

20 April 2023

To: [Reforming Defence Legislation](#) Review,

Public input by Mr David J Noonan to the "[Public Consultation Paper](#)" (March 2023)

c/o Submission form at: www.defence.gov.au/about/reviews-inquiries

RE: Defence legislation and policy should come to accord with Australia's commitment to Sign the UN "Treaty on the Prohibition of Nuclear Weapons" and respect Article 6 'positive obligations' over nuclear test sites. Defence must become transparent over proposed Navy High Level nuclear waste disposal, policy, siting – to impose on unwilling community, Indigenous rights and legal issues.

Please accept this public submission and give consideration and response to the public interest matters raised and to the Recommendations made (see p.3).

This public submission raised a range of contemporary and arising public interest issues that pertain to the effectiveness of existing Defence laws and to proposed reform policy options and calls for accountability and transparency on these matters within the scope of this Review.

On 9 March 2023, the Assistant Minister for Defence, the Hon Matt Thistlethwaite MP, announced a call for public submissions in relation to reforming Defence legislation, with 'feedback and comments on the proposed reforms' to be provided via an on-line submission form, due 21 April.

Defence is developing policy options to modernise the *Defence Act 1903* and related legislation "*to enable Defence to be more agile, operationally effective and responsive in an increasingly complex and dynamic strategic environment*". The consultation states: "*A range of factors are impacting the effectiveness of existing laws*".

"Additional considerations" (p.9) states the important matters that must be considered include "*any impact on the Australian population must be reasonable and proportionate*" and Defence must be accountable to the Australian people and incorporate appropriate safeguards to do so. Further, "Additional considerations" (p.14) states: "*It is critical to balance the need for security against the need for transparency, applying a proportionate approach to security risks.*"

It is within a spirit of accountability and transparency that a range of contemporary and arising public interest issues are raised for response, including to impose nuclear waste on unwilling community,

This public input draws on my [public submission](#) to The Defence Review, Titled: "*The Review must act in accordance with Australia's commitment to Sign the 'Ban Treaty', AND should be transparent on the implications for Australia as a target in a war with China*" (29 Oct 2022); and on my Opinion: "[Target Oz': Defence Strategic Review must address nuclear risks - Pearls and Irritations](#)" (3 Nov 2022).

Having committed to Sign, Australia should start to come into accord with the Ban Treaty (see Rec No 1-3 at p.3) and must not act contrary to the 'positive obligations' in Treaty Article 6 (see p.4-6).

Defence should declare its intentions regarding military activities at the Emu Field nuclear test site before the 70th Anniversary of the first atomic test in Australia (see p.6 and Rec 5). Defence should also start to instigate a required process to "*take necessary and appropriate measures towards the environmental remediation of areas so contaminated*" at Emu Field in accord with Treaty Article 6.

The Federal Government should become open and transparent in acting on ALP commitments to Sign the Ban Treaty, involve civil society in considerations, instigate an Inquiry by the Joint Standing Committee on Treaties and indicate a timeframe to Sign within this term of office (Rec 3).

In any case, contemporary community expectations for accountability and transparency require assurance there will be no US nuclear weapons in Australia, in over-flight or in transit in our territorial waters (see p.5 and Rec 4). The prior US practice to 'neither confirm nor deny' the presence of nuclear weapons should no longer apply in Australia.

Defence should become transparent over proposed Navy High Level nuclear waste disposal, policy, siting process, rights and legislative issues. Proposed siting triggers the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP, adopted by UNGA, Sept 2007).

Defence should commit to respect and to comply with the UNDRIP Article 29 provision of Indigenous People's rights to "Free, Prior and Informed Consent" over storage or disposal of hazardous materials, and Article 30 regarding military activities on their lands (see p.7 and Rec 6).

Defence should declare plans to over-ride State legislation and to impose High Level nuclear waste disposal and policy to also dispose of ANSTO nuclear fuel wastes at this Defence site (see Rec 7).

