati, Samoa, Tonga and Vanuatu would be reduced by more than 10 per cent.\textsuperscript{27}

\textsuperscript{21} Committee Hansard, Canberra, 12 February 2018, p. 6.
\textsuperscript{22} AFTINET, Submission 6, p. 7.
\textsuperscript{24} NIA, para 6.
\textsuperscript{25} AFTINET, Submission 6, p. 7.
\textsuperscript{26} AFTINET, Submission 6, p. 8.
\textsuperscript{27} AFTINET, Submission 6, p. 8.
3.29 AFTINET states that Australia and New Zealand have recommended an increase in consumption tax to make up for revenue losses from tariffs, but when a similar proposal was analysed by the International Monetary Fund (IMF) in 2005, it was determined that consumption tax could only replace 30 per cent of lost tariff revenues.\(^{28}\)

3.30 DFAT responded that tariffs are a declining source of income for Pacific Island countries.\(^{29}\) Ms Cawte pointed out that:

The chief trade adviser to the Pacific island countries estimated that the decline in tariff revenue as a result of PACER Plus over the period of implementation—that's up to 35 years—will be between one per cent and four per cent.\(^{30}\)

3.31 DFAT further advised that it would monitor the impact of tariff reduction on Pacific Island country revenues, and that the Australian Government supports the Pacific Financial Technical Assistance Centre, an IMF body that assists Pacific Island countries put in place new mechanisms for generating revenue.\(^{31}\)

3.32 The issue of the impact of PACER Plus on Pacific Islands’ Government revenue is relevant to a number of other issues raised during the inquiry, in particular, public health and the impact on women.

**Health Impacts**

3.33 The Public Health Association of Australia (PHAA) is concerned about the potential impact on public health in Pacific Island nations as a result of PACER Plus.

3.34 Dr Belinda Townsend, Research Fellow, NHMRC Centre for Research Excellence in the Social Determinants of Health, ANU College of Asia and the Pacific, advised the Committee that:

Our policy on trade agreements and health states that trade agreements should not limit or override a nation’s ability to foster and maintain systems and infrastructure that contribute to health and wellbeing; that policy space needs to be preserved in trade agreements for regulation to protect public health.

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\(^{28}\) AFTINET, *Submission 6*, p. 9.

\(^{29}\) Ms Cawte, DFAT, *Committee Hansard*, Canberra, 26 March 2018, p. 11.

\(^{30}\) Ms Cawte, DFAT, *Committee Hansard*, Canberra, 26 March 2018, p. 11.

\(^{31}\) Ms Cawte, DFAT, *Committee Hansard*, Canberra, 26 March 2018, p. 11.
health; and that trade agreements must address environmental sustainability and equity within and between countries.\textsuperscript{32}

3.35 The PHAA is concerned with the following specific implications of the PACER Plus agreement on health outcomes:

- increased exposure to health damaging products: PHAA suggests that reduction of tariffs and other trade barriers can lead to increased availability and lower prices for unhealthy products such as ultra-processed food, alcohol and tobacco. The PHAA is particularly concerned over the health risks of increased tobacco use.\textsuperscript{33}

- risks associated with liberalisation of health services: PHAA is concerned that the liberalisation of health services will lead to the proliferation of higher costs, private services which can only be accessed by wealthier sections of the population. The PHAA submission warns that this can lead to a two-tier health system and erode access and equity.\textsuperscript{34}

- government capacity to raise revenue and provide health services: PHAA is concerned about the potential impacts on the revenue base of the Pacific island countries, damage which may constrain the capability of these nations to provide health services to their people. The PHAA notes that some Pacific Island countries are highly dependent on tariffs as a source of revenue. The submission argues that attempting to replace revenue through excise or value added taxes is unlikely to compensate for the loss from tariff based revenue.\textsuperscript{35}

- burdensome requirements to justify health measures: PHAA is concerned that the obligations regarding technical regulations and standards will place a large burden on small island states with few resources to commit to developing a strong evidence base for public health policy interventions. PHAA claims that health-related measures may be perceived as technical barriers to trade under the PACER Plus agreement.\textsuperscript{36}

\textsuperscript{32} Dr Belinda Townsend, Research Fellow, NHMRC Centre for Research Excellence in the Social Determinants of Health, ANU College of Asia and the Pacific, \textit{Committee Hansard}, Canberra, 26 March 2018, p. 1.

