

**JOINT AGREEMENT ON ENHANCED COOPERATION
BETWEEN AUSTRALIA AND PAPUA NEW GUINEA
(PORT MORESBY, 30 JUNE 2004)
[2004] ATNIF 07**

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SUMMARY PAGE

Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea (Port Moresby, 30 June 2004) [2004] ATNIF 07

Date of Tabling of Proposed Treaty Action

1. 4 August 2004.

Nature and Timing of Proposed Treaty Action

2. The Agreement was signed on 30 June 2004. It will enter into force when Australia and Papua New Guinea exchange diplomatic notes pursuant to Article 22.2. It is expected that this exchange of Notes will occur once Papua New Guinea has passed the necessary enabling legislation which will give the terms of the Agreement the force of law in Papua New Guinea.
3. The Minister for Foreign Affairs wrote to the Chair of the Joint Standing Committee on 23 June 2004, advising him of the need for the treaty to be in force for Australia to enable the Australian officials and police to deploy to Papua New Guinea as soon as possible. The deployment of these officials is expected to begin as soon as the Parliament of Papua New Guinea passes the necessary enabling legislation.

Overview and National Interest Summary

4. It is in Australia's interests for Papua New Guinea to be stable and prosperous. In recent years Papua New Guinea has faced a number of serious challenges to its development, including law and order, justice, corruption, poor financial management, and governance. Papua New Guinea also faces challenges in managing its borders and ensuring transport safety and security. The Papua New Guinea government recognises these challenges and, through the Enhanced Cooperation Program (ECP), has accepted Australia's offer to help address them. It will also make the existing aid program more effective, and reflects a recognition of Australia's responsibilities towards a close neighbour.
5. The Agreement is part of the framework at international law for Australia to implement the ECP in Papua New Guinea.

Reasons for Australia to Take the Proposed Treaty Action

6. Australia has a history of close cooperation with Papua New Guinea. Since independence in 1975 the two countries have had a strong relationship. This has been enshrined in a number of documents, including the Joint Declaration of Principles Guiding Relations between Australia and Papua New Guinea (1987, updated in 1992) and the Treaty on Development Cooperation (2000).
7. In recent years, the challenges facing Papua New Guinea have undermined the essential workings of government. Core challenges have included law and order, justice, corruption, financial management and governance. The Papua New Guinea government has made serious attempts to address some of these problems, and has had some success in facilitating growth and stability. Nevertheless, Papua New Guinea's core challenges remain and are becoming more serious.
8. In mid-2003 Australia offered to take a more direct role in helping Papua New Guinea to address its core challenges. Foreign Minister Downer met Foreign Minister Sir Rabbie Namaliu in Port Moresby in September 2003 to discuss the offer.
9. The resulting framework included a commitment by Australia and Papua New Guinea to address core challenges in governance, law and order, justice, financial management, economic and social progress, as well as capacity in the public service. It also included close engagement and cooperation with the international financial institutions, and a renewed commitment by Papua New Guinea to reduce the size of its Defence Force. Finally, Australia and Papua New Guinea agreed to consider the principle of Australian officials working in Papua New Guinea departments and agencies.
10. In late 2003 senior Australian officials looked into law and order, policing, justice, border management, transport safety and security, macro-economic management and public sector reform issues. Discussions resulted in a "Concept of Assistance for a Policing Package", and agreement on the desirability of placing Australian officials in line positions within the Papua New Guinea Public Service.
11. At the Australia-Papua New Guinea Ministerial Forum on 11 December 2003, Ministers agreed to the details of the ECP. Under the ECP up to 230 Australian police will work with the Royal Papua New Guinea Constabulary (RPNGC) to help address law and order issues. Up to 18 Australian legal specialists will help strengthen the legal system; up to 36 Australian officials will work in key central economic agencies to help Papua New Guinea progress its economic development; and up to 10 Australian officials will help in the areas of border management, transport security, and transport safety.
12. The ECP marks a new era of cooperation under which Australian police and other officials will work alongside their Papua New Guinea colleagues in line positions within the Papua New Guinea government. This means they will exercise the relevant powers and duties of their Papua New Guinea counterparts. In doing so, they will need to be protected in particular from vexatious claims against them.
13. The Agreement provides a basis in international law for the presence of Australian police and other personnel in Papua New Guinea. Together with enabling legislation being put forward by the Papua New Guinea government, it will provide Australian police and other personnel with the powers and protections they need to operate in line positions. It provides the legal framework for the ECP.

