



REPUBLIC OF NAURU

Facilitation of Australian Assistance Act 2004

Act No. 8 of 2004

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REPUBLIC OF NAURU

**Facilitation of Australian Assistance
Act 2004**

Act No. 8 of 2004

An Act to facilitate the provision of police and other assistance by Australia to Nauru

Certified on 16 July 2004

Enacted by the Parliament of Nauru as follows:

PART I – PRELIMINARY

1 Short title

This Act may be cited as the *Facilitation of Australian Assistance Act 2004*.

2 Commencement and termination of Act

- (1) This Act shall come into operation upon certification by the Speaker.
- (2) This Act shall cease to have effect on the day on which the Agreement expires.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

‘Agreement’ means the Agreement between Nauru and Australia concerning additional police and other assistance to Nauru, done at Melbourne on 10 May 2004, the text of which is set out in the Schedule.

- (2) A term used in this Act and in the Agreement has the same meaning in this Act as it has in the Agreement.

4 Application of this Act

- (1) This Act binds the Republic.
- (2) Except as expressly provided in this Act or the Agreement, all Designated Persons are subject to the laws of Nauru.

5 Agreement to have force of law

Subject to this Act:

- (a) the provisions of the Agreement have the force of law; and
- (b) to the extent that any powers, privileges or immunities that the Agreement purports to grant are inconsistent with an Act of the Parliament, that Act is deemed to have been amended to the extent necessary to permit the granting of the power, privilege or immunity, and the power, privilege or immunity is deemed to have been granted.

PART II – POLICE ASSISTANCE

6 Director of Police

- (1) For the purposes of subsection 6(1) of the *Nauru Police Force Act 1972* and subject to subsections (2) and (3), the Chief Secretary may make an instrument of appointment that states that the person notified to the Chief Secretary by the Australian government as being the head of the Assisting Australian Police:
- (a) is appointed to be the Director of Police; or
- (b) is appointed to act in the office of Director of Police.
- (2) An instrument of appointment may be made in accordance with paragraph (1)(a) or (b) if there is a vacancy in the office of Director of Police.
- (3) An instrument of appointment may be made in accordance with paragraph (1)(b) if the person holding that office is absent from duty or from Nauru or is, for any other reason, unable to perform the functions of that office.

- (4) If the Australian Government notifies the Chief Secretary that the person appointed to the office of Director of Police under paragraph (1)(a) or (b) has ceased to be head of the Assisting Australian Police, the appointment of Director of Police is terminated on the receipt of the notice.
- (5) Despite anything in any other law, an instrument of appointment made in accordance with paragraph (1)(a) or (b) shall state the period during which the appointment is to be in force, being a period agreed between the Government of Australia and the Government of Nauru.
- (6) If:
- (a) an instrument of appointment is made in accordance with paragraph (1)(a) or (b); and
 - (b) after the appointment takes effect, the Australian Government notifies the Government of Nauru that, on and after a specified date, no person is to perform the functions of the head of the Assisting Australian Police;
- the appointment is terminated on that date.
- (7) If an instrument of appointment is made in accordance with paragraph (1)(a) or (b), the person who is deemed to hold, or act in, the office of Director of Police under the appointment:
- (a) is not required to comply with section 14 of the *Nauru Police Force Act 1972*; and
 - (b) in addition to any reporting requirements under any other law, shall consult with the Minister for Justice in respect of policing matters; and
 - (c) despite any other law, is not subject to any direction or disciplinary control, except as provided by the Constitution.

7 Assisting Australian Police Personnel

For the avoidance of doubt, Assisting Australian Police Personnel who are Members are not required to comply with section 14 of the *Nauru Police Force Act 1972*.

PART III – OTHER ASSISTANCE

8 Other personnel

A Designated Person who:

- (a) in accordance with Article 5.1 of the Agreement, is deployed to work in a government department of Nauru:
 - (i) shall be appointed to the Public Service by the Chief Secretary and, where necessary, in accordance with Article 68 of the Constitution;
 - (ii) shall be exempted from specified provisions of the *Public Service Act 1998* as ordered by the Chief Secretary under Section 4 of the *Public Service Act 1998*, and
 - (iii) shall have all the powers and duties of a public officer employed or engaged under the *Public Service Act 1998*;
- (b) in accordance with Article 5.1 of the Agreement, and subject to Cabinet approval, is deployed to work in an agency of Nauru:
 - (i) shall, despite any other law, and subject to the provisions of the Agreement and this Act, have all the powers and duties of an officer or employee, employed or engaged, as may be vested in them in respect of a particular position occupied under any other Act.