As to my background: I served 16 years as Australian Conservation Foundation (ACF) environment campaigner 1996-2011 including on uranium and nuclear public interest issues, as lead author of ACF nuclear issues submissions to Joint Standing Committee on Treaties (JSCT) Inquiries, and as an ACF witness in JSCT Hearings on uranium sales issues with China and with Russia.

As an individual, I later gave evidence as a witness before the JSCT Inquiry on UAE uranium sales, provided input to the JSCT Inquiry on Ukraine uranium sales, and am quoted in both JSCT Reports.

Service as an ACF campaigner included over 5 years on a prior Federal attempt to impose a nuclear waste dump in SA - 1998 through 2004 – a flawed process that had to be abandoned. I have also been an invited Witness as an individual involved on nuclear waste issues at a 2016 Hearing of the SA Parliament Joint Committee Inquiry on the Findings of the SA Nuclear Royal Commission.

As an Independent Environment Campaigner, I have provided public interest Briefing and Public Submissions throughout the current [National Radioactive Waste Management Facility](#) process.

For instance: see a Brief [Nuclear Waste Store siting at Napandee also targets the Port of Whyalla](#)" (Feb 2020, 2 p); a Public Comment: "[Input to the CEO of ARPANSA on Alternative Storage of ANSTO ILW at Lucas Heights](#)" (Nov 2021, 26 p); and recent [input](#) to the Federal Environment Department on Guidelines for an EIS process on the proposed nuclear waste facility at Kimba (23 March 2023, 11 p).

I also provide media commentary on nuclear related public interest issues, for instance see article: "**Alarm on nuclear waste transport**" (By Clare Peddie, SA Sunday Mail Rural Edition, 31 July 2022).

Please feel free for Review staff to contact regarding any aspect of this public submission.

Yours sincerely

Mr David J Noonan B.Sc., M.Env.St.

Independent Environment Campaigner and ABN Sole Trader Consultant,
Seaview Downs SA 5049

a 'Voice' of the [No Nuclear Dump Alliance](#)

Recommendations

1. This Reforming Defence Legislation Review and policy options should come into accordance with Australia's commitment to Sign the UN "[Treaty on the Prohibition of Nuclear Weapons](#)" and not compromise that path by accepting and entrenching roles in nuclear deterrence and warfare.

2. Australia must evolve the US Alliance to [end roles in US nuclear war fighting capabilities](#) AND end claimed defence reliance on nuclear deterrence and the US nuclear weapons 'umbrella'. Any *threat to use* nuclear weapons in Australia's defence policy is now illegal, since the Treaty came into force as a permanent part of International Law from 22 January 2021, given the Ban Treaty Article 1 Prohibitions on nations to "*never under any circumstance*:"

(d) Use or threaten to use nuclear weapons or other nuclear explosive devices".

3. The Federal Government should act to Sign the Ban Treaty within this term of office and instigate a Joint Standing Committee on Treaties Inquiry. [ALP commitments](#) to Sign and to Ratify the Ban Treaty are welcome and require a timeframe.

4. The US practice to 'neither confirm nor deny' the presence of nuclear weapons must not apply in Australia. Contemporary community expectations for accountability and transparency require assurance there will be no US nuclear weapons in Australia, in over-flight or in transit in our territorial waters. This public interest measure is arguably also required to come into accordance with Ban Treaty Article 1 Prohibitions to "*never under any circumstance*:"

(e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty".

5. The Reforming Defence Legislation Review and policy options should start to accord with, and must not be contrary to, the 'positive obligations' in the Ban Treaty Article 6 *Victim assistance and environmental remediation* regarding the Emu Field nuclear weapon test site in the Woomera Prohibited Area in South Australia.

Including to clarify Defence intentions for potential military activities in the Emu Field nuclear test area, which may reasonably be deemed to be inappropriate, and to instigate a required process to "*take necessary and appropriate measures towards the environmental remediation of areas so contaminated*" in accordance with Treaty Article 6.