Obligations

14. Articles 3 and 4 of the Agreement impose certain obligations in relation to the proposed deployment of Australian police to Papua New Guinea. The Assisting Australian Police (AAP) will comply with the lawful directions, organisational strategies and effective control of the Royal Papua New Guinea Constabulary (RPNGC). Australian police do not have to comply with an order which conflicts with their responsibilities under Australian laws, procedures and standards of conduct. Australia must appoint someone to act as head of the AAP. AAP personnel must comply with the orders of, and instructions from, the head of the AAP. The head of the AAP is required to report to the Commissioner of the RPNGC, but remains responsible to the Commissioner of the Australian Federal Police (AFP).

15. In exercising the powers and functions of members of the RPNGC, AAP personnel must work in partnership with the RPNGC. AAP personnel remain subject to Australian disciplinary proceedings or action. In providing police assistance, there must be close cooperation and consultation between the head of the AAP and the Commissioner of the RPNGC. In installing and operating communications systems, the AAP must consult with Papua New Guinea Radio and Telecommunication Technical Authority. Australia must notify the Papua New Guinea Department of Foreign Affairs and Immigration and the RPNGC of the names of AAP deployed to PNG.

16. Under Article 4, the possession, carriage and use of arms by the AAP are to be in accordance with their internal rules or orders, and in a manner compatible with the possession, carriage and use of arms by the RPNGC.

17. Article 5 allows Australia to deploy personnel to work in Papua New Guinea government departments and agencies. Australian personnel deployed will exercise the powers and duties of the position to which they are deployed. Australia must notify the Papua New Guinea Department of Foreign Affairs and Immigration of the names of all persons deployed to Papua New Guinea under Article 5. Australia must also notify the Papua New Guinea Department of Foreign Affairs and Immigration the names of all dependants and family members who accompany Australians deployed to Papua New Guinea pursuant to Articles 3 and 5. The treaty defines the deployed Australians as "Designated Persons" and the dependants and family members of Designated Persons as "Related Persons".

18. Under Article 7, Designated and Related Persons must observe and respect the laws and regulations of Papua New Guinea. Australia has an obligation to apply a code of conduct to Designated Persons.

19. Article 8 establishes a system of concurrent jurisdiction over Designated and Related Persons with respect to offences committed within the territory of Papua New Guinea and punishable by the law of Papua New Guinea. Australia has exclusive jurisdiction over Designated and Related Persons subject to Australian law with respect to offences punishable by Australian law but not by Papua New Guinea law. Australia also has a primary right to exercise jurisdiction over acts or omissions of Designated Persons that are taken in the course of, or are incidental to, official duties.

20. Under the system of concurrent jurisdiction, where Australia does not have exclusive jurisdiction or a primary right to exercise jurisdiction, the parties must agree to a request by the other party to consult in order to determine the exercise of jurisdiction in a particular case. Australian authorities and the authorities of Papua New Guinea must assist each other in the

carrying out of all necessary investigations and proceedings into offences, and in the collection and production of evidence.

21. Where a State has the primary right to exercise jurisdiction and it decides not to exercise jurisdiction, it must notify the authorities of the other State in writing as soon as practicable and give sympathetic consideration to a request from those authorities for waiver of jurisdiction. The authorities of Australia and Papua New Guinea shall notify each other by regular updates of all cases falling within Article 8. Australian authorities and the authorities of Papua New Guinea must assist each other in the arrest of Designated or Related Persons in Papua New Guinea and in handing such persons over to the authority which is to exercise jurisdiction. Upon a request by the Government of Papua New Guinea for the departure from Papua New Guinea of any Designated or Related Person, the head of the AAP must arrange for the departure of that person from Papua New Guinea as soon as practicable.

