

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**Treaty on Economic Cooperation between the Government of Australia and the
Government of the Independent State of Papua New Guinea**

(Port Moresby, 21 March 2014)

Not yet in force

[2014] ATNIF 3

The Government of Australia and the Government of Papua New Guinea (hereinafter referred to separately as a Party and together as the Parties):

RECOGNISING that cooperation between the Parties should include common interest in the prosperity and welfare of each other,

IN ACCORDANCE with the Joint Declaration of Principles Guiding Relations between Australia and Papua New Guinea, signed on 9 December 1987, as amended,

ACKNOWLEDGING the importance to each Party of the close historical ties and wide-ranging relationships, based on geographical proximity, common history and cultural links,

DESIRING to further promote and expand mutually beneficial trade and economic relations between the Parties,

RECOGNISING the evolving and maturing nature of relations between the Parties in trade, investment, business and development cooperation,

RECOGNISING the essential role of private investment, both domestic and foreign, in fostering growth, creating jobs, expanding trade, improving technology, and enhancing economic development,

HAVING REGARD to their respective rights and obligations under international law, including their mutual rights and obligations as Members of the World Trade Organization (WTO),

RECOGNISING the existing mechanisms for further dialogue on initiatives for expanding bilateral trade and investment through enhanced cooperation,

WISHING to enhance the valuable contribution to the Parties' relations made by existing agreements between the Parties,

COMMITTED to upholding the Partnership principles of the Paris Declaration on Aid Effectiveness.

HAVE AGREED as follows:

Article 1 **Objectives**

The objectives of this Treaty are to deepen and strengthen economic relations between the Parties and to set out a framework for bilateral cooperation in areas of shared interests including trade, investment, business relations and development cooperation.

Article 2
Bilateral Relations

1. The Parties, recognising their shared values and close historical, political, economic and people to people cultural ties, shall work together to foster mutually beneficial and sustainable bilateral economic relations.
2. Each Party shall, subject to its laws and regulations, accord nationals of the other Party fair and transparent treatment with respect to matters in connection with their business, immigration and professional activities. Each Party shall endeavour, subject to its laws and regulations, to accord non-discriminatory treatment between nationals of the other Party and nationals of any third country with respect to their business and professional activities.

Article 3
Trade and Investment Cooperation

1. The Parties shall endeavour to improve trade, investment and business cooperation, consistent with their rights and obligations under existing agreements and fora including, but not limited to, the *Pacific Agreement on Closer Economic Relations* done at Nauru on 18 August 2001; the *South Pacific Regional Trade and Economic Cooperation Agreement* done at Tarawa on 14 July 1980; the *Agreement on Trade and Commercial Relations* between the Government of Australia and the Government of Papua New Guinea done at Canberra on 21 February 1991; the *Agreement between the Government of Australia and the Government of the Independent State of Papua New Guinea for the Promotion and Protection of Investments* done at Port Moresby on 3 September 1990; and the *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* done at Canberra on 24 May 1989.
2. The Parties recognise that the continuous expansion of international trade on an open, multilateral and non-discriminatory basis is of fundamental importance for the sound development of the global economy. The Parties shall cooperate with each other in a manner consistent with their rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994 and other relevant multilateral agreements to which both Parties are signatories.
3. The Parties, recognising the importance of their relations in the economic, trade, investment and commercial fields, shall cooperate in strengthening and developing those relations on the basis of mutual benefit and trust.
4. The Parties recognise that liberalisation of trade and investment promotes economic growth and development. The Parties shall promote favourable environments for trade and other economic linkages in order to sustain and boost economic growth between the Parties.

5. The Parties recognise the importance of providing adequate and effective protection of intellectual property rights. In advancing the objectives of this Treaty the Parties shall act in accordance with their respective rights and obligations in international agreements to which they are party, including the *Agreement on Trade-Related Aspects of Intellectual Property Rights* contained in Annex 1C to the *Marrakesh Agreement Establishing the World Trade Organization*.
6. Each Party shall endeavour to enhance its mutual understanding of the other Party's sanitary and phytosanitary measures and technical barriers to trade as well as the regulatory processes that relate to those measures as well as enhancing consultation to improve cooperation.