6. Defence should become transparent over proposed Navy High Level nuclear waste disposal, policy, siting process, rights and legal issues. Defence should commit to respect and to comply with the [United Nations Declaration on the Rights of Indigenous Peoples](#) Article 29 provision of Indigenous People's rights to "Free, Prior and Informed Consent" over storage or disposal of hazardous materials and Article 30 regarding military activities on their lands.

7. Defence must declare whether the SA [Nuclear Waste Storage \(Prohibition\) Act 2000](#) will be respected or is intended to be over-ridden to impose a Navy High Level nuclear waste storage or disposal site on 'remote' lands and unwilling community in South Australia.

Defence should also now declare associated policy plans for ANSTO nuclear fuel wastes and long-lived Intermediate Level Wastes to also be disposed at a proposed Defence High Level nuclear waste disposal site.

Defence legislation and policy options should come into accordance with Australia's policy commitment to Sign the "Treaty on the Prohibition of Nuclear Weapons":

The ALP has "***acknowledged the centrality of the US Alliance***" and importantly made formal policy commitments to: "***sign and ratify the Ban Treaty***" (In: [ALP National Platform](#) 2021, p.117).

Australia has taken an important initial step to [no longer oppose the Ban Treaty](#) at the UN.

This Reforming Defence Legislation Review and considered policy options should start to act in accordance with a path for Australia to Sign the "Treaty on the Prohibition of Nuclear Weapons" (TPNW, the 'Ban Treaty') in this term of federal office.

Anthony Albanese MP, "[Changing the World](#)" Speech, ALP National Conference 18 Dec 2018, stated:

"We have on our side the overwhelming support of the Australian people. ... Our commitment to sign and ratify the nuclear weapons ban treaty in government is Labor at our best"

Recommendation 1: This Reforming Defence Legislation Review and policy options should come into accord with Australia's commitment to Sign the UN "[Treaty on the Prohibition of Nuclear Weapons](#)" and not compromise that path by accepting and entrenching roles in nuclear deterrence & warfare.

Australia must evolve our US Alliance to end our roles in US nuclear war fighting capabilities AND end Australia's so called defence reliance on US nuclear deterrence and 'weapons umbrella'.

The [ICAN](#) Report "[Choosing Humanity](#)" (July 2019) best sets out the case for Australia to Sign and Ratify the UN "[Treaty on the Prohibition of Nuclear Weapons](#)" (the TPNW, known as the Ban Treaty).

The US nuclear umbrella is a threat to use nuclear weapons in Australia's defence policy – a threat that has long been contrary to International Humanitarian Law and which is now illegal since the Treaty came into force as a permanent part of International Law from 22 January 2021.

Australia must evolve the roles and operations of the [Pine Gap](#) and potentially other bases in light of the **TPNW Article 1 Prohibitions** on nations to "*never under any circumstance*:"

(d) Use or threaten to use nuclear weapons or other nuclear explosive devices;

(e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty".

To come into future compliance with the Treaty, Australia's military inter-operability with US forces must evolve to exclude nuclear military related operations or reliance.

The TPNW Article 1 Prohibitions apply equally across Australia's nuclear weapons state allies: the US, the UK and France, and prescribe nations to "never under any circumstance:

(a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices".

The Federal Government should set out a path toward Signing the TPNW and can do so through a Referral to the [Joint Standing Committee on Treaties](#) (JSCT) as a proposed treaty action, as provided for under a [Resolution of Appointment](#) in both houses of Parliament over 26-27 July 2022.

The JSCT Inquiry can be conducted before legal obligations arise on Australia through Signing the TPNW and can serve to take account of matters cited for address in the ALP Platform commitment (a JSCT Inquiry is required as part of the process of treaty ratification in any case).

Initiative 2 interoperability & hosting foreign military forces can-not accede to nuclear weapons:

Foreign Affairs Minister Penny Wong has made a necessary and positive contribution through a US assurance that the American submarines to visit Australia on increased rotations from 2027 would be conventionally armed (reported [The Guardian](#) 17 April 2023).

