

**AGREEMENT, DONE AT MELBOURNE ON 10 MAY 2004, BETWEEN
NAURU AND AUSTRALIA CONCERNING ADDITIONAL POLICE AND
OTHER ASSISTANCE TO NAURU
[2004] ATNIF 04**

Documents tabled on 22 June 2004:

National Interest Analysis

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NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Agreement, done at Melbourne on 10 May 2004, between Nauru and Australia concerning additional police and other assistance to Nauru [2004] ATNIF 04

Date of Tabling of Proposed Treaty Action

1. 22 June 2004.

Nature and Timing of Proposed Treaty Action

2. The Agreement was signed on 10 May 2004. It will enter into force when Australia and Nauru exchange diplomatic notes pursuant to Article 19.2. It is expected that this exchange of Notes will occur once Nauru has passed the necessary enabling legislation which will give the terms of the Agreement the force of law in Nauru.

3. The Minister for Foreign Affairs wrote to the Chair of the Joint Standing Committee on 27 April 2004, advising him of the need for the treaty to be in force for Australia to enable the Australian officials and police to deploy to Nauru urgently. The deployment of these officials is expected to occur as soon as the Parliament of Nauru passes the necessary enabling legislation.

Overview and National Interest Summary

4. Nauru is on the verge of state failure. It has squandered the proceeds of phosphate mining and its phosphate reserves are largely exhausted. Government financial planning is non-existent, replaced instead by repeated requests to Australia for short-term bail-outs to keep essential services operational. Without outside assistance, the Nauru government's inability to manage its resources could have resulted in economic collapse and ultimately in Nauru's failure as a state, creating a humanitarian crisis and the possibility that Nauru would become a haven for trans-national crime. Australia's additional assistance to Nauru under the Memorandum of Understanding signed on 25 February 2004 will provide Nauru with a Secretary of Finance and a Director of Police as key measures to address Nauru's most serious and immediate challenges. The Secretary of Finance and Director of Police will each be supported by two Australian advisers. This is intended to reverse Nauru's decline and restore the country to stability. It also reflects recognition of Australia's long-standing relationship with Nauru.

5. The Agreement is part of the necessary framework at international law for Australia to deliver assistance to Nauru.

Reasons for Australia to Take the Proposed Treaty Action

6. Nauru is among the most egregious examples of corruption, profligacy and mismanagement in the South Pacific. For consistency in our policy on the importance of sound economic management and good governance for the Pacific Island Countries (PICs), and to arrest Nauru's descent into state failure, it was necessary for Australia to take steps to intervene in the management of Nauru's economy.

7. The secondment of a Secretary of Finance, along with two financial specialists, is intended to reverse the decline induced by Nauru's mismanagement. Once deployed, the finance team should assume full and complete authority and responsibility for the management of all of Nauru's financial and other assets. The team will be responsible for the formulation and disbursement of Nauru's budget, as well as auditing and assessing Nauru's remaining assets as the basis for economic reforms geared to meeting Nauru's longer-term needs.

8. The deployment of a Director of Police, along with up to two police advisers, will ensure the professional standards of the Nauru Police Force (NPF) are strengthened. Based on the Commissioner's assessment, the NPF will be re-structured to best meet Nauru's law and order needs. Along with providing training and guidance to the NPF, the Australian police team will facilitate the provision of Australian support for legislative drafting, including updating Nauru's criminal code.

Obligations

9. Article 3 of the Agreement imposes certain obligations in relation to the proposed deployment of Australian police to Nauru. The Assisting Australian Police (AAP) must work cooperatively with the Government of Nauru and its authorities to achieve the purposes of the treaty. The head of the AAP is obliged to report to the Director of the Nauru Police, although he is responsible to the Commissioner of the Australian Federal Police. In practice it is likely that an Australian will be appointed to be the Director of the Nauru Police. In all circumstances, Australian police must work cooperatively with the Nauru Police Force. Australia must also notify the Government of Nauru the names of AAP personnel deployed to Nauru.

10. Under Article 4, Australian police will not carry firearms generally, although may have access to them. Where an Australian police officer accesses firearms in Nauru the head of the Assisting Australian Police must notify the Nauru Police as soon as possible. The weapons will be owned and supplied by the Australian Federal Police.