22. Article 9 establishes a Joint Steering Committee, comprising members nominated by Australia and Papua New Guinea, to ensure continuing consultation on implementation of the ECP. Any Joint Steering Committee member may request consultations on the implementation of Article 8. At the request of either State, an investigation must be carried out into the incident which gave rise to the request for consultations prior to commencement of those consultations. Consultations shall be held as soon as practicable after such an investigation is completed.

23. Article 9 also provides that decisions of the Joint Steering Committee will be made by agreement between Australia and Papua New Guinea. Any member of the Joint Steering Committee may put in writing any complaint regarding the conduct of a Designated or Related Person and regarding implementation of Article 8.

24. According to Article 10, in giving effect to the Agreement, Australia must act in a manner consistent with its obligations under international law.

25. Article 11 establishes a system for dealing with civil claims brought against Designated Persons. Under this system Australia must waive claims against Papua New Guinea in respect of any act or omission of any Designated Person in the course of, or incidental to, official duties. Papua New Guinea must also waive such claims against Australia. Australia and Papua New Guinea must consult on claims not covered by Article 11.

26. Article 14 provides that Australia shall be responsible for the salary, allowances, removal expenses, costs of transport to Papua New Guinea and the medical and dental expenses of Designated Persons. Article 15 provides that Australia shall meet the accommodation and transport costs of Designated Persons.

Implementation

27. No legislation is required to implement Australia's obligations. The *Crimes (Overseas) Act 1964* has been extended to Papua New Guinea and ensures that, amongst other matters, Australia is able to exercise criminal jurisdiction over its officials who are deployed to Papua New Guinea under the Agreement.

Costs

28. Article 14.2 of the Agreement provides that the Australian Government shall be responsible for the salary, allowances, removal expenses, costs of transport to Papua New Guinea, and medical and dental expenses of Australian officials deployed to Papua New Guinea.

Australia is also responsible for personnel accommodation and transport costs of Australian officials deployed to Papua New Guinea. Australia will fund its participation following regular budgetary processes.

Consultation

29. Negotiations were undertaken between officials of the Department of Foreign Affairs and Trade, AusAID, the Australian Federal Police, the Attorney-General's Department and other interested agencies and the Government of Papua New Guinea in settling the text of the treaty.

30. The Agreement was notified to the States and Territories through the Commonwealth-State/Territory Standing Committee on Treaties process, as set out in the consultation annexure.

Regulation Impact Statement

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

Future Treaty Action

32. Article 21 of the Agreement provides for its variation by agreement between the Parties. Amendments to the Agreement would be subject to the Australian treaty making process, including tabling before Parliament.

Withdrawal or Denunciation

33. Article 21 of the Agreement provides also for its suspension, in part or in whole, by agreement between the Parties.

34. Article 22.3 of the Agreement provides that the Agreement shall expire on the complete withdrawal of all Designated Persons from Papua New Guinea. Article 22.4 of the Agreement confirms that the expiry of the 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.

Contact details

Papua New Guinea Section
New Zealand and Papua New Guinea Branch
Department of Foreign Affairs and Trade.

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Consultation

This Agreement has been done to facilitate the entry into Papua New Guinea of Australian police and officials to assist the Government of Papua New Guinea with key governance challenges. The Government of Papua New Guinea was consulted in the preparation of the text of the Agreement. Relevant Commonwealth agencies were also heavily involved in the preparation of the text of the Agreement (including the Department of Foreign Affairs and Trade, Attorney-General's Department, Australian Federal Police, Department of Immigration and Multicultural and Indigenous Affairs, Treasury, Department of Finance and Administration, AusAID).

State and Territory Premiers/Chief Ministers' Departments have been notified by the Department of Foreign Affairs and Trade (Legal Branch) according to the Commonwealth-State-Territory Standing Committee on Treaties process.

Papua New Guinea Political Brief

Papua New Guinea: Political Overview

1. Papua New Guinea is a constitutional monarchy. The head of state is Queen Elizabeth II, represented in Papua New Guinea by the Governor-General, Sir Paulias Matane. Papua New Guinea has three levels of government – national, provincial and local. The National Parliament is a 109-member unicameral legislature elected for five year terms by universal suffrage. The Prime Minister is appointed and dismissed by the Governor-General on the proposal of Parliament. The National Executive Council (Cabinet) is appointed by the Governor-General on the recommendation of the Prime Minister. Members of Parliament are elected from 19 provinces and the National Capital District.