This important US assurance must now be extended to cover all US military forces within Australia.

Proposed *seamless interoperability* (p.10) with our nuclear armed US ally and *technology-neutral* legal frameworks raise questions over Australia's compliance with Ban Treaty Article 1 Prohibitions.

The Public Consultation Paper cites Guiding Principles to underpin reform (p.7), 'Flexible' states:

"The reforms will result in a technology-neutral legislative framework..."

The Paper further applauds the benefits from "*hosting foreign military forces*", a practice which raises queries over visits, carriage and transit, and potential temporary storage of US nuclear weapons - for instance regarding US B-52 bombers proposed to operate out of RAAF bases.

The US practice to 'neither confirm nor deny' the presence of nuclear weapons must not apply in Australia. Contemporary community expectations are not *technology neutral* over nuclear weapons.

Recommendation 4: The US practice to 'neither confirm nor deny' the presence of nuclear weapons must not apply in Australia. Contemporary community expectations for accountability and transparency require assurance there will be no US nuclear weapons in Australia, in over-flight or in transit in our territorial waters. This public interest measure is arguably also required to come into accordance with Ban Treaty Article 1 Prohibitions to "*never under any circumstance*:

(e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty".

Defence policy and legislation should accord with the UN Ban Treaty's 'positive obligations' over nuclear test sites, including over Emu Field in the Woomera Prohibited Area:

The Reforming Defence Legislation Review and policy options should start to accord with, and must not be contrary to, the 'positive obligations' in the UN "[Treaty on the Prohibition of Nuclear Weapons](#)" Article 6 Victim assistance and environmental remediation, including that:

The States Parties to this Treaty, ...

Mindful of the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons,

Recognizing the disproportionate impact of nuclear-weapon activities on indigenous peoples,

... Have agreed as follows: ...

Article 6 Victim assistance and environmental remediation,

1. Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.

2. Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated.

The Ban Treaty Article 6 positive obligations raise questions for Defence regarding the three nuclear test sites in Australia and presents as a timely matter for the upcoming 70th Anniversary of the first nuclear weapon test in Australia at [Emu Field](#) in South Australia in October 1953.

The British atomic weapon tests at Emu Field are subject to contemporary scrutiny, see “[The Secret of Emu Field](#)”, UNSW Press 2022, by Elizabeth Tynan, the award-winning author of Atomic Thunder: The Maralinga Story), and present a range of ongoing public interest issues for Defence to engage on.

Only at Emu Field in Oct 1953 did a terrifying black mist speed across the land after an atomic bomb detonation, bringing death and sickness to Aboriginal populations in its path.

Emu Field was difficult and inaccessible ... abandoned quickly after the expense and effort of setting it up ... reveals the story of a cataclysmic collision between an ancient Aboriginal land and the post-war Britain of Winston Churchill and his gung-ho advisors.

The presence of local Anangu people did not interfere with Churchill's geopolitical aims and they are still paying the price.

This Reforming Defence Legislation Review has particular relevance to the [Woomera Prohibited Area](#) (WPA) of some 122,000 km² across the north and west of South Australia, that includes the Emu Field nuclear test site. The [WPA is governed](#) by the Defence Act 1903 pursuant to Part VIB, its Regulations and a [Rule 2014](#), and last declared a Prohibited Area in Cth Gazette 12 July 1989.

Emu Field test site can only be visited with the written approval of the RAAF Woomera Test Range.

Defence should clarify its intentions re the Emu Field test site, associated areas and airstrip. The Cth has cited ‘substantial benefit’ in upgrading the historic Emu airstrip into a runway for military aircraft. The “Review of the Woomera Prohibited Area Coexistence Framework” ([Report](#), Cth Gov 2018) cites:

“...there could be substantial benefit for Defence in investing in infrastructure in the north-west – for example, upgrading the historical Emu airstrip into a runway suitable for military aircraft.” (p.57)

“Defence is increasing its investment in the WPA.... Scoping works are underway for a further \$500 million of investment in redeveloping the Woomera Village and airfield precinct between 2022 and 2025.” (p.3)

Defence must consider that any further military activities in the Emu Field nuclear test area may be deemed to be inappropriate and may be contrary to the Ban Treaty Article 6 positive obligations.

