

**National Interest Analysis [2024] ATNIA 5  
with attachment on consultation**

**Australia–Tuvalu Falepili Union**

(Rarotonga, 9 November 2023)

**[2024] ATNIF 8**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### Australia–Tuvalu Falepili Union

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#### Nature and timing of proposed treaty action

1. The proposed treaty action is entry into force of the *Australia-Tuvalu Falepili Union* (the Agreement), which was signed by Prime Minister Albanese and then Prime Minister Natano in Rarotonga on 9 November 2023.
2. For the Agreement to enter into force, the Parties must notify each other of the completion of their necessary domestic requirements through an exchange of diplomatic notes. The Agreement would enter into force on the date of receipt of the last diplomatic note (Article 8(1)). Australia intends to send its diplomatic note as soon as practicable following the completion of its domestic requirements. The Prime Minister of Tuvalu notified the Prime Minister of Australia that Tuvalu supported commencement by Australia of its domestic treaty process and would undertake its own domestic consultation process with intent to progress entry into force of the treaty as soon as possible in 2024.

#### Overview and national interest summary

3. The purpose of the Agreement is to advance the respective national security interests of Australia and Tuvalu through the establishment of a legally binding partnership that provides for enhanced development and climate cooperation, the development of a special human mobility pathway to enable access to Australia for citizens of Tuvalu, cooperation on bilateral and regional security challenges, and cooperation on maintaining stability in the Pacific.
4. The Agreement contributes to Australia's national interest by strengthening the bilateral relationship with Tuvalu, a close Pacific partner with a shared commitment to regional security, prosperity and stability. More broadly, the Agreement is a demonstration to the Pacific family of Australia's commitment, as a signatory to the *Biketawa Declaration* and the *Boe Declaration on Regional Security*, to finding Pacific solutions to our region's security challenges.

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

5. The Agreement is based on the values of good neighbourliness, care and mutual respect. The core commitments set out in the proposed Agreement relate to security, including with respect to the impacts of climate change, and the creation of a special human mobility pathway to enable citizens of Tuvalu to access Australia. The Agreement significantly expands upon the Australia-Tuvalu Security Partnership Memorandum of Understanding (2017) and is a natural continuation of our longstanding close bilateral

partnership. The Agreement better positions Australia to play our part in a shared Pacific that is peaceful, stable and prosperous.

## **Obligations**

### *Climate cooperation*

6. Article 2 of the Agreement provides that Australia and Tuvalu commit to work together in the face of threats posed by climate change and to help the citizens of Tuvalu stay in their homes with safety and dignity, including by promoting Tuvalu's adaptation interests to other countries. Under Article 2, the Parties also recognise Tuvalu's enduring statehood, notwithstanding the possible impacts of climate change-related sea level rise.

### *Human mobility with dignity*

7. Article 3(1) of the Agreement obliges Australia to arrange for a special human mobility pathway for citizens of Tuvalu to access Australia. This pathway would enable citizens of Tuvalu to live, study and work in Australia, as well as access Australian education, health, and key income and family support on arrival.
8. Article 3(2) sets out that, to support the implementation of the human mobility pathway, Tuvalu is obliged to ensure that its immigration, passport, citizenship and border controls are robust and meet international standards for integrity and security and are compatible with, and accessible to, Australia. Australia is obliged under Article 3(3) to provide assistance to Tuvalu to enable it to meet its obligations under Article 3(2).

### *Cooperation for security and stability*

9. Article 4 of the Agreement sets out the enhanced security obligations for Australia and Tuvalu.
10. Article 4(1) sets out that Australia is obliged, in accordance with its international law obligations, international commitments, domestic processes and capacity, to provide assistance to Tuvalu in response to a major natural disaster, a public health emergency of international concern, or military aggression against Tuvalu. This obligation is predicated on Tuvalu requesting such assistance.
11. Article 4(2) contains an obligation on the Parties to enter into an instrument to set out the conditions and timeframes applicable to Australian personnel operating in Tuvalu's territory.
12. Article 4(3) obliges Tuvalu to provide Australia with rights to access, presence within, and overflight of Tuvalu's territory – in addition to the Parties' rights and freedoms under international law – if the activities are considered necessary for the provision of assistance requested by Tuvalu under the Agreement. This obligation is predicated on Australia providing advance notice to Tuvalu.
13. Under Article 4(4) Tuvalu would mutually agree with Australia any partnership, arrangement or engagement with any other State or entity on security and defence related matters. This provides Australia with oversight of Tuvalu's defence and security related engagement with third parties, including, but not limited to: defence, policing, border protection, cyber security and critical infrastructure, including ports,

telecommunications and energy infrastructure. This reflects the depth of Australia's security partnership with Tuvalu and the security guarantee provided to Tuvalu.

