

**AGREEMENT ESTABLISHING THE PACIFIC ISLANDS FORUM,  
DONE AT PORT MORESBY ON 27 OCTOBER 2005**

**[2005] ATNIF 28**

**Documents tabled on 28 March 2006:**

**National Interest Analysis [2006] ATNIA 13**

**With attachment on consultation**

**Text of the proposed treaty action**

**Background information:**

**Current status list**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Agreement Establishing the Pacific Islands Forum, done at Port Moresby on 27 October 2005 [2005] ATNIF 28**

#### **Nature and timing of the proposed treaty action**

1. It is proposed that Australia ratify the Agreement Establishing the Pacific Islands Forum (the PIF Agreement), done at Port Moresby on 27 October 2005 ([2005] ATNIF 28). The PIF Agreement was signed for Australia by the Prime Minister on 27 October 2005.
2. In accordance with Article XI, the PIF Agreement will enter into force on the day on which the last Member of the Pacific Islands Forum (the Forum) lodges its instrument of ratification with the depositary (the Government of the Republic of the Fiji Islands).
3. The Forum expects the PIF Agreement to enter into force generally (and for Australia) at the time of the next Forum meeting in the second half of this year.
4. It is proposed that Australia ratify the PIF Agreement prior to that next Forum meeting. As we have actively participated in the negotiations and our concerns have been addressed, our early ratification would be seen as a positive signal to other PIF members.
5. Upon entry into force (Article XIII), the PIF Agreement will terminate and replace the Agreement Establishing the Pacific Islands Forum Secretariat, done at Tarawa on 30 October 2000 (the 2000 Agreement) ([2006] ATS 5).

#### **Overview and national interest summary**

6. In 2004 Pacific Islands Forum leaders agreed to revise the 2000 Agreement to reflect the Forum's changed priorities and the current roles of the Secretariat and the Secretary-General.
7. While the 2000 Agreement established the Forum Secretariat, the PIF Agreement will establish the Forum as an International Organisation. The PIF Agreement also includes provision for associate membership of the Forum. These changes would encourage closer contact with non-sovereign Pacific territories whose constitutional arrangements (for example with France or the United States of America) would not permit full membership. The PIF Agreement also allows leaders to invite other territories, and intergovernmental organisations (eg the Commonwealth Secretariat) whose membership includes a significant number of Forum members, to be Forum Observers.
8. Ratification of the PIF Agreement is important as it will allow Australia to engage non-sovereign Pacific territories more deeply in the policy issues which arise in the Forum. These include issues such as regional security, trade and economic matters in which Australia has a strong national interest.
9. Moreover, if Australia did not ratify the PIF Agreement, the Agreement could not enter into force. This would contradict directly the decision of Forum Leaders (including the Australian Prime Minister) in 2004 to revise the 2000 Agreement.

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

10. The PIF Agreement was negotiated in the Pacific Islands Forum which includes 16 countries, 14 of which are developing or least-developed countries (the “Forum Island Countries”) and two developed countries (Australia and New Zealand).

11. The PIF Agreement will replace the 2000 Agreement (Article XIII). The Forum Leaders agreed in 2004 to revise the 2000 treaty to reflect the Forum’s changed priorities and the current roles of the Secretariat and the Secretary-General. While the 2000 Agreement established the Forum Secretariat, the PIF Agreement will establish the Forum as an International Organisation.

12. The PIF Agreement also includes provisions for associate membership to the Forum that will encourage closer contact with non-sovereign Pacific territories whose constitutional arrangements (for example with France or the United States of America) would not permit full membership (Article I(3)). The rights and obligations of associate members will be determined by Forum Leaders from time to time. It is currently intended that associate members would be able to attend and speak at the plenary session of the Forum, but would not have voting rights or attend the Forum Leaders’ retreat. The PIF Agreement will also allow Forum Leaders to invite other territories, and intergovernmental organisations (but not non-governmental organisations) whose membership included a significant number of Forum members, to be Forum Observers (Article I(4)). The entitlements of such observers will be determined by Forum Leaders from time to time.

13. Ratification of the PIF Agreement is important as it will allow Australia to engage more deeply with the non-sovereign Pacific territories regarding the policy issues which arise in the Forum. These include issues such as regional security, trade and economic matters in which Australia has a strong national interest.

14. Moreover, if Australia did not ratify the PIF Agreement, the Agreement could not enter into force. This would defy the Forum Leaders’ direction to replace the 2000 Agreement with one which better reflects the Forum’s changed priorities and the current roles of the Secretariat and the Secretary-General.