11. Australia must notify the Government of Nauru of the names of all personnel deployed to Nauru under Article 5 of the Agreement. Australia must also notify the Government of Nauru of the names of any "Related Persons" in Nauru, under Article 6 of the Agreement. "Related Persons" are family members and/or dependants of personnel who are deployed to Nauru.

12. Under Article 7, Australians deployed to Nauru must take appropriate measures to ensure that the laws and regulations of Nauru are observed and respected. Australia has exclusive criminal and disciplinary jurisdiction over its personnel.

13. According to Article 8 Australia must act in a manner consistent with its obligations under international law in giving effect to the Agreement.

14. Article 9 sets out how civil claims will be dealt with under the Agreement. Australia must waive certain claims against Nauru with respect to the actions taken by Australian officials

in the course of, or incidental to, official duties. Australia is obliged to consult Nauru on claims not covered by Article 9.

15. Article 11 provides that Australia shall be responsible for the salary, allowances, removal expenses, costs of transport to Nauru and medical and dental expenses of Designated Persons. Article 12 provides that Australia shall cover the accommodation and transport costs of Designated Persons.

Implementation

16. No legislation is required to implement Australia's obligations. The Crimes (Overseas) Act 1964 will apply to Nauru and ensure that, amongst other matters, Australia is able to exercise criminal jurisdiction over its officials who are deployed to Nauru under the Agreement.

Costs

18. Article 11.2 of the Agreement establishes that the Australian Government shall be responsible for the salary, allowances, removal expenses, costs of transport to Nauru, and medical and dental expenses of Australian officials deployed to Nauru. Australia is also responsible for personnel accommodation and transport costs within Nauru. Australia will fund its participation following regular budgetary processes.

Consultation

19. Relevant Commonwealth agencies, including the Department of Immigration and Multicultural and Indigenous Affairs, the Department of Treasury, the Department of Finance and Administration, the Australian Federal Police and the Attorney-General's Department were consulted in the drafting of this treaty. Negotiations were undertaken between officials of the Department of Foreign Affairs and Trade, the Australian Federal Police and the Government of Nauru in settling the text of the treaty.

20. The Agreement was notified to the States and Territories through the Commonwealth-State/Territory Standing Committee on Treaties process, as set out in the consultation annexure.

Regulation Impact Statement

21. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

22. Article 18 of the Agreement provides for its variation by agreement between the Parties. Amendments to the Agreement would be subject to the Australian treaty making process, including tabling before Parliament.

Withdrawal or Denunciation

23. Article 18 of the Agreement provides for its suspension by agreement between the Parties.

24. Article 19.3 of the Agreement provides that the Agreement shall expire at the mutual agreement of the Parties. Article 19.4 of the Agreement confirms that the expiry of the Agreement shall not affect any liabilities, rights and obligations arising out of the Agreement, and any immunity relating to actions taking place during the period of the Agreement.

Contact details

Pacific Bilateral Section

Pacific Islands Branch

Department of Foreign Affairs and Trade

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Consultation

This Agreement has been done to facilitate the entry into Nauru of Australian police and officials to assist the Government of Nauru with key governance challenges. The Government of Nauru was consulted in the preparation of the text of the Agreement. Relevant Commonwealth agencies were also heavily involved in the preparation of the text of the Agreement (Department of Foreign Affairs and Trade, Attorney-General's Department, Australian Federal Police, Department of Immigration and Multicultural and Indigenous Affairs).

State and Territory Premiers/Chief Ministers' Departments have been notified by the Department of Foreign Affairs and Trade (Legal Branch) according to the Commonwealth-State-Territory Standing Committee on Treaties process.

Nauru Political Brief

Nauru: Political Overview

1. Nauru is one of the smallest independent states in the world. Its constitution, adopted at independence in 1968, established it as a republic with a parliamentary system of government. The unicameral Parliament consists of eighteen members, who are elected every three years. Government is formed by a coalition of like-minded parliamentarians, with a majority of at least ten votes. At its first sitting, Parliament chooses a Speaker and a Deputy Speaker, before proceeding to elect the President from among the remaining members. The President then appoints four or five members of Parliament to form the Cabinet.

