

**MEMORANDUM OF UNDERSTANDING BETWEEN AUSTRALIA AND NAURU
FOR AUSTRALIAN DEVELOPMENT ASSISTANCE TO NAURU AND
COOPERATION IN THE MANAGEMENT OF
ASYLUM SEEKERS**

The Commonwealth of Australia (Australia) and the Republic of Nauru (Nauru), wishing to further strengthen bilateral relations, enhance Nauru's long-term viability, co-operate on the management of asylum seekers, and support regional efforts to combat people smuggling, have reached the following understanding:

Scope

1. This Memorandum of Understanding (MOU) replaces the previous MOU between the Parties, signed on 25 February 2004, and will be in force for an extended period until 30 June 2007.
2. Recognising the ambitious reform agenda of the Government of Nauru and the opportunity this presents for promoting sustainable development in Nauru, and given the commitment by Australia to support this reform agenda, both parties have mutually decided to work together in enhancing Nauru's long-term viability through a package of Australian development assistance to Nauru and linked reform commitments that will be implemented by Nauru.
3. Australia and Nauru have also decided to cooperate on the management of asylum seekers on Nauru, who have been referred to and accepted by Nauru at the request of Australia, in accordance with the constitutions and relevant domestic laws of each country, international law, and their respective framework of powers and responsibilities. This MOU allows for a maximum number of 1,500 persons to be accommodated in a number of temporary residential asylum seekers' facilities (the Facilities) at any one time, as well as for the presence of necessary support staff. Australia will ensure that each asylum seeker will be processed and will depart Nauru within as short a time as is reasonably possible, and further ensure that no asylum seeker will be left behind in Nauru. The details on the management of asylum seekers are set out in Schedule A to this MOU.
4. Australia will assume full financial responsibility for the administration of activities related to asylum seekers as outlined in this MOU. It will reasonably compensate Nauru for its assistance and for any losses incurred in this endeavour including accidents or unforeseen incidents resulting directly from the establishment of Facilities and/or the residence of asylum seekers on Nauru.
5. There will be targeted expenditure of funds, sourced from outside the MOU disbursement, to directly support the provision in Nauru of essential services for the Facilities. Details on this funding to directly support the provision of services to the Facilities are provided in Schedule A.
6. Both Parties recognise the significant mutual benefits in retaining the Facilities and commit to maintain and protect the ongoing presence of the Facilities so as to preserve those benefits. Nauru commits to extending its consent to host the Facilities, for the term of this MOU.

7. Australia will provide development assistance to Nauru over the term of this MOU to assist with realistic development planning, strengthening governance, broad economic reforms and the reform and development of key sectors. Australian development assistance will contribute to Nauru's efforts to place the economy on a more sustainable footing, improve the management and effectiveness of key government functions and assume greater responsibility for the provision of services to the Nauruan community. The broad elements of Australia's development assistance to Nauru over the period July 2005 to 30 June 2006 are detailed in Schedule B to this MOU. Australian development assistance will also support the maintenance of the broad operating environment that is required for the effective functioning of the Facilities in Nauru.

8. Recognising the urgent need to address Nauru's economic challenges and Australia's increased commitment to assist in that endeavour, the Parties commit to jointly develop and progressively implement a Joint Country Strategy, which will structure Australia's development assistance to Nauru until mid-2009, and a Partnership Performance Framework to review implementation. This review process will include quarterly discussions for the purposes of assessing progress, sharing information and reporting of actual expenditures under the MOU. Furthermore, Australia will work with Nauru to develop a National Development Strategy that assists Nauru meet its long-term economic and development challenges in a sustainable manner. In accordance with the ongoing commitment of Australia and Nauru to Pacific regional security and prosperity, the Parties anticipate a long-term cooperative relationship.

9. Nauru commits to implementing economic, governance and law and justice reforms as specified in Schedule C to this MOU. Australia will provide appropriate technical assistance, consistent with the Joint Country Strategy, to support the implementation of agreed reforms. The Parties agree that should Nauru fail to meet these reform commitments, then the level of development assistance provided by Australia may be reduced.

10. To assist Nauru implement its economic and financial reform commitments, as part of its development assistance program, Australia will continue to provide an in-line Secretary of Finance. The Secretary will have a clear mandate for the term of this MOU to assist with implementing the reforms, including those outlined in Schedule C, necessary to address Nauru's economic challenges, and full access to information on all Nauru Government accounts, both on and off-shore. To support the Secretary of Finance and broad capacity-building initiatives, Australia will provide up to two additional advisers to the Secretary of Finance.