Recommendation 5: The Reforming Defence Legislation Review and policy options should start to accord with, and must not be contrary to, the ‘positive obligations’ in the Ban Treaty Article 6 *Victim assistance and environmental remediation* regarding the Emu Field nuclear weapon test site in the Woomera Prohibited Area in South Australia.

Including to clarify Defence intentions for potential military activities in the Emu Field nuclear test area, which may reasonably be deemed to be inappropriate, and to instigate a required process to “take necessary and appropriate measures towards the environmental remediation of areas so contaminated” in accordance with Treaty Article 6.

Defence must become transparent over proposed Navy High Level nuclear waste disposal, policy, siting - to impose on unwilling community, Indigenous rights and legal issues:

Proposed siting of Navy High Level nuclear waste storage and disposal triggers the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP, adopted by UNGA, Sept 2007).

Defence should commit to respect and to comply with the UNDRIP Article 29 provision of Indigenous People's rights to "Free, Prior and Informed Consent" over storage or disposal of hazardous materials on their lands, and Article 30 regarding military activities on their lands.

Defence Minister Richard Marles MP has [said](#) Australia keeping High Level nuclear waste was a pre-condition to AUKUS nuclear powered submarines - which the ALP agreed to prior to the election.

However, this was only revealed to the Australian people recently, after an 18-month pathway study.

Australia now proposes to do what our AUKUS partners the US and the UK have failed to be able to do for over 60 years: to develop a capacity and a site to undertake High Level nuclear waste disposal. The sole responsibility of this submarine High Level nuclear waste disposal now lies with Australia.

"This is going to require a facility to be built in order to do that disposal, obviously that facility will be remote from populations, and today we are announcing that that facility will be on Defence land, current or future," Mr Marles said (ABC News 15 March 2023).

Effectively, 'future Defence land' means siting High Level nuclear waste disposal is open to 'remote' lands across Australia that Defence may deem suitable and reserves a right to compulsorily acquire.

Policy has not been transparent and information has been deliberately delayed and is very limited and overly simplistic in nature, see [Nuclear stewardship and waste](#) (Defence, March 2023).

Speculation over use of the Woomera Prohibited Area should be informed by the fact that only relatively small parts of the WPA are Commonwealth owned lands, most is State owned Crown land.

Importantly, any proposed High Level nuclear waste disposal site in the WPA or elsewhere in SA is subject to Indigenous Peoples rights and interests set out in the UNDRIP under Articles 29 & 30.

Defence must become accountable and transparent over these public interest issues and must declare whether the SA [Nuclear Waste Storage \(Prohibition\) Act 2000](#) will be respected or is intended to be over-ridden to impose a High Level nuclear waste disposal site in SA.

In a timely way Defence must now declare associated plans for ANSTO nuclear fuel wastes & long-lived Intermediate Level nuclear wastes to also be disposed at a Navy High Level waste disposal site.

Recommendation 6: Defence should become transparent over proposed Navy High Level nuclear waste disposal, policy, siting process, rights and legal issues. Defence should commit to respect and to comply with the [United Nations Declaration on the Rights of Indigenous Peoples](#) Article 29 provision of Indigenous People's rights to "Free, Prior and Informed Consent" over storage or disposal of hazardous materials and Article 30 regarding military activities on their lands.

Recommendation 7: Defence must declare whether the SA [Nuclear Waste Storage \(Prohibition\) Act 2000](#) will be respected or is intended to be over-ridden to impose a Navy High Level nuclear waste storage or disposal site on 'remote' lands and unwilling community in SA. Defence should also now declare associated policy plans for ANSTO nuclear fuel wastes and long-lived Intermediate Level Wastes to also be disposed at a proposed Defence High Level nuclear waste disposal site.