Article 4

Business Cooperation

1. The Parties recognise the fundamental role the business community plays as an important driver of economic growth.
2. The Parties shall encourage and support their business communities to find areas of common interest and to meet regularly to encourage further investment and cooperation.
3. The Parties further recognise the important role business organisations play in promoting business cooperation between the Parties.
4. The Parties recognise the important role of small and medium size enterprises (SMEs) in driving private sector growth, and support increased focus by business in this area and encourage and facilitate private sector interaction.

Article 5

Development Cooperation

1. The Parties reaffirm the Papua New Guinea-Australia Partnership for Development (Partnership) signed on 20 August 2008 as the framework for the development cooperation between the Parties which is founded on the principles of mutual understanding, mutual respect and mutual responsibility for improved development outcomes and sustainable improvements in the quality of life of Papua New Guineans and reflects the shared vision of the Parties to work together to meet the common challenges.
2. The Parties reaffirm that Priority Outcomes of the Partnership are endorsed by the Parties annually and that the Schedules under the Partnership set out specific goals, priority areas and primary funding commitments for each Party.

3. The Annex to this Treaty is an integral part of this Treaty. All Australian development cooperation to Papua New Guinea shall adhere to the procedures in the Annex.
4. The Parties may conclude subsidiary arrangements in writing relating to the implementation of particular aspects of development cooperation that may include forms of development assistance. Such subsidiary arrangements shall be consistent with the principles underlying the commitment of the Parties to development cooperation as set out in the Annex to this Treaty and the Partnership.
5. The Parties acknowledge that Papua New Guinea, in accordance with its ongoing economic development, may wish to seek reduction of Australian development cooperation funding.

Article 6

Final Provisions

1. Each Party shall notify the other Party in writing through the diplomatic channel upon the completion of its necessary domestic legal procedures for the entry into force of this Treaty. This Treaty shall enter into force on the date of the last notification.
2. The Parties agree that on the date of entry into force of this Treaty, the *Treaty on Development Co-operation between the Government of Australia and the Government of Papua New Guinea*, done at Port Moresby on 7 October 1999, shall terminate. All activities being conducted pursuant to that treaty that are incomplete on the date this Treaty enters into force shall be governed by the terms of this Treaty.
3. The Parties may at any time enter into negotiations to amend this Treaty and agree to such amendments in writing through an exchange of notes through the diplomatic channel. Any amendment shall follow the same procedure set out in paragraph 1 of this Article regarding its entry into force.
4. Either Party may terminate this Treaty by notifying the other Party in writing through the diplomatic channel of its intention to do so. Such notice shall take effect six months from the date of its receipt by the other Party.
5. Notwithstanding the termination of this Treaty under paragraph 4 of this Article, this Treaty shall continue to apply in respect of claims referred to under Article 16 of the Annex which arose prior to termination.
6. The Parties shall meet at periods to be mutually determined to review the implementation of this Treaty.

Article 7
Consultations

Disputes as to the application or interpretation of this Treaty shall be resolved amicably by consultations between the Parties through diplomatic channels.

DONE at Port Moresby in duplicate, this 21st day of March, 2014.

FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT OF
PAPUA NEW GUINEA:

The Hon Tony Abbott MP
Prime Minister of Australia

The Hon Peter O'Neill CMG MP
Prime Minister of Papua New Guinea

ANNEX

PROCEDURES APPLYING TO DEVELOPMENT COOPERATION

1. Definitions

In this Annex:

"Activity" means any aspects of development cooperation agreed between the Parties that may include forms of development assistance;

"Activity Personnel" means persons who are not nationals or permanent residents of Papua New Guinea who are working in Papua New Guinea on an Activity to which this Annex applies and whose salaries or other costs are funded from contributions by the Government of Australia to that Activity;

"Activity Supplies" means equipment, material and other goods and services supplied for an Activity to which this Annex applies, the cost of which is funded from contributions by the Government of Australia;

"Coordinating Authority" means an authority designated by a Party to coordinate Activities;

"Dependant" means the spouse or child of Activity Personnel or any other person recognized by the Parties as a dependant of Activity Personnel;

"Development Institutions" includes companies, partnerships, associations, statutory authorities, government bodies, non-government organisations and other organisations or individuals which are engaged in an Activity in Papua New Guinea to which this Annex applies;

"Immigration Formality" means a visa, permit, pass or other document or electronic authority granting a natural person of one Party the right to enter, reside or work or establish a commercial presence in the territory of the granting Party;

"Partnership" means the *Papua New Guinea-Australia Partnership for Development* signed on 20 August 2008;

"Personal and Household Effects" means any goods imported by Activity Personnel for their personal use or that of their Dependant(s), but excludes boats, motor vehicles, motor cycles or scooters, firearms, liquor, tobacco, foodstuffs or other consumables;

"Personal, Professional and Technical Material" means equipment and other goods imported by Activity Personnel or Development Institutions for their professional use while engaged by the Government of Australia in an Activity to which this Annex applies;

“Program” means the Australia-Papua New Guinea Development Cooperation Program; and

“Schedules” means the schedules to the Partnership.

2. Application

This Annex shall apply to all Activities arranged between the Parties, unless both Parties mutually determine otherwise.

3. Levels of Assistance

- A. Annual indicative forward planning figures shall be set out in the Schedules.
- B. The amount provided by the Government of Australia each year shall be determined by the Government of Australia, in consultation with the Government of Papua New Guinea, and shall be subject to the Government of Papua New Guinea meeting performance targets, including benchmarks that are mutually determined by the Parties.
- C. All expenditure by the Parties in accordance with the provisions of this Annex shall be subject to the normal approval of appropriations by the Parliament of the Party providing the appropriation.
- D. The financial contribution estimates for an Activity provided by each Party as outlined in the Schedules shall be indicative planning figures only and not financial commitments. Annual financial estimates for the Program shall be arranged between the Parties and any variations mutually determined as appropriate.

4. Contributions of the Government of Australia

- A. The contributions of the Government of Australia for Activities shall include, but are not limited to, the following:
 - i. the cost of professional and other goods and services required for the implementation of Activities;
 - ii. the cost of providing Activity Supplies and the cost of transportation of such Activity Supplies;
 - iii. the cost of travel, living allowances, fees and other associated costs in relation to student scholarships and training awards;
 - iv. any other form of development cooperation, reportable as Official Development Assistance under the OECD Development Assistance Committee guidelines as may be determined by the Parties;
- B. Donors other than the Government of Australia may also meet costs referred to in this Article, subject to the consent of both Parties.

- C. The Government of Australia may consent to meet costs in addition to those referred to in this Article, if requested to do so by the Government of Papua New Guinea.

5. Contributions of the Government of Papua New Guinea

- A. The contributions of the Government of Papua New Guinea shall include, but are not limited to, the following:
- i. provision of agreed levels of counterpart funding for all jointly arranged Activities;
 - ii. transportation within Papua New Guinea in accordance with the requirements of Activities arranged between the Parties;
 - iii. facilitation of travel within Papua New Guinea for Activity Personnel in the performance of their duties;
 - iv. grant of permission to use means of communications in Papua New Guinea appropriate to the needs of the Activities involved;
 - v. provision of furnished office premises and office services on the sites of Activities where such premises and services are needed by Development Institutions and Activity Personnel to carry out their duties;
 - vi. provision of reports, records, maps, statistics and other information related to Activities and likely to assist Development Institutions and Activity Personnel in carrying out their duties, except where the reports, records, maps, statistics and other information are deemed as confidential or may prejudice official government positions or the commercial activity of another business enterprise;
 - vii. salaries and allowances of personnel other than Activity Personnel; and
 - viii. other measures (such as the provision of land) which may facilitate the execution of the Activities arranged under this Annex.
- B. The Government of Papua New Guinea shall provide an ongoing budget to its relevant Government Departments, Agencies and state owned enterprises to ensure the sustainability of the achievements of Activities supported by the Program when contributions made under Article 4 of the Annex (Contributions of the Government of Australia) have ceased.