11. To assist Nauru implement law and justice reforms, as part of its development assistance program, Australia will continue to provide an in-line Australian Commissioner of Police, with a mandate to implement reforms to the Nauru Police Force (NPF) for the term of this MOU. Reforms will include infrastructure development and the provision of training and professional development for the NPF. To support the Commissioner of Police and broad capacity development initiatives, two supporting positions and additional short-term support, either in-line or advisory, will be provided for human resource/strategic planning and training/community policing.

12. Australia's development assistance to Nauru over the period 1 July 2006 to 30 June 2007 will be linked to the results of the review of progress in implementing the Joint Country Strategy and agreed reforms, referred to in paragraph 9 above, and will be negotiated with Nauru in June 2006.

Legal Framework

13. The deployment of Australian personnel will continue to be subject to the provisions of the Agreement between Australia and Nauru Concerning Additional Police and Other Assistance to Nauru, signed on 10 May 2004.

Co-ordination

14. Overall co-ordination of the activities covered by this MOU, including administrative facilities, will be conducted jointly through the Australian Consulate-General in Nauru and the Ministry of Foreign Affairs of Nauru. The Australian Consul-General and Special Representative will serve as the channel of communication for Australia and officially represent Australia's continued commitments for the duration of activities undertaken on Nauru related to this MOU, the coordination of which shall be supported by an in-country representative of AusAID. The Nauru Minister for Foreign Affairs will serve as the channel of communication for Nauru and will officially represent Nauru's commitments under this MOU. Further details on co-operative activities or implementation of this MOU may also be mutually determined and will be considered as being part of this MOU if designated as such in writing.

Resolution of Differences

15. Any differences between Nauru and Australia over the interpretation or application of this MOU will be resolved as soon as reasonably practicable by consultation between the Parties.

Effective Date, Termination and Amendment

16. This MOU will come into effect on the date of signature by both Parties and will terminate on 30 June 2007.

17. The Parties may jointly decide to vary or extend this MOU through written arrangements.

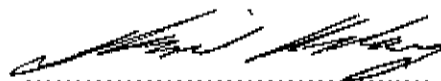
Signed in duplicate, on the twentieth day of September 2005.

For the Commonwealth of Australia



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The Hon Alexander Downer MP
Minister for Foreign Affairs
Commonwealth of Australia

For the Republic of Nauru



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The Hon David Adeang MP
Minister for Foreign Affairs and Trade
Republic of Nauru

SCHEDULE A TO THE MOU BETWEEN AUSTRALIA AND NAURU: TEMPORARY RESIDENTIAL FACILITIES

A.1 Australia will ensure that arrangements are in place for the day-to-day management of the Facilities and provide food and water, sanitation, medical treatment and any other identified needs. The Facilities will be fully maintained and serviced by the Australian Government through the International Organization for Migration (IOM) or another suitable organisation. The Facilities are designed for temporary residence, lasting only for such time as is reasonably necessary to complete the processing activities under this MOU. Australia will return the Facilities' sites to their original condition or better, on the conclusion of these activities.

A.2 The Facilities' sites are to be provided by Nauru and will include: Meneng District, Nauru, at land portion numbers 202, 203, 204, 209 and 210 otherwise known as "Topside"; at land portion numbers 277 and 365 otherwise known as "Former State House"; and other sites to be jointly determined between the Parties, as designated in writing.

A.3 The Parties will continue to maintain and manage the facilities in consultation with IOM or another suitable organisation, including procedures for the reception of visitors and circumstances in which persons who are not normally engaged in the servicing of the Facilities may enter.

A.4 Health and medical services, personnel, supplies and equipment will be provided by Australia through IOM or another suitable organisation. Where medical cases cannot be treated at the Facilities, Australia may seek the assistance of Nauru's Health Services or, where necessary, evacuate persons from Nauru for medical treatment.

A.5 Both parties will seek to maximise the engagement of suitably qualified Nauru citizens in the operation of the Facilities and to ensure, where possible, that opportunities are taken for the transfer of skills.

Security for the Facilities

A.6 Australia will ensure that security personnel are provided at Australia's expense and at a standard appropriate to manage any risk to the safety and security of the Nauruan community that is related to the Facilities and their residents and ensure the safety and security of the asylum seekers.

A.7 Management of ongoing security at the Facilities, including the day-to-day operation of security and responses to particular incidents, will be in accordance with any Security Protocol developed together with the Nauru Police Force.