SCHEDULE

section 5

AGREEMENT BETWEEN NAURU AND AUSTRALIA CONCERNING ADDITIONAL POLICE AND OTHER ASSISTANCE TO NAURU

RECOGNISING the history of cooperation between Nauru and Australia; and

RECALLING the Memorandum of Understanding Between Australia and Nauru For Cooperation in the Management of Asylum Seekers and Related Issues;

HAVE AGREED as follows:

Article 1 – Definitions

- (a) ***‘Designated Person’*** means any person notified by the Government of Australia to the Government of Nauru pursuant to either Article 3.9 or Article 5.3. Australia shall confirm any notification with the Government of Nauru in writing.
- (b) ***‘Assisting Australian Police’*** means the group of Assisting Australian Police Personnel deployed to Nauru pursuant to this Agreement.
- (c) ***‘Assisting Australian Police Personnel’*** means any member or individual representative of the Australian Federal Police or the police force of any other Australian jurisdiction who is deployed to Nauru pursuant to this Agreement and is notified to the Government of Nauru pursuant to Article 3.9.
- (d) ***‘Member’*** means any police officer, member of special member of the Australian Federal Police or of the police force of any other Australian jurisdiction.
- (e) ***‘Related Persons’*** means any dependants and family of a Designated Person notified by the Government of Australia to the Government of Nauru.

Article 2 – Purposes

Australian may deploy police and other personnel to Nauru to work in partnership with the Government of Nauru to address core issues in Nauru in the areas of governance, law and order and justice and financial management.

Article 3 – Status of Assisting Australian Police

1. It is the intention of this article that the Assisting Australian Police shall work cooperatively with the Government of Nauru and its authorities in order to achieve the purposes set out in Article 2.
2. The most senior Member of the Assisting Australian Police shall be the head of the Assisting Australian Police, with general administration and control of the Assisting Australian Police.
3. Assisting Australian Police Personnel are subject to the orders of, and instructions from the head of the Assisting Australian Police. The head of the Assisting Australian Police shall report to the Director of Police of Nauru. The head of the Assisting Australian Police shall be responsible to the Commissioner of the Australian Federal Police.
4. Any tasks or orders carried out by Assisting Australian Police Personnel shall be consistent with the laws, procedures and standards of conduct applicable to them in Australia. Assisting Australian Police Personnel will be subject to Australian disciplinary laws and procedures.
5. Assisting Australian Police Personnel shall not be subject to any law or regulations concerning the administration or discipline of the Nauru Police Force or to the jurisdiction of any Nauruan disciplinary authority, court or tribunal.
6. Members of the Assisting Australian Police may exercise the powers, authorities and privileges exercised by members of the Nauru Police Force.
7. In exercising any powers referred to in Article 3(6), the Members of the Assisting Australian Police shall work in partnership with Nauru Police Force.

8. The provision of police assistance may be the subject of arrangements subsidiary to this Agreement between the Commissioners of the Australian Federal Police and the Nauru Police Force. In providing this assistance there shall be close cooperation and consultation between the head of the Assisting Australian Police and the Nauru Police Force.
9. Australia shall notify the Government of Nauru of the names of Assisting Australian Police Personnel deployed to Nauru.
10. Assisting Australian Police Personnel, together with their service vehicles, vessels, aircraft, equipment and supplies, shall enjoy freedom of movement throughout Nauru.
11. For the purposes of Article 2, Assisting Australian Police Personnel shall have the authority to install and operate radio and satellite sending and receiving stations to make direct contact with Australia and within Nauru.

Article 4 – Uniform and carriage of weapons

1. Members of the Assisting Australian Police may wear their Australian uniform, or such uniform as agreed under Article 3.8, when on official duty in Nauru.
2. Members of the Assisting Australian Police will not generally carry firearms in Nauru but may have access to firearms. Where Members of the Assisting Australian Police access firearms in Nauru, they shall possess, carry and use arms in accordance with their internal orders or rules. If a Member of the Assisting Australian Police accesses firearms in Nauru, the head of the Assisting Australian Police shall notify the Nauru Police as soon as practicable.