\textsuperscript{33} Public Health Association of Australia (PHAA), \textit{Submission 7}, pp. 5–6.

\textsuperscript{34} PHAA, \textit{Submission 7}, p. 6.

\textsuperscript{35} PHAA, \textit{Submission 7}, pp. 6–7.

\textsuperscript{36} PHAA, \textit{Submission 7}, p. 7.
3.36 In response, DFAT advised the Committee that:

... there is nothing in PACER Plus that inhibits policy space for public health issues in the countries that are members. That’s made explicit both in the preamble to the agreement and in the operative chapters ...\(^{37}\)

3.37 In relation to concerns about the impact of tariff reductions on the increased availability and lower prices for unhealthy products such as ultra-processed food, alcohol and tobacco as a result of tariff reductions, the Australian Government argued that Pacific Island countries could apply other pricing mechanisms to limit consumption of these products, such as excises.\(^{38}\)

**Impact on women**

3.38 A number of submissions have identified that the combination of potential impacts of PACER Plus on Pacific Island nations is likely to fall disproportionately on women.

3.39 In particular, in Pacific Island communities, women are generally engaged in caring and unpaid household and community work.\(^{39}\)

3.40 ActionAid Australia is concerned that the reduction in Pacific Island Government revenues resulting from tariff reductions will disproportionately affect women as the Government services that support their roles, such as health care and transport, may have funding reduced.\(^{40}\)

3.41 ActionAid points out that Pacific Island women who do paid work are concentrated in industries that are likely to be impacted by PACER Plus, such as agricultural production, clothing manufacturing, and retail.\(^{41}\)

**Business capacity**

3.42 The Australia Pacific Islands Business Council’s submission argues that PACER Plus represents the best possible opportunity for Pacific Island nations to become economically self-sustaining without external development assistance.\(^{42}\)


\(^{38}\) Ms Cawte, DFAT, *Committee Hansard*, Canberra, 26 March 2018, p. 11.


\(^{40}\) ActionAid Australia, *Submission 10*, p. 2.

\(^{41}\) ActionAid Australia, *Submission 10*, p. 3.

\(^{42}\) Australia Pacific Island Business Council, *Submission 11*, p. 1
3.43 The Business Council believes this will be ‘played out over multiple generations.’

3.44 Building the capacity of Pacific Island nations to meet quarantine standards in Australia and New Zealand in order to facilitate greater agricultural exports opportunities is a high priority for the Business Council.

3.45 In addition, the Business Council would like to see capacity building in Pacific Island chambers of commerce to enable better access for Pacific Island exporters to international markets.

Aid

3.46 The NIA states that an important aim in negotiating PACER Plus is to ‘promote growth and development and enhance stability and security.’

3.47 According to the NIA, in addition to the economic benefits that would normally be expected from an economic agreement, Australia and New Zealand have allocated funds to assist Pacific Island countries to prepare for the implementation of PACER Plus.

3.48 Under PACER Plus, Australia and New Zealand have committed A$4m each to a readiness package, and A$19m and A$7m respectively to a development and economic cooperation work program.

3.49 The AFTINET submission points out that this is not actually additional funds, but rather funds that will be diverted from existing development assistance.