#### *Other obligations*

14. Article 5 of the Agreement obliges the Parties to establish a Joint Committee that would meet at least every twelve months to discuss matters arising under the Agreement. It also provides that either Party may convene a meeting of the Joint Committee to discuss any obligation contained in the Agreement or its implementation. In such a case, the meeting would occur within two weeks of notification being provided to the other Party.
15. Article 6 requires the Parties to resolve any dispute regarding the interpretation, application or implementation of the Agreement solely by consultation or negotiation between the Parties, and not by referral to any court, tribunal or third party.

#### **Implementation**

16. Australia has an obligation under Article 3 of the Agreement to arrange for a special human mobility pathway to Australia for citizens of Tuvalu. Tuvalu has a corresponding obligation to ensure that its immigration, passport, citizenship and border controls are robust and meet international standards. These obligations are enlivened upon entry into force of the Agreement. Once the policy settings of the special human mobility pathway are settled and Tuvalu's immigration, passport, citizenship and border control systems are strengthened, amendments to the *Migration Regulations 1994* will likely be required to implement the special human mobility pathway visa arrangement.
17. Article 4(2) of the Agreement commits Australia and Tuvalu to enter into a separate instrument setting out the conditions and timeframes applicable to Australian personnel operating in Tuvalu's territory. This instrument will be jointly determined by the Parties after the Agreement enters into force.
18. A full domestic implementation analysis is currently being conducted and this will identify whether any other legislative or regulatory action is required to ensure consistency with the Agreement. If any other such action is required, this would be completed prior to entry into force of the Agreement for Australia.

#### **Costs**

19. The costs associated with implementing the Agreement are expected to form part of the 2024/25 Budget.
20. Australian assistance to Tuvalu in response to a major national disaster, public health emergency of international concern, or military aggression would incur costs. It is not possible to estimate these costs until the nature of the request and Australia's response is known.
21. The Office of Impact Analysis has been consulted and has confirmed that a detailed Impact Analysis is not required.

### **Future treaty action**

22. In accordance with Article 7(1), the Parties may review or amend the Agreement where both Parties agree in writing. Any such amendment would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties. Any amendment would enter into force on the date of receipt of the last notification by which the Parties notify each other in writing, through an exchange of diplomatic notes, that their respective requirements for entry into force of the relevant amendment have been completed.

### **Termination**

23. Article 8(2) of the Agreement provides that the Agreement would continue in force unless terminated in accordance with Article 8.
24. Article 8(3) provides that the Parties may agree in writing to terminate the Agreement at any time. The Agreement would be terminated on the date agreed by the Parties.
25. Article 8(4) allows for unilateral termination by either Party by providing written notice to the other Party. Such termination will become effective twelve months from the date on which the other Party received the written notice of termination.

### **Contact details:**

Pacific Partnerships Branch  
Office of the Pacific  
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## **ATTACHMENT ON CONSULTATION**

### **Australia–Tuvalu Falepili Union**

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### **CONSULTATION**

1. The Agreement was negotiated in-confidence following a proposal from the Government of Tuvalu for an enhanced, more integrated bilateral partnership with Australia. The Agreement was discussed with Pacific Islands Forum leaders ahead of its signature on 9 November 2023.

#### *State and Territory Governments*

2. The State and Territory Governments were advised of the Agreement through the Australian Senior Officials Committee for National Security (ASOCNS) following its announcement.
3. Ongoing consultation with State and Territory Government officials is planned in the lead up to entry into force of the Agreement, through the design process of the special human mobility pathway with the Government of Tuvalu. Consultation may occur independently, or jointly with other like programs such as the Pacific Engagement Visa and Pacific Australia Labour Mobility scheme, including the Family Accompaniment Pilot.

#### *Public Consultation*

4. No public consultation was undertaken on the Agreement prior to its announcement as the Agreement relates to bilateral defence cooperation and migration matters and was still under negotiation-in-confidence with the Government of Tuvalu. In the interests of transparency, the Agreement was published on the Department of Foreign Affairs and Trade website immediately following its signing, and it has been the subject of academic, media and public debate and discussion in Parliament.