

**MINISTER FOR FOREIGN AFFAIRS**

Departmental No. 380 of 2023

Executive Council

Meeting No.

Minute Paper for the Executive Council**Subject***The Constitution*Signature of the *Australia-Tuvalu Falepili Union*

Recommended for the approval of His Excellency the Governor-General in Council that:

- (a) an appropriate person nominated by the Minister for Foreign Affairs be authorised to sign, for and on behalf of the Government of Australia, the agreement between the Government of Australia and the Government of Tuvalu, the *Australia-Tuvalu Falepili Union*; and
- (b) the Minister for Foreign Affairs be authorised to draw up and complete the appropriate instrument of full powers for this purpose.

Approved in Council

s 22(1)(a)(ii)

David Hurley
Governor-General.....
Filed in the Records
of the Council

s 22(1)(a)(ii)

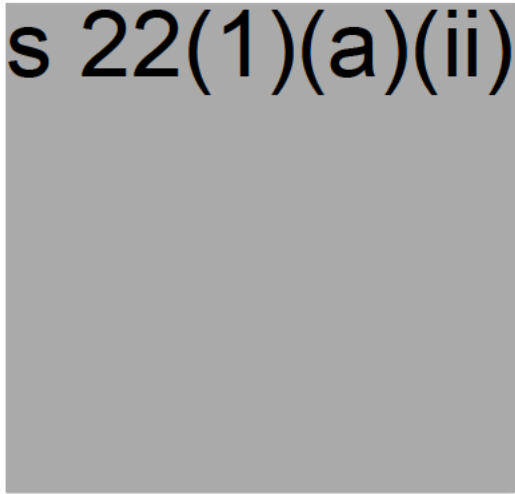
Secretary to the Executive Council

s 22(1)(a)(ii)

Penny Wong
Minister for Foreign Affairs

Australia-Tuvalu Falepili Union

s 22(1)(a)(ii)



Australia-Tuvalu Falepili Union

The Government of Tuvalu ("Tuvalu") and the Government of Australia ("Australia") (together, "the Parties")

RESOLUTE in reaffirming the Parties' sovereignty, territorial integrity, and political independence;

UNDERPINNED by the concept of *Falepili* which connotes the traditional values of good neighbourliness, duty of care and mutual respect;

RECOGNISING that as Pacific countries the Parties' interests are intertwined and decisions taken by one Party affect the interests of the other;

REAFFIRMING a shared commitment to Pacific values as envisioned in the *2050 Strategy for the Blue Pacific Continent*, the guiding principles outlined in the *Framework for Resilient Development in the Pacific*, and the *Boe Declaration on Regional Security*, which affirms an expanded concept of security;

RECOGNISING the traditional, warm and close ties between Australia and Tuvalu on development, economic and security matters;

COMMITTED to enhancing their partnership to promote and protect the Parties' shared interest in each other's prosperity, stability and security, including by responding to current and emerging security challenges, such as climate change;

COMMITTED to work together to address Tuvalu's development needs, including through enhanced development assistance and by exploring opportunities to build capability, collaborate on delivery of government services and support key infrastructure priorities;

RECOGNISING the special and unique circumstances faced by Tuvalu and that climate change is Tuvalu's greatest national security concern;

COMMITTED to working together in support of the international rules-based order;

REAFFIRMING their respective obligations under international and domestic law;

HAVE AGREED as follows:

Article 1: Purpose

The main purpose of this agreement is to:

- (a) establish a Falepili Union based on values of good neighbourliness, care and mutual respect and elevate the Parties' relationship to one which is advanced, integrated and comprehensive;
- (b) provide the citizens of Tuvalu with a special human mobility pathway to access Australia underpinned by a shared understanding and commitment to ensuring human mobility with dignity; and
- (c) protect and promote each Party's and the Parties' collective security and sovereignty.

Article 2: Climate cooperation

- (1) The Parties, in the spirit of friendship, mutual respect and support for enduring shared interests, including each other's stability, security, prosperity and resilience, commit to work together in the face of the existential threat posed by climate change.
- (2) The Parties recognise:
 - (a) the desire of Tuvalu's people to continue to live in their territory where possible and Tuvalu's deep, ancestral connections to land and sea;
 - (b) the statehood and sovereignty of Tuvalu will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise;
 - (c) that more recent technological developments provide additional adaptation opportunities.
- (3) The Parties commit to work together to help the citizens of Tuvalu to stay in their homes with safety and dignity, including by promoting Tuvalu's adaptation interests to other countries, including through regional and international forums.

Article 3: Human mobility with dignity

- (1) Australia shall arrange for a special human mobility pathway for citizens of Tuvalu to access Australia which shall enable citizens of Tuvalu to:
 - (a) live, study and work in Australia;
 - (b) access Australian education, health, and key income and family support on arrival.
- (2) To support the implementation of the pathway, Tuvalu shall ensure that its immigration, passport, citizenship and border controls are robust and meet international standards for integrity and security and are compatible with and accessible to Australia.
- (3) Australia shall provide assistance to Tuvalu to enable it to meet its obligations under paragraph 2 of this article.