3.50 The NIA makes it clear that:

The Department of Foreign Affairs and Trade’s Official Development Assistance budget will absorb funding for implementation assistance to the Pacific Island Countries.

\[\text{References}\]

43 Australia Pacific Island Business Council, Submission 11, p. 1.
44 Australia Pacific Island Business Council, Submission 11, p. 2.
45 Australia Pacific Island Business Council, Submission 11, p. 2.
46 NIA, para 21.
47 NIA, para 29.
48 NIA, para 29.
49 AFTINET, Submission 6, p. 12.
50 NIA, para 60.
3.51 In other words:

The funding attached to PACER Plus would come out of the part of the [aid] allocation that’s not programmed in the future years, so it’s not coming explicitly out of a program.\(^{51}\)

**Labour issues**

3.52 As noted in paragraph 3.8, in addition to PACER Plus, a less than treaty status agreement was negotiated between the Parties relating to labour mobility.

3.53 This less than treaty status agreement aims:

... to enhance cooperation between participants on regional labour mobility, including in respect of mobility for unskilled and semi-skilled labour. The Arrangement establishes a Pacific Labour Mobility Annual Meeting to address key issues in cooperation, including enhancing existing labour mobility schemes (such as Australia’s Seasonal Worker Programme) and facilitating other forms of temporary labour mobility, as well as exploring the recognition of qualifications and the registration of occupations.\(^{52}\)

3.54 Remittances from Pacific Islanders working in Australia and New Zealand are a significant part of Pacific Island economies. Access to labour markets in Australia and New Zealand is consequently an important issue for Pacific Island countries.\(^{53}\)

3.55 According to Matthew Dornan, Deputy Director of the Development Policy Centre at the Australian National University, the Pacific Island countries are generally unhappy with the outcome in PACER Plus in relation labour mobility because the Agreement does not include a binding commitment to provide labour mobility opportunities to Pacific Islanders.\(^{54}\)

3.56 Another concern for some inquiry participants is the treatment of Pacific Island workers who are able to access employment in Australia.

3.57 The Australian Council of Trade Unions (ACTU), amongst others, raises concerns about the treatment of Pacific Island workers employed under the

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\(^{52}\) NIA, para 32.


Seasonal Worker Programme. In particular, the ACTU is concerned that expanding the use of temporary migrant workers to Australia should not occur in an environment where these workers are subject to exploitation and work in unsafe conditions.\textsuperscript{55}

Conclusion

3.58 The Committee considers that the absence of Papua New Guinea and Fiji from PACER Plus significantly diminishes the utility of the Agreement for Australian business.

3.59 However, because of the long time frame over which the PACER Plus will be implemented, the Committee is of the view that there is still sufficient opportunity for both nations to join the Agreement if satisfactory conditions can be negotiated.

3.60 While the Australian Government’s advice on PACER Plus has highlighted the development assistance aspects of the Agreement, the Committee notes that the development assistance identified in PACER Plus is coming from the existing aid budget, and so would likely have been expended as aid to Pacific Island countries anyway. It is not clear how tying this expenditure to PACER Plus implementation is likely to provide a greater benefit to Pacific Island countries that it otherwise would.

3.61 The Committee is concerned PACER Plus may impact on Pacific Island Government revenues, which are not significant in any case and have to stretch a long way in remote, isolated, low income communities. The impact on the public health capacity as a result of reduced government revenues and access to tariff free products that cause harm has been a significant issue in the inquiry.

Recommendation 2

3.62 The Committee recommends that part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the Agreement, and where necessary, provide funds to Pacific Island countries to assist relevant development outcomes.

\textsuperscript{55} Australian Council of Trade Unions (ACTU), Submission 3, p. 2.
Recommendation 3

3.63 As previously recommended in Reports 165 and 172, the Committee again recommends that the Government commission independent economic analysis of all trade agreements to improve the transparency and quality of their assessment.

3.64 These issues aside, the Committee considers PACER Plus should be ratified.

Recommendation 4

3.65 The Committee supports the *Pacific Agreement on Closer Economic Relations Plus*, and recommends that binding treaty action be taken.
4. Minor Treaty Actions

Minor treaty actions

4.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.

4.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee’s website. The Committee can choose to formally inquire into these treaty actions, or accept them without a formal inquiry and report.