6. Cooperation, Facilitation and Consultation

- A. The Government of Papua New Guinea shall facilitate at national, provincial, district and local government levels the implementation of all Activities under this Annex.
- B. The Parties shall hold Annual Partnership Dialogues, alternating between the Parties. The Dialogues shall consider and review general Partnership and

Program policies, objectives and outcomes, future Activities and specific progress against these.

- C. The Parties may undertake periodic reviews of the Partnership, Program or Activities to ensure the effective implementation of the Partnership. A review undertaken pursuant to this Article may be detailed in a subsidiary arrangement, established under Article 5(4) (Development Cooperation) of this Treaty.
- D. Both Parties are committed to open, accountable and transparent tender processes.
- E. The Parties will endeavour to promote aid effectiveness principles and coherence across the Activities.

7. Coordinating Authorities

- A. Each Party shall co-ordinate Activities through its Coordinating Authority.
- B. Unless the Parties provide otherwise:
 - i. the Australian Agency for International Development shall be the Coordinating Authority for the Government of Australia; and
 - ii. the Department of National Planning and Monitoring shall be the Coordinating Authority for the Government of Papua New Guinea.

8. Responsibility

- A. Final responsibility for the implementation of Activities rests with the Government of Papua New Guinea.
- B. Responsibility for efficient management of an Activity shall be vested in the head of the implementing agency as defined in any subsidiary arrangement established under Article 5(4) (Development Cooperation) of this Treaty, who shall prepare regular reports to the Parties on progress of the Activity.

9. Duties, Levies and Taxes on Development Institutions

- A. The Government of Papua New Guinea shall exempt Development Institutions from income taxes or other similar taxes on income or profits, and other remuneration derived from Activities performed in Papua New Guinea to which this Annex applies.
- B. Development Institutions shall be exempt from the taxes on income referred to in paragraph A derived from Activities performed outside Papua New Guinea provided the income is not transferred into Papua New Guinea.

10. Duties, Levies and Taxes for Activity Personnel

- A. The Government of Papua New Guinea shall facilitate the recruitment and employment by the Government of Australia or Development Institutions of Activity Personnel required for the Activities to which this Annex applies by:
- i. granting exemption from income or other taxes on salaries and allowances;
 - ii. granting exemption from import duties and any other charges on Personal and Household Effects imported at the time of first taking up duty in Papua New Guinea or during a period of six months after that date;
 - iii. granting to Activity Personnel no lesser rights and entitlements than those accorded to aid personnel of any other donor country;
 - iv. expediting the issue of all documentation required for entry of and performance of work by Activity Personnel;
 - v. granting exemption from import duty or any charge levied on one motor vehicle for each Activity Personnel taking up duty in Papua New Guinea and each of their Dependants over the legal driving age in accordance with the laws and regulations of Papua New Guinea. The motor vehicle must be imported or purchased within six months of the relevant Activity Personnel or Dependant arriving in Papua New Guinea. If that motor vehicle is imported or purchased and sold to a person without similar privileges at the end of the Activity Personnel posting, not being prior to 18 months from the date of purchase or alternatively not before the expiration of a period of two years after the date of importation or purchase of the motor vehicle, the person shall pay an amount equivalent to the full import duty and import levy that was payable on the motor vehicle at the date on which it was imported or purchased.
- B. Activity Personnel shall not engage in any form of employment in Papua New Guinea other than that allowed under the terms of their Papua New Guinea entry permits or visa requirements.

