

National Interest Analysis [2017] ATNIA 27

with attachment on consultation

**Agreement between the Government of Australia and the Government of Solomon
Islands Concerning the Basis for Deployment of Police, Armed Forces and Other
Personnel to Solomon Islands**

(Canberra, 14 August 2017)

[2017] ATNIF 34

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement between the Government of Solomon Islands and the Government of Australia Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands

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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of Solomon Islands concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands* (the Agreement) signed on 14 August 2017.
2. For the Agreement to enter into force, the Parties must exchange diplomatic notes notifying each other of the completion of their necessary internal procedures (Article 23(1)). It is anticipated that Australia would advise Solomon Islands of this as soon as practicable following consideration of the Agreement by the Joint Standing Committee on Treaties (JSCOT).
3. The Agreement is the first bilateral security treaty between Australia and Solomon Islands.
4. An earlier treaty involving several other countries, the *Agreement 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* was signed on 24 July 2003 to provide for the Regional Assistance Mission to Solomon Islands (RAMSI). This earlier treaty expired on the withdrawal of RAMSI on 30 June 2017. The new bilateral Agreement is not a direct replacement but will provide for future Australian operational assistance to Solomon Islands should the need arise.

Overview and national interest summary

5. The Agreement, together with a written request from the Solomon Islands Government, would provide a legal basis for the Australian Federal Police, Australian Defence Force and associated civilian personnel, with contributions from other countries, as appropriate, to deploy rapidly and effectively in an operational capacity in the event of a major security challenge or event, including humanitarian response situations.

6. The Pacific is a region of great importance to Australia. During five years of ethnic and civil unrest between 1998 and 2003 known as the ‘Tensions’, Solomon Islands came close to becoming a failed state. The stability of Solomon Islands has a major impact on the security of Australia and the broader region. State failure would have exacerbated common security threats faced across the Pacific such as narcotics trafficking, illegal fishing, health pandemics, irregular people movements and natural disasters.
7. In 2003, Australia led RAMSI, a stabilisation and state-building intervention, in partnership with 15 Pacific Island nations. RAMSI concluded on 30 June 2017. Over 14 years, RAMSI successfully
 - a. restored law and order;
 - b. rebuilt critical law and order institutions;
 - c. stabilised government finances;
 - d. restored business confidence; and
 - e. rebuilt the Royal Solomon Islands Police Force.
8. While RAMSI successfully fulfilled its mandate, Solomon Islands continues to face many development challenges, some of which were the underlying causes of the ‘Tensions’. Solomon Islands will need ongoing support to retain the gains made under RAMSI and to help build long-term stability and enduring growth. The Agreement provides an important message to the people of Solomon Islands that Australia stands ready to assist in the event of a future emergency. Any future deployment would be subject to Australia’s internal decision-making processes as noted in Article 2(1).

Reasons for Australia to take the proposed treaty action

9. The Government considers the Agreement will provide a number of benefits for Australia. The Agreement will reinforce Australia’s close bilateral relations with a significant country in the Pacific region. The Agreement will also cement Australia as Solomon Islands’ primary security partner.
10. The Agreement will allow Australia to respond quickly to a security or humanitarian crisis in Solomon Islands. This may include short-term deployments in response to specific events, including humanitarian emergencies, through to a longer-term stabilisation mission. The Agreement will provide for future assisting police and defence forces to exercise the same powers and authorities, and have substantially the same privileges and immunities, as were provided for under the RAMSI treaty. The relevant privileges and immunities are implemented in Solomon Islands domestic law through the *Facilitation of International Assistance Act 2003* (Solomon Islands).
11. The ongoing stability of Solomon Islands and the broader Pacific region is critical to Australia’s national interests. The cost to Australia of RAMSI was around \$2.8 billion over 14 years. However, the cost to Australia of a failed state would have been far greater. The Government considers that the ability for Australia to respond quickly at the request of the Solomon Islands Government in the event of a future emergency would again be less costly than allowing a security vacuum in Solomon Islands that would exacerbate security threats to Australia and the broader Pacific region.