4.3 The Committee has been asked to consider the following four minor treaty actions.


4.4 The *Code of the Maritime Labour Convention 2006* (MLC) sets minimum working conditions for seafarers to work on ships. The Amendments are to Regulations 4.3 and 5.1 of the MLC. The Amendments relate to the inspection and certification of ships to ensure continued compliance with national laws and the protection of seafarers from harassment and bullying in their employment. The Amendments clarify that the effects of harassment and bullying should be taken into account by a ships’ Administration when setting standards for the protection of seafarer welfare. For Australia flagged ships these protections are provided for under existing Australian workplace legislation. The Amendments also allow for the extension of
maritime labour certificates issued to ships where a new certificate cannot be issued immediately.¹

4.5 The proposed treaty action is the deemed acceptance by Australia of the Amendments.² There is provision for Members to formally object to the Amendments however Australia does not propose to object.³

**Amendment to Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade**

4.6 The following chemicals have been added to Annex III of the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (the Convention):

- cabofuran (an insecticide) has been added to the pesticides category;
- trichlorfon (an insecticide) has been added to the pesticides category;
- short-chain chlorinated paraffins (used in extreme pressure lubricants in the metal processing industry) have been added to the industrial chemicals category; and
- all tributyltin compounds (an additive in paints and stains) have been added to the industrial chemicals category.

4.7 According to the Explanatory Statement, the treaty action means that the importation of these chemicals will become subject to the Convention’s Prior Informed Consent (PIC) Procedure. The PIC Procedure is a mechanism for formally distributing the decisions of importing Parties (known as Import Responses) as to whether they wish to receive future shipments of chemicals listed in Annex III and for ensuring compliance with these decisions by exporting Parties.⁴

4.8 The Explanatory Statement states that the additional administration for any company wishing to import or export these chemicals in the future is expected to be minimal, principally requiring submission of a permit

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² Explanatory Statement 1 of 2018, para 1.

³ Explanatory Statement 1 of 2018, para 3.

application to the Department of Agriculture and Water Resources (for pesticides) or the Department of Health (for industrial chemicals). The Department of Health also requires submission of shipping documentation for verification purposes (only for industrial chemicals).\textsuperscript{5} Permit applications are usually processed within 10 business days.\textsuperscript{6} The Explanatory Statement notes that for pesticides, import and export permits do not attract fees. However, for industrial chemicals, permit fees are:

- $900 for an annual export authorisation permit;
- $1,950 for an export authorisation permit; and
- $1,950 for an annual import authorisation permit.\textsuperscript{7}

4.9 A number of minor legislative amendments to Australian domestic law will be required.\textsuperscript{8}

4.10 The Amendments entered into force on 15 September 2017. Australia has nine months to advise the Secretariat of an Import Response concerning the future import of the chemicals listed ie by 15 June 2018. It is proposed that Australia consents to the import of these chemicals subject to specified conditions as applied under Australian regulations.\textsuperscript{9}

**Conclusion**

4.11 The Committee determined not to hold a formal inquiry into any of the minor treaty actions, and agreed that binding treaty action may be taken in each case.

Hon. Stuart Robert MP

Chair

2 May 2018

\textsuperscript{5} Explanatory Statement 2, para 8.
\textsuperscript{6} Explanatory Statement 2, paragraphs 9 and 10.
\textsuperscript{7} Explanatory Statement 2, para 10.
\textsuperscript{8} Explanatory Statement 2, paragraphs 11 and 13.
\textsuperscript{9} Explanatory Statement 2, paragraphs 3 and 4.
A. List of Submitters

Reprocessing Nuclear Fuel-France
1 Australian & New Zealand Society of Nuclear Medicine
2 UNSW Nuclear Engineering Group
3 Australian Nuclear Association
4 Australian Young Generation in Nuclear (AusYGN)
5 Mr David Noonan
   ▪ 5.1 Supplementary to submission 5
6 Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)
7 Australian Nuclear Science and Technology Organisation

