

Agreement concerning police and assistance to Nauru

- 5.1 The purpose of the *Agreement between Australia and Nauru concerning additional police and other assistance to Nauru (Melbourne, 10 May 2004)* (the Agreement), pursuant to Article 2, is to enable Australia to deploy police and other personnel to Nauru to work in partnership with the Government of Nauru to address core issues in the areas of governance, law and order and justice and financial management. Moreover, the Agreement provides part of the necessary legal framework at international law for Australia to deliver such assistance to Nauru.¹

Background

- 5.2 Mr Damien White from the Department of Foreign Affairs and Trade stated that 'Nauru's governance problems are so serious that Nauru could have been said to be on the verge of state failure'.² The National Interest Analysis (NIA) states that Nauru 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 own resources

1 National Interest Analysis (NIA), para. 5.

2 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 7. See also NIA, para. 4.

could have resulted in its 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 transnational crime.³

- 5.3 In this context, and to be consistent with Australia's policy on the importance of sound economic management and good governance for Pacific Island Countries (PICs), Australia agreed to provide assistance to Nauru to address the key issues in the areas of governance, law and order and justice and financial management.⁴
- 5.4 The Committee understands that Australia and Nauru signed the third of a series of memoranda of understanding (MOU) on 25 February 2004, the 'Memorandum of Understanding For Cooperation in the Management of Asylum Seekers and Related Issues',⁵ that included an outline of humanitarian and development assistance to be provided to Nauru by Australia.⁶ This assistance includes the deployment of a number of Australian officials and police to assist the Government of Nauru address key economic, financial and policing reforms. Accordingly, the Agreement will enable the deployment of Australian officials and provide them with appropriate legal protections and powers to perform their duties by establishing the obligations, rights and duties of each Party.⁷

Features of the Agreement

- 5.5 Mr White told the Committee that the Agreement is similar in nature to the Solomon Islands Short-Term Multilateral Assistance Agreement that concerns the Regional Assistance Mission to the Solomon Islands (RAMSI), and is signed by all PICs.⁸ The Agreement is also similar to some extent to the *Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea*.⁹

3 NIA, para. 4.

4 NIA, para. 6 and Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 7.

5 Mr Peter Hunter advised the Committee at the public hearing that the MOU is presently in place until the end of June 2005, *Transcript of Evidence*, 9 August 2004, p. 10.

6 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 7.

7 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 7.

8 *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 (Townsville, 24 July 2003)*. See Joint Standing Committee on Treaties Report 55.

9 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 7.

- 5.6 The Agreement establishes a number of obligations, rights and duties on both Parties in respect to the deployed officials, including
- provisions concerning the deployment of Assisting Australian Police (Article 3)
 - provisions concerning uniforms, and the carriage of weapons, by Assisting Australian Police (Article 4)
 - provisions concerning the status and exchange of information concerning other personnel deployed (Article 5)
 - measures concerning family members and/or dependants of deployed personnel in Nauru (Article 6)
 - jurisdiction over deployed Australians (Article 7)
 - compliance with obligations under international law (Article 8)
 - management of claims involving deployed Australians (Article 9)
 - provisions for entry into and departure from Nauru of deployed Australians (Article 10).¹⁰
- 5.7 Mr White advised the Committee that one of the features of the Agreement is that the Australian officials will be deployed to in-line positions in the Nauru bureaucracy.¹¹ The NIA states that Australia intends to provide a Secretary of Finance and Director of Police to address Nauru's most serious and immediate challenges.¹² These two Australian officials will each be supported by two Australian advisers.
- 5.8 The Australian Secretary of Finance and two financial specialists will be deployed to work towards reversing Nauru's economic decline. The National Interest Analysis states that the finance team will
- 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.¹³
- 5.9 The Committee understands that the Agreement and implementing legislation within Nauru enables the Australian Secretary of Finance

10 NIA, paras 9-14.

11 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 10.