Travel Documents and Transportation

A.8 Australia will arrange for the provision of voluntary repatriation counselling and will ensure that appropriate transportation and travel documents are arranged for all persons whose status has been determined.

A.9 Australia will provide a minimum of 24 hours notice, but preferably at least 48 hours, wherever practicable in moving persons to or from the Facilities. This may include persons

being transferred out of Nauru for a temporary purpose, such as medical treatment, and their subsequent return to Nauru; persons leaving permanently to be resettled or returned; and persons arriving for the first time. Where persons are arriving for the first time, Australia will be responsible for providing a medical report acceptable to the Government of Nauru in advance of their arrival, and the entry shall be subject also to approval from the Nauru Department of Health. All costs associated with the transfer of these persons to or from Nauru will be borne by Australia.

A.10 Nauru will facilitate the prompt issue of visas and other travel documents or requirements for persons travelling to Nauru for the purpose of either delivering development assistance or the management of asylum seekers on Nauru.

Commitments

A.11 Nauru will carry out its commitments with due diligence and efficiency, and will assist in securing suitable accommodation for Australian and international personnel engaged in the administration and management of the Facilities. Nauru will assist in securing suitable accommodation for officials referred to in paragraph A.10 of this MOU.

A.12 Australia will carry out its commitments with due diligence and efficiency, arrange for the day-to-day administration of and provide funds for the upkeep of the Facilities and all requisite services related to the Facilities.

A.13 The Consul-General and Special Representative will serve as the channel of communication for Australia and officially represent Australia's continued commitments for the duration of activities undertaken on Nauru related to this MOU.

Targeted support for the provision of essential services to the Facilities

A.14 In 2005-06, targeted expenditure of approximately \$1.7 million, sourced from outside the MOU disbursement, will directly support the provision of essential services for the Facilities. This assistance will be provided for the following specific activities:

Audits of the Menen Hotel and RONTEL
\$0.25m

Refurbishment of cement batching plant
\$0.2m

Current critical infrastructure refurbishment
\$0.75m

Refurbishment of the prison
\$0.45m

Clean up of the Menen Hotel water reticulation system
\$0.05m

**SCHEDULE B TO THE MOU BETWEEN AUSTRALIA AND NAURU:
AUSTRALIAN DEVELOPMENT ASSISTANCE TO NAURU**

Under this MOU, Australia is proposing to provide a total package of up to \$40.5 million in development assistance to Nauru over two years. The funding and activities described in this Schedule are an assurance of Australia's commitment to assist Nauru implement necessary reforms that enhance Nauru's viability. The total level of expenditure will be linked to ongoing commitment by Nauru to implement the necessary economic, governance and law and justice reforms which for 2005-06 are set out in Schedule C.

In 2005-06, Australia is proposing to provide up to \$23.4 million in development assistance to Nauru (including for police development). In 2006-07, Australia is proposing to provide up to \$17.1 million in development assistance, linked to Nauru's performance in implementing agreed reforms.

Australia anticipates that over 2007-09, pending a successful mid-program review in early-2007 and subject to the negotiation of a further MOU, assistance will be provided for implementation of activities identified in the Joint Country Strategy. These activities could include the renewal of essential infrastructure. Over this period, Australia and Nauru would continue moving to a long-term and more sustainable aid relationship in keeping with the special historic relationship.

Australia will adopt a long-term, integrated approach to development activities in Nauru. Australia will assist Nauru to address its priorities through supporting realistic development planning, strengthening governance and service delivery, supporting the implementation of economic reforms, and examining long-term development options. Future assistance will be guided by a Joint Country Strategy, which will be finalised by end-2005 following agreement to this MOU. The development of the Joint Country Strategy will provide a process for addressing priority activities in a strategic and integrated way, including the necessary institutional improvements that will enable the establishment of appropriately structured and sustainable services for the Nauruan community. A Partnership Performance Framework will be developed in conjunction with the Joint Country Strategy and will be agreed by the Parties. Australia will assist in strengthening strategic decision-making and planning by the Nauru Government, including through providing support for agreed priorities identified through the National Development Strategy.

All activities, including any response to emerging priorities, will be managed within the total agreed funding. Integrated program-wide approaches will be developed to contribute to aid effectiveness. In particular, the support for economic and financial management reform will be directed towards improving both the management and delivery of essential services to the Nauruan community.