2. Political instability has plagued Nauru recently. Since January 2003 it has had five Presidents. Bernard Dowiyogo was elected President on 18 January 2003 after Rene Harris was deposed as President in a vote of no-confidence by the House. On 20 March 2003, Derog Gioura was elected President by Parliament following the unexpected death of President Dowiyogo on 9 March 2003. Parliamentary elections, which had been scheduled prior to President Dowiyogo's death, were held on 3 May 2003. Ludwig Scotty was elected in a second round of votes by a margin of ten to seven. President Scotty formed a government on 4 June with the support of three members of the Naoero Amo party. However, the Scotty government's reformist path did not suit other members and in a vote of no confidence on 8 August 2003 Rene Harris was returned as President.

3. The Harris government's parliamentary speaker resigned on 6 April 2004, creating a deadlock in Nauru's parliament, with both government and opposition occupying nine seats. Until the impasse is resolved, no government business requiring parliamentary approval can go ahead. Thus the government is unable to pass the enabling legislation required to give effect to the treaty covering the Australian officials scheduled to deploy to Nauru. Until the impasse is resolved, our officials will be unable to deploy.

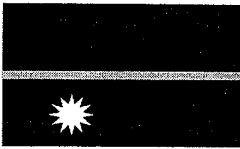
Economic Overview

4. Phosphate production has been in decline since 1989 as demand fell in traditional markets because of the level of cadmium present and as the cost of extracting the diminishing phosphate reserves increased. Estimates indicate that some 570,000 tonnes of phosphate remain, which at the current rate of extraction would suggest that operations could come to an end by 2007. If the roads at topside were also to be mined, phosphate exports could be extended for a further three to four years, but at a high cost.

5. Apart from phosphate, fishing licences issued to China, Japan, Republic of Korea, Taiwan and the USA, are an important source of revenue for Nauru. While pelagic fish abound in Nauruan waters, Nauru has not been able to exploit the resource commercially. As an isolated island, Nauru is dependent on shipping and air services for the provision of food and other supplies, notably from Australia. It has no natural port but has deep-water anchorages served by a cantilever system for loading phosphate and discharging fuel and water supplies, and by lighters for unloading other cargo.

Bilateral relationship

6. Australia enjoys good relations with Nauru and actively supported Nauru's successful UN and Commonwealth applications in 1999. Australia is the key trade and investment partner for Nauru. Nauru holds significant property investments in Australia, particularly in Victoria. Australia and Nauru cooperate closely on addressing people smuggling in the region and Nauru hosts two asylum seeker processing centres. In association with this cooperation, Australia meets the costs of these centres and provides Nauru with assistance in the areas of health, education and maintenance of public infrastructure. There are currently around 400 Asylum Seekers on Nauru, down from the maximum number of 1153.



NAURU

Fact Sheet

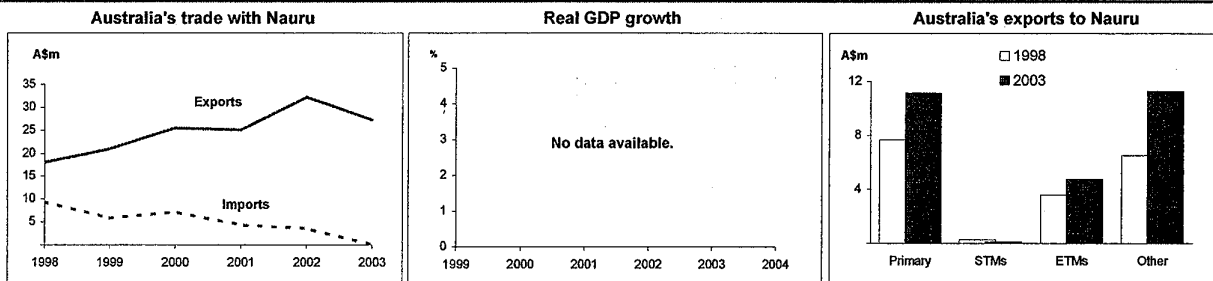
General information:

Surface area: 21 sq km
 Official language: Nauruan
 Population: 12,100 (2003)
 Exchange rate: Unit of currency = Australian dollar

Head of State and Head of Government:
 H.E. President The Hon Mr Rene Harris

Recent economic indicators:

	1999	2000	2001	2002	2003(a)	2004(b)
GDP (US\$bn):	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
GDP per capita (US\$):	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Real GDP growth (% change YOY):	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Current account balance (US\$m):	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Current account balance (% GDP):	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Goods & services exports (% GDP):	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Inflation (% change YOY):	6.7	7.5	4.0	n.a.	n.a.	n.a.
Unemployment rate (%):	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.