Obligations

12. Article 2(1) of the Agreement allows Australia to deploy a Visiting Contingent to Solomon Islands at the written request of Solomon Islands, after Australia has accepted such a request based on its (Australia's) assessment of the circumstances on a case-by-case basis. Under Article 1 of the Agreement, a Visiting Contingent is an Assisting Police Force, Assisting Defence Force and/or other personnel.
13. The purpose of deploying a Visiting Contingent is described in Article 2(1). The Visiting Contingent will assist in the provision of safety and security of persons and property, provide humanitarian assistance and disaster response, and/or provide such other assistance as may be mutually determined.
14. Under Article 2(2) of the Agreement, Australia must consult with Solomon Islands on the nature and duration of a deployment.
15. Under Article 3(1), Australia must nominate a head of a Visiting Contingent and notify Solomon Islands of the appointment. This nominee is obliged under Article 3(3) to work cooperatively with Solomon Islands to achieve the purposes of the deployment.
16. Where an Assisting Police Force is deployed as part of the Visiting Contingent, the most senior Australian police officer notified to Solomon Islands shall serve as its commander (Article 4(1)). Where an Assisting Defence Force is deployed as part of a Visiting Contingent, an Australian Defence Force member notified to Solomon Islands shall serve as its commander (Article 5(1)).
17. Both the Assisting Police Force and Assisting Defence Force will be able to exercise the powers, authorities and privileges afforded to members of the Royal Solomon Islands Police Force, and use such force as is reasonably necessary to achieve the purposes of the deployment (Article 4(9) and Article 5(4)).
18. Under Article 6(1), a Visiting Contingent must take all appropriate measures to ensure that Solomon Islands Laws are observed and respected. Article 6(2) provides that members of a Visiting Contingent shall be immune from arrest, detention and legal proceedings in Solomon Islands courts and tribunals in relation to actions that are taken in the course of, or are incidental to, official duties.
19. Members of a Visiting Contingent will be accorded privileges in relation to matters such as entry and departure (Article 7), freedom of movement (Article 9), taxation (Article 17), utilities and facilities (Article 10), communications (Article 11) and health and safety (Article 12).
20. Under Article 18, if Solomon Islands requests in writing the withdrawal of a Visiting Contingent, the Visiting Contingent must withdraw within three months. Under Article 18(3), following consultations between the Parties, Australia may at any time withdraw a Visiting Contingent, or any part of it, from Solomon Islands.

21. Under Article 20 of the Agreement, Australia may invite a third state to contribute to a Visiting Contingent for a Deployment. Under Article 20, this would require the permission of Solomon Islands.

Implementation

22. No changes to Australian domestic laws are required to implement the Agreement.

Costs

23. If Australia decides to deploy a Visiting Contingent to Solomon Islands under the Agreement, Australia will incur costs as a result. However, unless a request is made by Solomon Islands, and until the nature and duration of the resulting deployment is known, it is not possible to estimate the costs.
24. Under Article 2(1) of the Agreement, any deployment by Australia will be subject to a decision-making process by the Australian Government. Such a decision-making process would include consideration of the costs, taking into account the specific circumstances of the request by Solomon Islands.

Future treaty action

25. The Agreement does not provide for the negotiation of any future legally binding instruments.
26. Under Article 20 of the Agreement, Australia may make arrangements (of less than treaty status) with third states which supply personnel to a Visiting Contingent under Article 20 of the Agreement. Such an arrangement would include further details in relation to the internal direction, command, control, discipline and administration of the Visiting Contingent.

Withdrawal or denunciation

27. The Agreement will remain in force, unless terminated (Article 23(5)).
28. The Agreement may be terminated by one Party giving written notice to the other Party (Article 25(5)). Such termination will become effective on the first day of the month following the expiration of a period of three months after the written notice is received (Article 25(6)).
29. Where the Parties mutually agree in writing to terminate the Agreement, the termination will become effective on the date agreed by the Parties (Article 25(7)).
30. Article 25(8) of the Agreement provides that if the Agreement is terminated, certain liabilities, rights and obligations are not affected, nor are any privileges or immunities relating to actions taking place during the period of time the Agreement was in force.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

31. The Agreement is assessed to have negligible impact on the States and Territories and therefore no State or Territory Government representatives were directly engaged in considering the matter.