PACER Plus Agreement
1 Ms Saide Gray
2 Mr Adrian Cooke
3 Australian Council of Trade Unions
4 Community and Public Sector Union
5 Australian Red Meat & Livestock Industry
6 Australian Fair Trade and Investment Network
7 Public Health Association of Australia (PHAA)
8 Public Services International
9 Minerals Council of Australia
10 ActionAid Australia
11 Australia Pacific Islands Business Council
12 Department of Foreign Affairs and Trade
   • 12.1 Supplementary to submission 12
13 Department of Jobs and Small Business
B. List of Exhibits

Reprocessing Nuclear Fuel-France

1 Mr David Noonan, (Submission 5)

PACER Plus

1 Research Study on the Benefits, Challenges and Ways Forward for PACER Plus: Final Report, Institute for International Trade, (Submission 12)

2 Sustainable Impact Assessment of the PACER Plus Agreement on Forum Island Countries, Office of the Chief Trade Adviser, (Submission 12)

3 The Pacific Agreement on closer Economic Relations (PACER) Plus: Benefits and Myths, Office of the Chief Trade Adviser, (Submission 12)

4 Pacific Island Countries: Review of Tax Reforms and Lessons for Future Revenue Mobilization, Pacific Financial Technical Assistance Centre, (Submission 12.1)
C. List of Witnesses

Monday, 12 February 2018

Reprocessing Nuclear Fuel-France
Canberra
Australian Nuclear Science and Technology Organisation
   Dr Adrian Paterson, Chief Executive Officer
   Mr Steven McIntosh, Senior Manager, Government and International Affairs

Monday, 12 February 2018

PACER Plus Agreement
Canberra
Department of Foreign Affairs and Trade
   Ms Alice Cawte, Assistant Secretary, Melanesia Branch
   Ms Patricia Holmes, Assistant Secretary, Trade and Investment Law Branch, Office of Trade Negotiations

Department of Home Affairs
   Mr David Coyles, Acting Assistant Secretary, Trade and Customs Branch

Department of Jobs and Small Business
   Mr David Denney, Branch Manager

Department of Agriculture and Water Resources
Mr Ian Mortimer, Acting Assistant Secretary

Monday, 26 March 2018
Canberra

Public Health Association of Australia

Professor Michael Moore, Chief Executive Officer
Mr Malcolm Baalman, Senior Policy Officer
Dr Belinda Townsend, Research Fellow, NHMRC Centre for Research Excellence in the Social Determinants of Health, ANU College of Asia and the Pacific

Australian Fair Trade and Investment Network

Dr Patricia Ranald, Convener

Department of Foreign Affairs and Trade

Ms Alice Cawte, Assistant Secretary, Melanesia Branch
Ms Patricia Holmes, Assistant Secretary, Trade and Investment Law Branch, Office of Trade Negotiations
Mr Matthew Harding, Director, Regional Economic Growth Section, Pacific Regional Economic Branch

Department of Home Affairs

Mr Michael Willard, Assistant Secretary

Department of Jobs and Small Business

Ms Helen McCormack, Branch Manager, Seasonal Worker Programme
Ms Debbie Mitchell, Group Manager, Workplace Relations Programmes Group
Additional Comments

Michael Danby MP, Deputy Chair; Senator Jenny McAllister; Josh Wilson MP; Susan Templeman MP; Senator the Hon Kristina Keneally

PACER Plus Agreement

1.1 Labor supports fair and free trade through agreements, preferably multilateral, that are openly negotiated and made subject to independent economic analysis and proper process, including informed consideration by the Joint Standing Committee on Treaties (the “Committee”). Trade is best pursued through appropriately structured and regulated multilateral arrangements that allow countries to pursue their own economic development, while ensuring that development occurs regionally and globally on a sustainable and inclusive basis, with proper protections for human rights and for the environment we all share.

