

National Interest Analysis [2025] ATNIA 1
with attachment on consultation

Nauru-Australia Treaty
(Canberra, 9 December 2024)
[2025] ATNIF 3

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

Nauru- Australia Treaty

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Nature and timing of proposed treaty action

1. The proposed treaty action is entry into force of the *Nauru-Australia Treaty* (the Agreement), which was signed by Prime Minister Albanese and President Adeang on 9 December 2024.
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 will enter into force on the date of receipt of the last diplomatic note (Article 9(1)). Australia intends to send its diplomatic note as soon as practicable following the completion of its domestic requirements.
3. Nauruan President Adeang notified Australian Prime Minister Albanese that Nauru supported commencement by Australia of its domestic treaty process and had already undertaken its own domestic consultation process with intent to progress entry into force of the treaty as soon as possible in 2025.

Overview and national interest summary

4. The Agreement provides for enhanced cooperation between Australia and Nauru to strengthen Nauru's security, economic and social development, and longer-term resilience.
5. Under the treaty terms, Nauru provides a number of guarantees, including to mutually agree with Australia any partnership, arrangement or engagement with any other State in security, telecommunications and banking; to consult with Australia on any partnership, arrangement or engagement with any other State or entity relating to Nauru's other critical infrastructure such as ports, aviation and energy; and agreement that critical infrastructure shall not be used by any third party for security purposes. In return, Australia shall support Nauru to build security capability, improve fiscal stability, sustain Nauru's existing level of banking services and access to the international financial system and strengthen Nauru's fiscal and financial management systems.
6. The Agreement contributes to Australia's national security interests by deepening and expanding bilateral cooperation to support security, stability and resilience in the Pacific region. More broadly, the treaty is tangible demonstration of Australia's commitment, as a signatory to the *Biketawa Declaration* and the *Boe Declaration on Regional Security*, to finding collective solutions to our region's security challenges, and our value as economic and security partner of choice for Pacific island countries.

Reasons for Australia to take the proposed treaty action

7. This Agreement meets the needs of both countries: Nauru's economic security, and Nauru and Australia's shared interests in collective security, sovereignty and prosperity in the Pacific region. The core commitments set out in the proposed Agreement relate to economic and social resilience, including with respect to ensuring Nauru remains connected to the international financial system through Australia's support for a banking solution, and a security uplift through the establishment of regional policing arrangements.
8. The Agreement significantly expands upon the *Agreement between Australia and Nauru concerning additional police and other assistance to Nauru* signed in Melbourne on 10 May 2004,¹ and the Security Partnership Memorandum of Understanding signed in Apia on 8 September 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

Cooperation for Economic resilience, fiscal stability and prosperity

9. Article 2 of the Agreement provides that Australia and Nauru commit to work together in the face of Nauru's unique economic position, including advocacy in international forums relating to Nauru's ongoing eligibility for official development assistance.

Banking

10. Article 3(1) of the Agreement obliges Australia to support Nauru to sustain the existing level of banking services and access to the international financial system.
11. Article 3(2) provides that, for Australia to support sustainable banking services, Nauru is obliged to strengthen its enforcement of and compliance with its financial regulatory framework. Article 3(3) provides that both Australia and Nauru are obliged to advocate for Nauru's ongoing banking accessibility and connectivity, as appropriate.

Governance and transparency

12. Article 4 of the Agreement clarifies both Parties' understanding of the role of strong financial accountability and transparency in building resilience.
13. Article 4(2) obliges Nauru to ensure integrity, transparency and accountability in its fiscal and financial management system and processes to prevent fraud, corruption and misconduct. In support of this commitment, Article 4(3) obliges Australia to support Nauru to strengthen its fiscal and financial management system, including by sharing

¹ [2004] ATS 21.

knowledge, skills and experience.

Security and stability

14. Article 5 of the Agreement sets out the enhanced security obligations for Australia and Nauru.
15. Articles 5(1) and (2) outline the history of Nauru and Australia's close security ties, and recognise the importance of national and regional security, and sovereignty. Article 5(3) commits the Parties to deepening and expanding their security cooperation on the basis of mutual consultation and consent.
16. Article 5(4) contains an obligation on the Parties to prioritise consultation on Nauru's security and defence-related needs, and to facilitate any mutually agreed assistance. If there is a development which threatens the sovereignty, peace or stability of Australia or Nauru, Article 5(5) requires the Parties to consult and consider whether any measures should be taken, which may include mutually agreed support from Australia.
17. Under Article 5(6), Nauru is obliged to mutually agree with Australia any partnership, arrangement or engagement with any other State or entity on matters relating to Nauru's security including maritime security, defence, policing, border protection and cyber security sectors, and Nauru's critical infrastructure concerning banking and telecommunications.
18. Article 5(7) obliges Nauru to consult with Australia on any partnership, arrangement or engagement with any other State or entity relating to Nauru's other critical infrastructure such as ports, aviation, and energy. In support of this obligation, Article 5(8), sets out the process to consult with Australia on matters identified in Article 5(7).
19. Article 5(9) confirms both Parties understand that the critical infrastructure identified in Articles 5(6) and 5(7) shall not be used by a third Party for security purposes. This reflects the depth of Australia's security partnership with Nauru.

Consultation and dispute settlement

20. Article 6 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.
21. Article 7 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. Where one Party notifies the other of a dispute arising under the Agreement, the Joint Committee must be convened to begin dispute resolution. If a resolution has not been agreed within six months of the date of notification of a dispute,

either Party may suspend compliance with one or more obligations under the Agreement (Article 7(4)).

Implementation

22. The obligations set out within the Agreement are not envisioned to require any legislative amendments to allow for the delivery of commitments.
23. A full domestic implementation analysis is currently being conducted and this will further identify whether any 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

24. The costs associated with implementing the Agreement are expected to form part of the 2024/25 MYEFO Budget.
25. The Office of Impact Analysis has been consulted and has confirmed that a detailed Impact Analysis is not required.

Future treaty action

26. In accordance with Article 8(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

27. Article 9(2) of the Agreement provides that the Agreement would continue in force unless terminated in accordance with Article 9.
28. Article 9(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.
29. Article 9(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. The Parties may continue to seek to resolve a dispute after written notification of a Party's intention to terminate including using the dispute resolution mechanism under Article 7. Parties can agree to extend this time, or the terminating Party may reverse its termination notification if a solution to the dispute is mutually agreed ahead of the termination becoming effective.

Supplementary Instruments

30. Article 10 sets out the status of subsidiary agreements and implementing arrangements. Such implementing arrangements would come into effect concurrently on the entry into force of the Agreement.
31. For avoidance of doubt, Article 10(3) confirms that any implementing arrangements would be read together with the Agreement, and the terms of the Agreement would prevail in the event of a conflict or inconsistency between any terms of the implementing arrangements.

Contact details:

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ATTACHMENT ON CONSULTATION

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CONSULTATION

1. The Agreement was negotiated in-confidence following a proposal from the Government of Nauru for an enhanced, more integrated bilateral partnership with Australia. The Agreement was discussed with Pacific Islands Forum countries through diplomatic posts on the day of signature, 9 December 2024.

State and Territory Governments

2. The Agreement is not envisioned to have any impacts on State and Territory Governments.

Public Consultation

3. No public consultation was undertaken on the Agreement prior to its announcement as the Agreement relates to bilateral security cooperation and sensitive commercial matters and was still under negotiation-in-confidence with the Government of Nauru. 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.