12 See NIA, paras 4, 7-8.

13 NIA, para. 7.

to 'exercise all of the powers that a Nauruan secretary of finance could exercise'.¹⁴

- 5.10 The NIA states that the Australian Director of Police and two advisers will ensure the professional standards of the Nauru Police Force (NPF) are strengthened.¹⁵ The Committee understands that the main focus of the policing team is training and reform. Mr Peter Hunter from DFAT stated that the police force is 'oversized and needs significant retraining and re-evaluation'.¹⁶ The NIA states that on the 'Commissioner's assessment, the NPF will be restructured to best meet Nauru's law and order needs'.¹⁷ The Australian policing team will also provide training and guidance to the NPF, and 'facilitate the provision of Australian support for legislative drafting, including updating Nauru's criminal code'.¹⁸
- 5.11 The NIA notes that in 'practice it is likely that an Australian will be appointed to be the Director of the Nauru Police'.¹⁹
- 5.12 The Committee understands that the current Nauru Government has placed a high priority on economic reform.²⁰ The Committee was therefore interested in the rationale behind the Agreement predominately focusing on policing assistance. Mr Hunter explained that the Agreement in part reflects the higher priority of the previous Nauru government. Specifically, it
- was concerned to have the police deployment occur more or less simultaneously with the deployment of its finance officials. The new government sees a higher priority being placed on the need for economic reforms and economic measures to get Nauru back on track and it is interested in discussing further with us the possibility of delaying the policing deployment slightly to give a slightly higher priority to the economic measures. That said, it is still pushing ahead with the policing deployment.²¹
- 5.13 Further, Mr Hunter stated that in the drafting of the Agreement it was necessary to 'reassure them' that the 'Australian police deployment

14 Mr Damien White, *Transcript of Evidence*, 9 August 2004, pp. 7-8.

15 NIA, para. 8.

16 Mr Peter Hunter, *Transcript of Evidence*, 9 August 2004, p. 9.

17 NIA, para. 8.

18 NIA, para. 8.

19 NIA, para. 9.

20 Mr Peter Hunter, *Transcript of Evidence*, 9 August 2004, p. 9.

21 Mr Peter Hunter, *Transcript of Evidence*, 9 August 2004, p. 9.

would be conducted in a manner that would protect Australians and Nauruans, so there was an emphasis there'.²²

Jurisdiction and protections

5.14 As reported previously, the Agreement will provide the deployed Australians with appropriate legal protections and appropriate powers. Mr White stated that

It is important to note that these immunities for Australian officials are designed to prevent those officials from being exposed to vexatious litigation in Nauru which could prevent them from carrying out their duties. Australians working in Nauru, in both the policing and finance sectors, could potentially be engaged in sensitive work. In order for them to work free from interference, it was desirable to agree to these immunity provisions, Australia can waive these immunities if it considers it appropriate in a particular case.²³

5.15 In addition, Mr White advised the Committee that from the deployment of Australians to PICs under similar treaties

the protections that have been offered to Australians have been assessed as adequate by the agencies deploying people. You could probably say that this treaty represents the high-water mark in terms of protections.²⁴

5.16 Under Article 7 of the Agreement, the deployed Australians are obliged to observe and respect the laws of Nauru but are not subject to the civil jurisdiction of courts of Nauru.²⁵ With respect to criminal or disciplinary matters, the Australians are subject to the exclusive jurisdiction of Australia.²⁶ In accordance with the *Crimes (Overseas) Act 1964*, Australia is able, amongst other things, to enforce criminal jurisdiction over the deployed Australian officials.²⁷ Mr White explained that this 'represent the maximum immunities you could expect in a treaty of this type'.²⁸

22 Mr Peter Hunter, *Transcript of Evidence*, 9 August 2004, p. 9.

23 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 8.

24 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 10.

25 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 10.

26 NIA, para. 16 and Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 10.

27 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 8.