Australia's trade relationship with Nauru:

Major Australian exports, 2003 (A\$m):

Refined petroleum	6
Printed matter	2
Meat (excl. bovine)	1
Meat prepared or preserved	1
Tobacco, manufactured	1

Major Australian imports, 2003 (A\$m):

No significant imports were recorded.

Australian merchandise trade with Nauru, 2003:

		Total share:	Rank:	Growth (yoY):
Exports to Nauru (A\$m):	27	0.0%	83rd	-15.2%
Imports from Nauru (A\$m):	0	0.0%	159th	-97.6%
Total trade (exports + imports) (A\$m):	27	0.0%	93rd	-23.4%
Merchandise trade surplus with Nauru (A\$m):	27			

Australia's trade in services with Nauru, 2003:

		Total share:
Exports of services to Nauru (A\$m):	n.a.	n.a.
Imports of services from Nauru (A\$m):	n.a.	n.a.
Services trade balance with Nauru (A\$m):	n.a.	

Nauru's global trade relationships:

Nauru's principal export destinations, 2002:

1	India	45.7%
2	Korea	18.4%
3	Australia	10.6%
4	New Zealand	8.0%
5	Netherlands	5.6%

Nauru's principal import sources, 2002:

1	Australia	59.2%
2	United States	10.1%
3	Ireland	7.5%
4	Malaysia	6.1%
5	United Kingdom	2.4%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a): all recent data subject to revision; (b): EIU forecast.
 n.a. Data not available.

Fact sheets are updated biannually; next update: September 2004

List of other treaties with Nauru

Agreement with the Republic of Nauru relating to Air Services
[1969] ATS 23

Exchange of Notes constituting an Agreement with Nauru amending the Schedule to the Agreement relating to Air Services of 17 September 1969
[1976] ATS 25

Agreement with the Republic of Nauru relating to Appeals in the High Court of Australia from the Supreme Court of Nauru
[1977] ATS 11

Exchange of Notes constituting an Agreement with Nauru to further amend the Schedule to the Agreement relating to Air Services of 17 September 1969
[1984] ATS 34

Agreement with the Republic of Nauru for the Settlement of the Case in the International Court of Justice concerning Certain Phosphate Lands in Nauru
[1993] ATS 26

Rehabilitation and Development Cooperation Agreement with the Republic of Nauru
[1994] ATS 15

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List of treaties of the same type with other countries:

There are no similar bilateral treaties but the following multilateral treaties are similar:

- Agreement between Papua New Guinea and Fiji, Tonga, Solomon Islands, Vanuatu, Australia and New Zealand, concerning the Elements of the Defence Forces of those Countries Deployed in the North Solomons Province of Papua New Guinea as Part of the South Pacific Peacekeeping Force
[1994] ATS 17
- Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu, concerning the Neutral Truce Monitoring Group for Bougainville
[1997] ATS 30
- Protocol concerning the Peace Monitoring Group made pursuant to the Agreement between Papua New Guinea, Australia, Fiji, New Zealand and Vanuatu, concerning the Neutral Truce Monitoring Group for Bougainville done at Port Moresby on 5 December 1997
[1998] ATS 12
- Protocol concerning the Bougainville Transition Team made pursuant to the Agreement done at Port Moresby on 5 December 1997, between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, as amended by the Protocol done at Port Moresby on 29 April 1998
[2003] ATS 15
- Agreement, done at Townsville on 24 July 2003, between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the police and armed forces and other personnel deployed to Solomon Islands to assist in the restoration of law and order and security
[2003] ATS 17