11. Export of Personal Professional and Technical Material and Personal and Household Effects

- A. In respect of the export from Papua New Guinea of Personal, Professional and Technical Material and Personal and Household Effects at the end of the assignment of Activity Personnel, the Government of Papua New Guinea shall in accordance with its laws:
- i. exempt them from export duty or any charge levied; and
 - ii. expedite their clearance through customs, cultural and other authorities.

12. Remittance of Funds

The Government of Papua New Guinea shall assist Activity Personnel and Development Institutions in the repatriation of their funds.

13. Activity Supplies and Personal Professional and Technical Material

- A. Activity Supplies shall become the property of the Government of Papua New Guinea upon completion of an Activity unless otherwise advised by the Government of Australia.
- B. Activity Supplies provided for a specific Activity shall be available only for the purpose of that specific Activity and shall not be withdrawn from that use without the mutual agreement of the Coordinating Authorities. The Australian Coordinating Authority shall exercise administrative control over such Activity Supplies for the duration of the Activity or until both Coordinating Authorities agree that they may be released from the Activity.
- C. Activity Supplies that are identified by the Government of Australia for repatriation shall not be subject to duties, taxes or levies upon export.
- D. The Government of Papua New Guinea shall, in respect of Activity Supplies and Personal, Professional and Technical Material that are imported into or procured within Papua New Guinea:
 - i. apply a zero rate for value added tax and exempt from payment of customs duties, excise duties, sales tax, other duties, taxes, levies and other charges of a similar nature upon these items;
 - ii. facilitate the movement of Activity Supplies by providing appropriate customs and wharfage facilities in the port closest to the site of the Activity;
 - iii. unless provided otherwise by mutual arrangement between the Parties, provide expeditious transport to the site of the Activity; and
 - iv. exempt from or be responsible for inspection fees and storage charges and all other levies, duties, fees or charges.

14. Intellectual Property

- A. The Coordinating Authorities shall discuss:
 - i. the equitable allocation of ownership of all intellectual property arising directly or indirectly from an Activity;
 - ii. the equitable licensing of such intellectual property; and
 - iii. where it is within their power, the equitable licensing of such other intellectual property as is necessary for the utilisation of the results of the Activity.

- B. In discussions pursuant to paragraph A, the Coordinating Authorities shall have regard to relevant considerations, including:
- i. the intellectual contributions of each Party;
 - ii. the financial contributions of each Party;
 - iii. the contribution of intellectual property, materials, research effort and preparatory work of each Party;
 - iv. the facilities provided by each Party; and
 - v. such other relevant considerations as the Coordinating Authorities may mutually determine.
- C. Notwithstanding paragraph A, all intellectual property rights attached to Activity Supplies and which are vested in the Government of Australia, will be retained by the Government of Australia.
- D. For the purposes of this Article, intellectual property shall include the rights relating to:
- i. literary, artistic and scientific works, usually referred to as copyright;
 - ii. inventions in all fields of human endeavour, usually referred to as patents;
 - iii. scientific discoveries;
 - iv. industrial designs;
 - v. trademarks, service marks, and commercial names and designations;
 - vi. protection against unfair competition; and
 - vii. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including any rights in computer software and mask works, and intellectual activity arising solely or partly by the restraint of confidence.

15. Facilitation of Activities

- A. The Government of Papua New Guinea shall facilitate the implementation of the Activities to which this Annex applies by taking all necessary measures, including the prompt and timely issue of Immigration Formalities to Development Institutions and Activity Personnel and their Dependents.
- B. The Government of Papua New Guinea shall issue to Activity Personnel Immigration Formalities which shall be valid for one year or for the duration of their assignment to an Activity in Papua New Guinea, whichever is the lesser.