2. Papua New Guinea politics is highly competitive and fluid. No Prime Minister has served a full five-year term. The seventh national parliament was elected in June 2002, and in August 2002 Sir Michael Somare became the Prime Minister for the third time. Sir Michael has identified continued economic reform as a top priority for his government.

Economic Overview

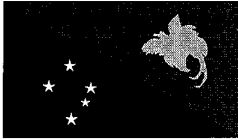
3. Papua New Guinea has a dual economy, comprising a formal, corporate-based economy and a large informal economy where subsistence farming accounts for the bulk of economic activity. Over the past two decades Papua New Guinea's economic growth has been characterised by a heavy reliance on commodity exports from the mining and petroleum sectors.

4. After three consecutive years of economic contraction the economy grew by two percent in 2003, driven mainly by high commodity prices for key Papua New Guinea products. Despite this growth, fundamental problems remain. Domestic demand remains weak. The contribution of the mining and petroleum sector to economic growth is likely to decline significantly over the next decade, creating additional challenges for the Papua New Guinea government. Further economic improvements will depend on how well the Papua New Guinea government manages its expenditure (while delivering essential services); implements economic reform; and tackles corruption and law and order problems.

Bilateral relationship

5. Geographic proximity and historical links have given Papua New Guinea a special place in Australia's foreign relations. Nearly 30 years after Papua New Guinea's independence, Australia's relationship with the country is one of its most complex and wide-ranging. Australia has an overriding interest in Papua New Guinea's sustainable development and stability. The presence of 6,000-7,000 Australians in Papua New Guinea is also of significant interest to the Australian Government.

6. Key aspects of the bilateral relationship are encompassed in a number of formal bilateral arrangements. The umbrella agreement is the Joint Declaration of Principles of 1987, revised in 1992. Bilateral relations between Australia and Papua New Guinea entered a new era of cooperation in December 2003 when Ministers from both countries agreed to the Enhanced Cooperation Program to help address Papua New Guinea's economic and development challenges.



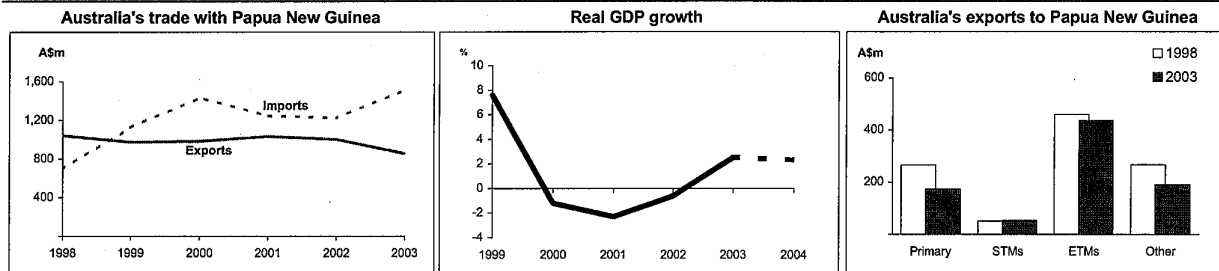
PAPUA NEW GUINEA *Fact Sheet*

General information:

Capital:	Port Moresby	Head of State:	H.M. Queen Elizabeth II, represented by
Surface area:	463 thousand sq km		Governor-General, Sir Paulias Matane
Official languages:	Pidgin, English	Head of Government:	Prime Minister The Rt Hon. Sir Michael Somare
Population:	5.7 million (2003)		GCMG CH MP
Exchange rate:	A\$1 = 2.5692 Kina (Feb 2004)		

Recent economic indicators:

	1999	2000	2001	2002	2003(a)	2004(b)
GDP (US\$bn):	3.4	3.4	3.0	2.8	3.4	3.6
GDP per capita (US\$):	696	676	561	512	603	623
Real GDP growth (% change YOY):	7.6	-1.2	-2.3	-0.6	2.5	2.3
Current account balance (US\$m):	95	345	282	-129	293	177
Current account balance (% GDP):	2.7	10.0	9.6	-4.6	8.7	4.9
Goods & services exports (% GDP):	47.3	49.1	49.5	45.0	45.2	45.9
Inflation (% change YOY):	14.9	15.6	9.3	11.8	15.7	7.5
Labour force (m)	3.0	3.0	3.1	3.2	3.3	3.3



