

EXPLANATORY MEMORANDUM – FALEPILI UNION BETWEEN TUVALU AND AUSTRALIA

Purpose

This document confirms joint understandings between the Governments of Tuvalu and Australia on implementation and interpretation of the Falepili Union. Both Governments commit to implement the Falepili Union in line with this document, including where relevant in interpretation of the Treaty.

Introduction

The Falepili Union was initiated by a proposal from the then Prime Minister of Tuvalu to the Prime Minister of Australia in August 2023. It comprises the treaty and commitments articulated in a joint leaders' statement issued on 9 November 2023. These provide the foundation for an enhanced bilateral relationship that is durable, balanced and respectful of individual and collective sovereignty.

Use of the Tuvalu term 'falepili' embodies the values underpinning the deeper partnership, including good neighbourliness, care and mutual respect. Australia and Tuvalu entered into the Falepili Union freely and cognisant of the significance of their shared achievement.

Sovereignty

Australia and Tuvalu share the understanding that the Falepili Union safeguards the future and sovereignty of the two countries, including by:

- uplifting development cooperation to support Tuvalu's priorities and the long-term prosperity of its people, including extension of the Tuvalu Coastal Adaptation Project (joint statement);
- reaffirming sovereignty, territorial integrity and political independence (preamble);
- protecting and promoting each party's and the parties' collective security and sovereignty as one of the main purposes of the agreement (Article 1(c));
- supporting Tuvalu to respond to the devastating impacts of climate change, as the single greatest threat to the livelihoods, security and wellbeing of its people, including through adaptation (Article 2) and recognising for the first time in a legally binding treaty Tuvalu's continuing statehood in the face of climate change (Article 2 (2)(b));
- creating a pathway for mobility with dignity (Article 3) for Tuvaluans that choose to move to Australia to live temporarily or indefinitely, study, access health services or work, with an uplift of Tuvalu's border security, immigration and identity verification arrangements (Article 3 (2)) supported by Australia (Article 3 (3));
- providing a security guarantee for Australia to respond to a request from Tuvalu with assistance in the face of military aggression, humanitarian disaster or global pandemic (Article 4) and mutually agreeing third party cooperation in Tuvalu's security and defence matters, without limiting Tuvalu's liberty to enter into diplomatic relations with other States (Article 4(4)); and
- creating a consultative process for settlement of disputes with provision to suspend (Article 6), amend (Article 7) or terminate the treaty (Article 8).

Mobility with Dignity

Australia and Tuvalu will co-design a special mobility pathway for citizens of Tuvalu. The pathway is expected to become active around nine months after entry into force of the treaty. It would enable citizens of Tuvalu to live, study and work in Australia. Access to Australian supports on arrival would include those provided under the Pacific Engagement Visa (PEV):

- study at schools, university and vocational facilities at the same subsidisation as Australian citizens
- enrol in Medicare
- enrol in the National Disability Insurance Scheme
- Family Tax Benefit A, B and child care subsidy
- travel freely within Australia and unlimited entry to Australia
- Austudy and Youth Allowance (study)
- Higher Education Loan Program
- vocational student loan programs

Like PEV holders, Falepili visa holders would be eligible to apply for Australian citizenship on the same basis as other Permanent Residents. Australian citizenship will not affect Tuvaluan citizenship. Genuine Tuvaluan citizens could apply for the special pathway from anywhere in the world and would be free to secure work of their choice. Applicants would self-fund their own travel and would have freedom to choose where they live in Australia.

The pathway would provide additional benefits to the arrangements in place for PEV. Visas would provide for indefinite permanent residency, with freedom for unlimited travel to and from Australia. The initial annual allocation of up to 280 visas could be mutually adjusted each program year. Visas would be allocated through a random ballot, managed by Australia, with a small ballot fee. Applicants would need to be at least 18 years old, but spouses and dependent children could be included. Australia would provide support for applicants to find work and to the growing Tuvaluan diaspora in Australia to maintain connection to culture and improve settlement outcomes. Applicants and visa holders would need to meet standard character requirements. The pathway would be open to Tuvaluans with disabilities, special needs and chronic health conditions. Communicable disease restrictions (such as tuberculosis) would apply.

Under Article 3(2) Tuvalu shall ensure that its immigration, passport, citizenship and border controls are robust and meet international standards for integrity and security and compatible with Australia's controls. Australia shall provide assistance to Tuvalu to enable it to meet these obligations. The pathway cannot open until appropriate integrity and security standards are met. The parties will consult closely to prioritise uplift activities to enable the pathway to open as soon as practicable. Criteria will be designed to ensure only genuine citizens of Tuvalu would be eligible.

Cooperation for Security and Stability

Under Article 4(1), Australia shall provide assistance at Tuvalu's request in response to a major natural disaster, a public health emergency of international concern or military aggression against Tuvalu. The Parties shall agree an instrument to establish the conditions for Australian personnel operating in Tuvalu's territory (Article 4(2)). It will be developed following entry into force of the treaty, under the auspices of the Joint Committee (Article 5).

Under Article 4(4), Tuvalu shall mutually agree with Australia any partnership, arrangement or engagement with any other State or entity on security and defence related matters. This provides Australia with insight into Tuvalu's defence and security related engagement with third parties, including, but not limited to, defence, policing, border protection, cyber security and critical infrastructure, including ports, telecommunications and energy infrastructure. Australian involvement reflects the depth of the security guarantee and will be implemented in the spirit of respect and amicable consultation.

Tuvalu does not need permission from Australia before it starts to talk with other partners. Unlike some integrated partnership models, Australia does not have unqualified rights of access to Tuvalu's territory or airspace, nor the right to establish military areas in Tuvalu. Article 4(4) does not diminish Tuvalu's standing in global fora. It will not preclude other partners supporting Tuvalu's economic and development interests such as education, health, waste, climate adaptation, gender, disability, trade or granting fishing licences. Australia will continue to advocate for increased support from likeminded partners, as it has done for a primary telecommunications cable and extension of the Tuvalu Coastal Adaptation Project.

In practice, there is a narrow set of circumstances for third-party cooperation which could be of concern. In the context of regional security dynamics, the primary considerations would be risks posed to Tuvalu's and Australia's sovereignty and security and our ability to meet our obligations under the treaty (particularly the security guarantee in Article 4(1)). In the vast majority of cases, friendly consultation is likely to resolve issues. In line with decisions by leaders, cooperation with Pacific Islands Forum members would not be of concern. If Tuvalu is uncertain whether Article 4(4) applies, it will seek Australia's views through the Australian High Commissioner who will advise promptly if Australia considers the article applies. In cases where Australia is concerned about the proposed cooperation, the parties would seek to mitigate risks through a frank and honest dialogue through the Joint Committee (Article 5). Ultimately, if either party is concerned expectations are unreasonable, they can suspend obligations (Article 6 (3)) and even terminate the treaty (Article 8) by mutual agreement or unilaterally.

Consultation

Ahead of entry into force, Australia and Tuvalu will undertake Parliamentary scrutiny and public consultation. For Australia, this involves consideration by the Joint Standing Committee on Treaties. Tuvalu's process will include consultation with its people and submission to its Parliament. Australia and Tuvalu have committed to transparency. While Explanatory Memorandums are not legally binding, this document will inform respective consultations ahead of entry into force of the Australia-Tuvalu Falepili Union Treaty.

SIGNED at Funafuti, this eighth day of May 2024.

FOR THE GOVERNMENT OF
TUVALU

FOR THE GOVERNMENT OF
AUSTRALIA

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