- C. The Government of Papua New Guinea shall accord Development Institutions and Activity Personnel in Papua New Guinea no lesser rights and entitlements than those accorded to organisations or individuals from other countries providing development cooperation in Papua New Guinea.
- D. The Government of Papua New Guinea shall make available to Development Institutions and Activity Personnel details of local laws and regulations which may affect them in the performance of their duties.

16. Claims Relating to Activities

- A. The Government of Papua New Guinea shall release the Government of Australia and Activity Personnel from all actions, suits, proceedings, claims and demands which the Government of Papua New Guinea may now have or may in future have against them or any of them in relation to loss or damage resulting from, or consequent upon, Activities.
- B. The Government of Papua New Guinea shall, at all times, indemnify and keep indemnified the Government of Australia and Activity Personnel against:
 - i. all actions, suits, proceedings, claims and demands which any other party may now have or may in future have against them or any of them in relation to loss or damage resulting from, or consequent upon, Activities; and
 - ii. any claim for contributions which any party may now have or may in future have against any of them in respect of any such actions, suits, proceedings, claims and demands.
- C. The release and indemnity referred to in paragraphs A and B above shall not apply where it has been decided by the Parties that a claim arises from a criminal act, gross negligence or wilful misconduct.

17. Security

The Government of Papua New Guinea shall extend security arrangements to Activity Personnel, their Dependants and Activity Supplies similar to those that are available to other foreign aid activities, personnel attached to those activities and their dependants.

18. Subsidiary Arrangements

- A. The terms of this Annex will, unless otherwise stated, apply to subsidiary arrangements made pursuant to Article 5(4) (Development Cooperation) of this Treaty. Subsidiary arrangements shall, as required, refer to this Annex. The Parties shall endeavour to include in the subsidiary arrangements:
 - i. the name and duration of the Activity;
 - ii. description and statement of objectives and outputs of the Activity;
 - iii. the nominated implementing agencies of the Parties;

- iv. details of the contributions to the Activity by the Parties including:
 - a. financial contributions;
 - b. the supply of materials, services and equipment;
 - c. the numbers and areas of expertise of Activity Personnel and other personnel to be engaged; and
 - d. estimated annual budgets;
- v. timetable(s) for implementation; and
- vi. monitoring, review and evaluation arrangements.

19. Fraud and Corruption

- A. The Parties are committed to preventing and detecting fraud, corruption and bribery. The Government of Australia shall provide assistance to the Government of Papua New Guinea to fight corruption.
- B. The Parties shall not make or cause to be made, receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the Program or the provision of funds in relation to any Activity.
- C. The Parties shall endeavour to ensure that any employee or other entity involved in an Activity adhere to this provision.
- D. The Parties agree that any suspected fraud within the Program will be thoroughly and comprehensively investigated in accordance with the laws of Papua New Guinea.
 - i. The Government of Papua New Guinea shall promptly notify the Australian Coordinating Authority of any suspected or actual cases of fraud within the Program.
 - ii. The Government of Australia and the Government of Papua New Guinea will establish a regular forum and meet at least every three months to review and monitor cases of fraud in the aid program, where issues relating to the reporting, investigation and prosecution of cases can be raised and resolved.
 - iii. The Government of Papua New Guinea shall ensure that every effort is accorded by their authorities to recover any funds lost due to fraud or corruption.
- E. The Parties commit to improving the procurement and financial systems in Papua New Guinea to ensure that funds issued in respect of Activities are disbursed effectively and efficiently providing the greatest possible value for

money and sustainable improvements in the quality of life of Papua New Guineans.

20. Counter Terrorism

- A. The Parties shall endeavour to ensure that funds provided by the Government of Australia under this Treaty do not provide direct or indirect support or resources to organisations or individuals associated with terrorism.
- B. If either Party discovers that funds provided by the Government of Australia under this Treaty are linked with any organisation or individual associated with terrorism, it shall inform the other Party immediately.