Article 5 – Status of Other Personnel

1. Australia may, in consultation with the Government of Nauru, deploy Australian personnel to work in government departments and agencies of Nauru.
2. A Designated Person appointed to a position or office within a government department, agency of Nauru shall exercise the relevant powers and duties of that position or office.
3. Australia shall notify the Government of Nauru of the names of all personnel deployed to Nauru pursuant to this Article.

4. Any tasks or orders carried out by a Designated Person shall be consistent with the laws, procedures and standards of conduct applicable to them in Australia. Designated Persons shall be subject to Australian disciplinary and employment laws, relevant codes of conducts and procedures.
5. As appropriate, Nauru shall facilitate the access to official relevant records and accounts of the Government of Nauru, including its State Owned Enterprises which may assist a Designated Person carry out his duties. In this regard, Nauru shall provide any required authorisations or delegations and give consideration to any legislative amendments which are required for this purpose.

Article 6 – Related Persons

1. Articles 7.1, 8, 10.2, 10.3, 11.3 and 14.3 of this Agreement shall apply to Related Persons.
2. Australia shall notify the Government of Nauru of the name of all related persons in Nauru.
3. Related Persons shall be granted visas allowing a Related Person to undertake employment in Nauru.

Article 7 – Jurisdiction

1. Designated Persons shall take all appropriate measures to ensure that the laws and regulations of Nauru are observed and respected.
2. The following arrangements respecting criminal and civil jurisdiction are made having regard to the special functions of the Designated Persons and not for the personal benefit of those persons.
3. Designated persons shall be subject to the exclusive jurisdiction of Australia in respect of any criminal or disciplinary proceedings. Australia undertakes, where appropriate and where national law permits, to commence criminal or disciplinary proceedings in respect of any such offences committed in the territory of Nauru.
4. Designated Persons shall not be subject to civil proceedings, administrative proceedings or any proceedings to enforce customary law in Nauru's courts and tribunals.

5. Australia may waive the immunity granted by paragraph 3 or paragraph 4 to a Designated Person. Such a waiver shall be in writing.
6. Where Australia waives the immunity of any of its personnel as provided in paragraph 6, or Australia commences its own investigation or proceedings, the authorities of Australia and Nauru shall assist each other in carrying out all necessary investigations into any offences alleged to have been committed by the Designated Person. Such investigations shall include the collection and production of evidence in relation to any alleged offence or offences committed by the Designation Person.
7. When so requested by the head of the Assisting Australian Police, the Nauru authorities may take into custody any Designated Person, without subjecting them to any routine of arrest, in order immediately to deliver them, together with any items seized, to the nearest Australian authorities.

Article 8 – Obligations under International Law

In giving effect to this Agreement, the Parties shall act in a manner consistent with their obligations under international law. The parties agree that Designated Persons shall act in a manner consistent with Australia's obligations under international law.

Article 9 – Claims

1. Claims involving Designated Persons shall be dealt with in accordance with this Article.
2. Each Party waives any claim against the other Party in respect of:
 - (a) loss of, or damage (including loss of use) to, property owned, hired or chartered by a Party and used by a Designated Person;
 - (b) maritime salvage of any vessel or cargo owned by a Party and used by a Designated Person; and
 - (c) personal injury or death suffered by a Designated Person;which arises out of any act or omission of any Designated Person in the performance of or incidental to official duties.
3. Nauru waives any claims against Australia in respect of loss, or damage to, any of its state property and the personal injury or

death suffered by any person employed by or in the service of the Government of Nauru that arises out of, or is related to, actions taken under this Agreement, including the actions of Designated Persons taken in the course of, or incidental to, official duties.

4. The Parties shall consult on claims not otherwise covered by this Article.

Article 10 – Entry and Departure

1. Nauru authorities shall facilitate the entry into, and departure from, Nauru of Designated Persons. Such facilitation shall include the grant of a special exemption visa or successor visa of that type. The Government of Nauru shall grant all Designated Persons exemption from departure tax.
2. Designated Persons shall be exempt from any laws and orders governing the residence of aliens in Nauru, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Nauru.
3. Designated Persons may import into and export from Nauru without licence, other restriction or registration and free of customs, duties and taxes, and inspection, any equipment (including vehicles, vessels and aircraft) and other supplies required by them for the purpose of their operations, or other forms of cooperation under this Agreement, together with personal effects of, and items for the personal consumption or use by, Designated Persons. Any personal property imported duty-free which is sold in Nauru by a Designated Person to persons other than those entitled to duty-free import privileges shall be subject to customs and other duties on its value at the time of sale.