Article 4: Cooperation for security and stability

- (1) Australia shall, in accordance with its international law obligations, international commitments, domestic processes and capacity, and following a request from Tuvalu, provide assistance to Tuvalu in response to:
 - (a) a major natural disaster;
 - (b) a public health emergency of international concern;
 - (c) military aggression against Tuvalu.
- (2) The Parties shall enter into an instrument to set out the conditions and timeframes applicable to Australian personnel operating in Tuvalu's territory.
- (3) In addition to the Parties' rights and freedoms under international law, provided that advance notice is given by Australia, Tuvalu shall provide Australia rights to access, presence within, and overflight of Tuvalu's territory, if the activities are necessary for the provision of assistance requested by Tuvalu under this agreement.
- (4) Tuvalu shall mutually agree with Australia any partnership, arrangement or engagement with any other State or entity on security and defence-related matters. Such matters include but are not limited to defence, policing, border protection, cyber security and critical infrastructure, including ports, telecommunications and energy infrastructure.

Article 5: Consultation and responses

- (1) Tuvalu and Australia shall establish a Joint Committee that shall meet at least every twelve months to discuss matters arising under this agreement.
- (2) In the event that either Tuvalu or Australia determines it necessary to discuss an obligation contained in this agreement or its implementation, the Joint Committee shall be convened within two weeks following notification by either Party, to determine individual or joint responses.

Article 6: Settlement of disputes

- (1) Any dispute arising under this agreement with respect to its interpretation, application or implementation shall be settled by consultation or negotiation between the Parties, and shall not be referred to any national or international tribunal or court or any other third party for resolution.
- (2) The Parties agree the Joint Committee will resolve disputes relating to the interpretation, application or implementation of this agreement, should such a dispute arise.
- (3) Either Party, following provision of written notice, can suspend compliance with their obligations under the agreement pending resolution of a dispute.

Article 7: Amendment

- (1) This agreement may be amended in writing by mutual consent of both Parties.
- (2) Any amendment to this agreement shall come into force on the date of the later notification by either Party of the completion of their respective requirements for entry into force of the relevant amendment.

Article 8: Entry into force, duration and termination

- (1) This agreement shall 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 the entry into force of this agreement have been completed.
- (2) This agreement shall continue in force unless terminated in accordance with this article.
- (3) The Parties may agree in writing to terminate this agreement at any time. Such termination shall become effective on the date agreed by the Parties.
- (4) Either Party may terminate this agreement upon written notice to the other Party. Such termination shall become effective twelve months following the date on which the other Party receives the written notice of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this agreement.

DONE at _____, this _____ day of _____,
in duplicate.

FOR THE GOVERNMENT
OF AUSTRALIA

FOR THE GOVERNMENT
OF TUVALU

EXPLANATORY MEMORANDUM

Minute No. 380 of 2023 - Minister for Foreign Affairs

Subject - The *Constitution*

Signature of the *Australia–Tuvalu Falepili Union*

The minute recommends approval of signature of the *Australia–Tuvalu Falepili Union*.

Australia's treaty-making power is exercisable by the Governor-General by virtue of Chapter II of the *Constitution* which provides, among other things, that the executive power of the Commonwealth is vested in the King and His heirs and successors and is exercisable by the Governor-General.

The *Australia–Tuvalu Falepili Union* (proposed treaty) responds to a request from the Government of Tuvalu to elevate the bilateral relationship between Australia and Tuvalu to safeguard the future of Tuvalu. It would oblige Australia to arrange a special pathway for citizens of Tuvalu to live, study and work in Australia, and to assist Tuvalu in response to a major natural disaster, public health emergency or military aggression.

Provided that advance notice is given by Australia, Tuvalu would provide Australia with a right to access its territory to give effect to the security purposes of the proposed treaty. Tuvalu would mutually agree with Australia any security-related engagement with third parties, including, but not limited to, defence, policing, border protection, cyber security and critical infrastructure, which includes Tuvalu's ports, telecommunications and energy infrastructure.

Under the proposed treaty, once the special pathway is established, the citizens of Tuvalu would be able to live, study and work in Australia and have access to Australia's education and health systems and key income and family support on arrival. Tuvalu would be required to ensure that its immigration, passport, citizenship and border controls met international standards for integrity and security, and were compatible with and accessible to Australia.

It is anticipated that a number of amendments to Commonwealth legislation, including the *Migration Regulations 1994*, would be necessary to give effect to the obligations set out in the proposed treaty. Legislative amendments at the State and Territory level may also be required depending on the visa mechanism. The obligations in the proposed treaty would have financial implications for Australia in future budget cycles.

The Prime Minister and the Attorney-General have approved signature of the proposed treaty.

The Minute recommends that approval be given in the form proposed.

Authority: Chapter II of the *Constitution*

s 22(1)(a)(ii)