1.2 Plurilateral and regional agreements like PACER Plus can help achieve an open, balanced, and harmonised approach to trade between nations. In the case of Pacific Island nations, Labor is conscious that particular circumstances and considerations apply, both to the economic and development challenges that face our regional neighbours, individually, and to the relationship between Australia and those nations. Put simply, there is a vast capacity and economic imbalance between Australia (and New Zealand) and the smaller Pacific Island nations, and we should only put in place trade arrangements that are supportive of the broad development
interests of those countries. Labor is generally wary and appropriately critical of ‘aid-for-trade’ as a development tool, and believes this approach should be regarded with measured scepticism in relation to our Pacific Island neighbours.

1.3 It is essential to recognise that the PACER agreement only removes tariffs that affect Australian exports, and while there is a slow phase-in of the tariff reductions, they are dramatic in terms of their scale and coverage. This agreement delivers no tariff benefits to Pacific Island nations vis-à-vis Australia. When considering the non-exporting nature of many Pacific economies, it is hard not to view this agreement as being skewed to the Australian self-interest end of the spectrum. It is also vital that Australia carefully consider and monitor the impact on Pacific Island industries that underpin the wellbeing of local communities in the Pacific Islands, and are especially important with regard to the participation of women.

1.4 It is salient to repeat the Report’s observations about the absence from this Agreement of Papua New Guinea and Fiji, which together represent more than 80% of GDP of Pacific Island nations. The submission from AFTINET points to the fact that PNG and Fiji withdrew from the Agreement on the basis that it was not to their benefit, which begs the question of its value to smaller, less developed nations in our region.

1.5 The concerns that Labor members of the Committee have in relation to the PACER agreement include:

- The absence of independent economic analysis of the impact of the Agreement, on Australia and on participating Pacific Island nations;
- The apparent allocation of Official Development Assistance funding from within the existing ODA allocation to support the adoption and implementation of PACER by our neighbours, considering that all the tariff benefits accrue to Australia;
- The likelihood that this agreement will significantly reduce the capacity of Pacific Island nations to fund key social services as a result of the loss of tariff revenue, which in some cases has been estimated to effect a 10% decrease in government revenue; and
- The fact that the labour mobility agreement associated with PACER doesn’t provide the rigour, clarity, and certainty that could deliver meaningfully improved social and economic benefits to Pacific Island nations in the form of employment opportunities and consequent remittances.
1.6  In light of these concerns, Labor members of the Committee moved the following recommendation, and were grateful to the Committee for including them within the Inquiry report.

1.7  **Recommendation 2**

1.8  The Committee recommends that part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the Agreement, and where necessary, provide funds to Pacific Island countries to assist relevant development outcomes.

1.9  **Recommendation 3**

1.10  As previously recommended in Reports 165 and 172, the Committee again recommends that the Government commission independent economic analysis of all trade agreements to improve the transparency and quality of their assessment.

**Reprocessing Nuclear Fuel-France**

1.11  While Labor members of the Committee understand the need to have in place arrangements with regard to Intermediate Level Waste from the Open Pool Australian Lightwater (OPAL) reactor, it is disappointing that this agreement has been presented for consideration without the full context in which such arrangements should be considered, including in relation to previous agreements.

1.12  For example, legitimate questions have been raised but not satisfactorily answered in relation to:

- The expiry or abandonment of a previous arrangement with the United States of America which would have resulted in no return of processed waste to Australia, at less cost;
- The lack of detail on the costs involved in the proposed arrangement under the Agreement (specifically compared with previous arrangements and other options), and also the lack of detail about the contracts with Areva, and other contingencies;
- The apparent absence of contingency planning around the possibility that reprocessing in France could cease to be available without much notice, as previously occurred with the UK; and
- The paucity of detail around progress towards the creation of the National Radioactive Waste Management Facility.
Michael Danby MP

Josh Wilson MP

Senator Jenny McAllister

Susan Templeman MP

Senator the Hon Kristina Keneally