Article 11 – Transport and Financial Arrangements

1. Nauru authorities shall register free of charge, vehicles, vessels and aircraft and other equipment, including medical equipment and supplies, provided or used by Designated Persons in the course of official duties. Nauru authorities shall accept as valid, without a test or fee, a permit or licence by a Designated Person for the operation of vehicles, vessels or aircraft, and other equipment and supplies, issued by Australian authorities.
2. Australia shall be responsible for the salary, allowances, removal expenses, costs of transport to Nauru, and medical and dental expenses of Designated Persons.

3. Remittances between Australia and Nauru shall be freely allowed for:
 - (a) funds derived by Designated Persons;
 - (b) funds derived by Designated Persons from sources outside Nauru, subject to any relevant laws, regulations or policies of Australia; and
 - (c) funds derived from the proceeds of sales or personal effects or other property used by Designated Persons while serving in Nauru which are disposed of in connection with their departure from Nauru.
4. Designated Persons shall be exempt from taxation by the Government of Nauru on their pay and other emoluments. They shall also be exempt from any other direct taxes (including death duties), fees and charges.
5. Designated Persons may purchase locally produced goods and commodities that they require in fulfilment of the purposes of Article 2 free of duties, taxes and charges.

Article 12 – Accommodation and Facilities

1. Subject to paragraph 2, Australia shall cover the personal accommodation and transport costs of Designated Persons.
2. Unless otherwise negotiated, the Government of Nauru shall provide Designated Persons, free of charge, with unrestricted use of, and access to, suitable premises (including facilities and administrative support) as may be necessary for the fulfilment of the official duties of Designated Persons.
3. Unless otherwise negotiated, Designated Persons shall have the right to the use of water, electricity and other public utilities free of charge for the purposes of carrying out their official duties.
4. Designated Persons may generate, transmit and distribute electricity for their own use free of charge and without being subject to regulation or licensing requirements.

Article 13 – Communications and Postal Services

1. Designated Persons shall enjoy the right of unrestricted communications by radio, television, or any other means and of establishing the necessary facilities for maintaining such communications within and between premises used by

Designated Persons, including the laying of cables and land lines and the establishment of fixed and mobile radio and satellite sending and receiving stations.

2. Designated Persons may process and transport mail addressed to or sent from Designated Persons. Nauru shall not interfere with the mail of Designated Persons.

Article 14 – Health and Safety

1. Designated Persons who are medical, nursing or paramedic staff may treat Designated Persons and other persons, including residents of Nauru, as required without being subject to registration or licensing under the laws and regulations or orders of Nauru.
2. The Government of Nauru shall provide all practicable assistance to Designated Persons in relation to health and safety issues that may arise.
3. Designated Persons may take charge of, and repatriate, the body of a Designated Person who has died in Nauru.
4. The Government of Nauru shall provide a safe and secure workplace to Designated Persons, appropriate to the official duties being carried out by the Designated Persons.

Article 15 – Additional Matters

Any matter not covered by this Agreement shall be the subject of mutually acceptable arrangements made from time to time between the Parties.

Article 16 – Supplemental Arrangements

Supplemental arrangements for the carrying out this Agreement shall be made as required between the Governments of Nauru and Australia.

Article 17 – Consultations

Any matter 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 third party or tribunal for resolution.

Article 18 – Variation and suspension

The Parties may agree to a variation or suspension of this Agreement or a part or parts thereof.

Article 19 – Entry into Force and Duration

1. This Agreement shall be open for signature by the Parties.
2. Each Signatory shall notify the other in writing of the completion of the constitutional formalities by its laws for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of the two notifications by Nauru and Australia.
3. This Agreement shall expire at the mutual agreement of the parties. Such agreement shall be expressed in writing.
4. Expiry of this Agreement shall not affect any liabilities, rights and obligations arising out of the Agreement, and any immunity relating to actions taking place during the period of the Agreement.
5. This Agreement shall prevail over any existing agreement as between any of the Parties to this Agreement to the extent necessary to give effect to this Agreement.

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

DONE AT MELBOURNE ON 10 MAY 2004.

FOR THE GOVERNMENT OF THE
GOVERNMENT OF
REPUBLIC OF NAURU

[Signed]
RENE HARRIS
President

FOR THE
AUSTRALIA

[Signed]
GEORGE ATKIN
Assistant Secretary
Pacific Islands Branch

Department of Foreign
Affairs and Trade