## **Obligations**

15. The PIF Agreement would oblige Australia to contribute to the strengthening of regional cooperation and integration, including through the pooling of regional resources of governance and the alignment of policies, in order to further Forum members’ shared goals of economic growth, sustainable development, good governance, and security (Article II).

16. The PIF Agreement establishes the Forum as an international organisation enjoying the legal capacity of a body corporate within the jurisdictions of its members (Articles I and X). The PIF Agreement would oblige Australia to afford to the Forum such privileges and immunities as Australia and the Forum Secretariat agree are necessary to enable the Forum to fulfil its purpose and carry out its functions (Article X). Australia would be obliged to take all necessary measures to confer such privileges and immunities upon the Forum in accordance with Australian domestic legislation.

17. The PIF Agreement creates a Secretariat and a Pacific Islands Forum Officials’ Committee that would give general policy directions to the Secretariat and to make recommendations to the Forum Leaders. Australia would be represented on this Committee (Article V).

18. Australia would be obliged to contribute to the costs of operating the Forum in the shares determined by the Committee by consensus from time to time (Article IX).

### **Implementation**

19. Obligations flowing from the PIF Agreement would not require new legislation.

20. To give effect to the PIF Agreement, the *South Pacific Forum Secretariat (Privileges and Immunities) Regulations 1992* would need to be amended. However, the necessary amendments to the Regulations would be limited to change of nomenclature only.

21. In the event that Australia enters into a bilateral agreement on privileges and immunities for the Forum Secretariat, then further changes to the Regulations may also be required to give effect to those privileges and immunities, in large part to cover the Pacific Islands Trade and Investment Commission (the PITIC) office in Sydney.

### **Costs**

22. The ratification of the PIF Agreement would not result in additional expenditure for the Commonwealth.

23. However, following the entry into force of the PIF Agreement, Australia may need to negotiate with the Forum Secretariat a separate bilateral agreement on privileges and immunities, in large part to cover the PITIC office in Sydney.

### **Regulation Impact Statement**

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

### **Future treaty action**

25. The PIF Agreement may be amended by unanimous approval of the Forum Leaders. Such amendments would enter into force three months after the date of such approval, or on the day on which the instrument of ratification of the last of those members requiring ratification has been received by the depositary whichever is the later (Article XII).

26. Any future treaty action would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

27. There is no provision permitting reservations.

### **Withdrawal or denunciation**

28. Any Party may denounce the Agreement by giving notice of its intention to do so to the depositary. Any withdrawal would be effective one year from the date upon which the Secretary General has received the notification (Article XI).

29. Withdrawal or denunciation by Australia would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

### **Contact details**

Pacific Regional Section  
South Pacific, Africa and Middle East Division  
Department of Foreign Affairs and Trade

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**CONSULTATION**

The following consultations have taken place:

- . The Commonwealth-State Standing Committee on Treaties (SCOT) has been informed throughout the treaty negotiations. States and Territories have not expressed any objections to the proposed treaty action.
- . No further consultations were necessary.

## BACKGROUND INFORMATION

Current status list of parties to the treaty

### AGREEMENT ESTABLISHING THE PACIFIC ISLANDS FORUM

**Done at Port Moresby** : 27 October 2005  
**Entered into Force** : NOT YET IN FORCE  
**Status** : 10 February 2006  
**Depositary** : The Government of Fiji

<b>Party</b>	<b>Signed</b>	<b>Ratified</b>	<b>In Force</b>
<b>Australia</b>	<b>27 October 2005</b>		
<b>Cook Islands</b>	<b>27 October 2005</b>		
<b>Federated States of Micronesia</b>	<b>27 October 2005</b>		
<b>Fiji</b>	<b>27 October 2005</b>		
<b>Kiribati</b>	<b>27 October 2005</b>		
<b>Nauru</b>	<b>27 October 2005</b>		
<b>New Zealand</b>			
<b>Niue</b>	<b>27 October 2005</b>		
<b>Palau</b>	<b>27 October 2005</b>		
<b>Papua New Guinea</b>	<b>27 October 2005</b>		
<b>Republic of Marshall Islands</b>	<b>27 October 2005</b>		
<b>Samoa</b>	<b>27 October 2005</b>		
<b>Solomon Islands</b>	<b>27 October 2005</b>		
<b>Tonga</b>			
<b>Tuvalu</b>			
<b>Vanuatu</b>	<b>27 October 2005</b>		