Australia's trade relationship with Papua New Guinea:

Major Australian exports, 2003 (A\$m):

Refined petroleum	52
Civil engineering equipment	31
Specialised machinery	28
Motor vehicle parts	28
Internal combustion piston engines	26

Major Australian imports, 2003 (A\$m):

Non-monetary gold	961
Crude petroleum	477
Coffee and coffee substitutes	16
Copper	14
Wood, simply worked	12

Australian merchandise trade with Papua New Guinea, 2003:

		<u>Total share:</u>	<u>Rank:</u>	<u>Growth (yoy):</u>
Exports to Papua New Guinea (A\$m):	853	0.8%	23rd	-14.8%
Imports from Papua New Guinea (A\$m):	1,515	1.2%	19th	23.7%
Total trade (exports + imports) (A\$m):	2,368	1.0%	22nd	6.4%
Merchandise trade deficit with Papua New Guinea (A\$m):	662			

Australia's trade in services with Papua New Guinea, 2003:

		<u>Total share:</u>
Exports of services to Papua New Guinea (A\$m):	281	0.9%
Imports of services from Papua New Guinea (A\$m):	161	0.5%
Services trade surplus with Papua New Guinea (A\$m):	120	

Papua New Guinea's global trade relationships:

Papua New Guinea's principal export destinations, 2003:

1	Australia	29.3%
2	Japan	7.4%
3	China	6.1%
4	Germany	3.7%
5	United Kingdom	2.6%

Papua New Guinea's principal import sources, 2003:

1	Australia	44.7%
2	Singapore	20.6%
3	New Zealand	7.3%
4	China	5.0%
5	Japan	3.6%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a): all recent data subject to revision; (b): IMF forecast.

Fact sheets are updated biannually; next update: September 2004

List of other treaties with Papua New Guinea

- Agreement between Australia and Papua New Guinea regarding the Status of Forces of Each State in the Territory of the Other State
[1977] ATS 06
- Exchange of Letters constituting an Agreement between Australia and Papua New Guinea concerning a Loan of \$1 Million to Purchase Certain Assets of the Australian Overseas Telecommunications Commission in Papua New Guinea
[1978] ATS 17
- Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services
[1980] ATS 29
- Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area Known as Torres Strait, and Related Matters [Torres Strait Treaty]
[1985] ATS 04
- Agreement between Australia and the Independent State of Papua New Guinea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income
[1989] ATS 37
- Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea with Agreed Minutes and Exchange of Letters [PATCRA II]
[1991] ATS 37
- Agreement between Australia and the Independent State of Papua and New Guinea for the Promotion and Protection of Investments
[1991] ATS 38
- Treaty on Development Cooperation with the Government of Papua and New Guinea
[2000] ATS 30

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List of treaties of the same type with other countries:

- Agreement, done at Melbourne on 10 May 2004, between Nauru and Australia concerning additional police and other assistance to Nauru
[2004] ATNIF 04

In addition, the following multilateral treaties are similar:

- Agreement between Papua New Guinea and Fiji, Tonga, Solomon Islands, Vanuatu, Australia and New Zealand, concerning the Elements of the Defence Forces of those Countries Deployed in the North Solomons Province of Papua New Guinea as Part of the South Pacific Peacekeeping Force
[1994] ATS 17
- Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu, concerning the Neutral Truce Monitoring Group for Bougainville
[1997] ATS 30
- Protocol concerning the Peace Monitoring Group made pursuant to the Agreement between Papua New Guinea, Australia, Fiji, New Zealand and Vanuatu, concerning the Neutral Truce Monitoring Group for Bougainville done at Port Moresby on 5 December 1997
[1998] ATS 12
- Protocol concerning the Bougainville Transition Team made pursuant to the Agreement done at Port Moresby on 5 December 1997, between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, as amended by the Protocol done at Port Moresby on 29 April 1998
[2003] ATS 15
- Agreement, done at Townsville on 24 July 2003, 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
[2003] ATS 17