28 Mr Damien White, *Transcript of Evidence*, 9 August 2004, p. 10.

Implementation and costs

- 5.17 The NIA states that no legislation was required to implement Australia's obligations under the Agreement.²⁹
- 5.18 The Committee recognises that there will be costs incurred in association with the deployment of Australian officials. Article 11 of the Agreement establishes that the Australian Government is responsible for the salary, allowances, removal expenses, costs of transport to Nauru, and medical and dental expenses of Australian officials deployed to Nauru.³⁰ Also, under Article 12 Australia is responsible for the accommodation and transport costs of Australian officials within Nauru.³¹

Consultation

- 5.19 The NIA states that the Government of Nauru was consulted in the development of the Agreement.³² In addition, relevant Commonwealth agencies, including the Department of Immigration and Multicultural and Indigenous Affairs, the Treasury, Department of Finance and Administration, Australian Federal Police and the Attorney-General's Department were consulted in the preparation of the treaty text.³³
- 5.20 The Committee understands that the departments of the State and Territory Premiers and Chief Ministers have been notified by DFAT according to the Commonwealth-State-Territory Standing Committee on Treaties process.³⁴

Entry into force

- 5.21 The Agreement was signed on 10 May 2004 and entered into force on 29 July 2004 following the exchange of diplomatic notes between the two Parties in accordance with Article 19.³⁵ At the time of the

29 NIA, para. 16.

30 NIA, paras 15 and 18.

31 NIA, paras 15 and 18.

32 NIA Annexure 1, p. 1.

33 NIA, para. 19.

34 NIA Annexure 1, p. 1.

35 NIA, para. 2 and Mr Damian White, *Transcript of Evidence*, 9 August 2004, p. 8.

Committee's public hearing on 9 August 2004 the Australian finance team had been deployed to Nauru and commenced its work.³⁶

Mr Mark Sewell from the Treasury advised the Committee that at that stage it was thought the finance team would be working through to the middle of 2005.³⁷ The Committee understands that two members of the Australian policing team were deployed to Nauru on 22 November 2005 and that a third member will be deployed in early 2005.

- 5.22 At the Public Hearing Mr Hunter informed the Committee that the Australian Government was in the process of discussing the appointment of an Australian as Director of the NPF.³⁸
- 5.23 Under Article 19, the Agreement shall expire at the mutual agreement of the Parties expressed in writing.

National Interest Exception provision

- 5.24 Generally, after treaties have been signed for Australia they are tabled in both Houses of Parliament for at least 15 sittings days prior to binding treaty action being taken. During this period the Committee normally reviews the proposed treaty action and presents its conclusions and recommendations to the Parliament.
- 5.25 Where it is in Australia's national interest to proceed with an urgent treaty action, however, the 15 or 20 sitting day tabling requirement may be varied or waived. The National Interest Exception provision was invoked in relation to the Agreement concerning the additional police and other assistance to Nauru.
- 5.26 On 27 April 2004, the Minister for Foreign Affairs and Trade, the Hon Alexander Downer MP, wrote to the Committee advising of the urgent need for the Agreement to be in force to enable the Australian police and officials to deploy on 3 May 2004. The Agreement was subsequently tabled in Parliament on 22 June 2004.

36 Mr Damian White, *Transcript of Evidence*, 9 August 2004, p. 8 and Mr Peter Hunter, *Transcript of Evidence*, 9 August 2004, p. 11.

37 Mr Peter Sewell, *Transcript of Evidence*, 9 August 2004, p. 12.

38 Mr Peter Hunter, *Transcript of Evidence*, 9 August 2004, p. 9.

Conclusion

- 5.27 The Committee supports the Agreement enabling the deployment of Australian Police and other officials to deliver assistance to Nauru to address core issues in the areas of governance, law and order and justice and financial management. The Committee also acknowledges the urgent need for the Agreement to be in force prior to the treaty action being tabled in Parliament and parliamentary consideration of the Agreement.
- 5.28 Given that there have been a number of treaties relating to the stability of PICs which have entered into force before being tabled in Parliament, the Committee believes that it is timely to review the national interest exemption. A possibility may be for the Committee to receive an urgent briefing in the case of these national interest exemptions.
- 5.29 While it is not within the Committee's area of review, the Committee does believe that a Parliamentary review of governance in PICs is warranted, with a view to identifying where urgent action may be required.