The indicative funding allocated for broad sectors reflects the Parties' understanding of required cooperative effort and resources. There may be some scope for adjustment among sectoral allocations following agreement to the Joint Country Strategy or if funds under this MOU are needed in order to respond to emerging priorities. The police development program, while complementary and strongly linked to the Strategy, will be managed and funded as a discrete program.

The Parties agree to implement the Joint Country Strategy which will determine specific assistance and required funding support, broadly consistent with the activities and funding

estimates below (except for those elements where a funding cap has been identified). The Parties acknowledge that, linked to this development assistance, Nauru will implement the economic and governance reforms set out in Schedule C to this MOU.

Based upon the Joint Country Strategy and Partnership Performance Framework agreed by both Parties, development cooperation assistance will be provided for priority activities within the following areas:

Aid coordination and development planning

\$0.5 m

To promote effective development cooperation and to guide Australia's assistance to Nauru, a Joint Country Strategy will be developed. A related Partnership Performance Framework will provide the basis for assessing implementation. Ongoing program assessments and in-country implementation will also be supported.

Working in collaboration with the Government of Nauru, Asian Development Bank and the Pacific Islands Forum Secretariat, Australia will provide assistance for developing a National Development Strategy, using participatory planning processes.

Economic development and reform and public sector management

\$6.8m

Activities will focus on economic and financial management reform, assisting with the transition to changed livelihoods and improving the management and delivery of key services (health and education) to the Nauruan community.

Activities focused on economic development and reform are likely to include the continued deployment of the Finance Team, an audit program of Nauru Government accounts and selected state owned enterprises, technical assistance with improving fisheries management, workforce assessment and planning, and public service reform.

- *Economic development and reform - \$2.6 million*

As part of a strategy for assisting the Nauruan community to adapt to changed livelihoods, there will be activities that focus on improving Nauru's food security. These could include the provision of training and materials for increasing the number and productivity of domestic gardens and technical assistance for the development of domestic markets.

- *Food Security - \$0.4 million*

Education and training activities will focus on improving basic education and technical and vocational skills. These activities will assist the Nauru Government develop an appropriately structured education system and the skills base required for Nauru's future needs. Australian assistance is likely to include the continued provision of a Director of Education to deliver leadership on reforms, including ongoing curriculum development and in-service training; technical and vocational training; and tertiary scholarships targeted at priority skill requirements.

- *Education - \$1.7 million*

Health activities will assist with shifting services towards a greater emphasis on primary health and preventative measures in order to place these on a more sustainable long-term

footing. To continue the process of improving health services, Australian assistance is likely to include the provision of a suitably qualified Director of Health, in-service training of nurses, capacity building other staff involved in the delivery and management of health services and support for the maintenance of essential medical equipment. In order to encourage improved management of pharmaceuticals and other consumables, a cap of \$800,000 will be placed on support for these items in 2005-06.

- *Health Care - \$2.1 million (including \$0.8 million capped amount for pharmaceuticals and other consumables)*

Infrastructure reform

\$7.5m

Activities will focus on reforming the institutional arrangements for delivering power and water services. These activities are likely to include the deployment of a suitably qualified Chief Executive Officer to manage provision of services and support the implementation of necessary immediate reforms (while a long-term approach is being scoped through technical assistance provided by the Asian Development Bank), and support for power supply to essential services and domestic users. There will be a capped allocation of \$3.5 million for diesel supplies in 2005-06.

- *Infrastructure Reform - \$6.7 million (including \$3.5 million capped amount for diesel fuel supplies)*

In order to improve water security, there are likely to be activities to improve public and domestic rainwater collection and storage and increase total potable water resources.

- *Water Security - \$0.8 million*

Legal

\$0.7m

Development cooperation activities in the legal sector will focus on capacity building in the Department of Justice and technical assistance for priority legal advice and legislative drafting. Assistance will also be provided to commence work on locating and pursuing misdirected funds.

Logistics

\$1.3m

Support services, such as housing, transport and other costs for in-line officials, will be provided for the implementation of development cooperation activities.

Police Development Program

\$6.6m

While complementary with and strongly linked to Australia's other development cooperation activities, the Police Development Program (PDP) will be managed separately. There will be three main areas of focus:

- (1) Provision of an in-line Commissioner of Police and advisors

This will include the continuation of an Australian Commissioner and 2 advisers with the provision for a fourth advisor. The focus will be to implement reform of the Nauruan Police Force (NPF).

(2) Infrastructure Development

In 2005-06, the Police Development Program will incorporate major infrastructure developments including a new police building and communications system, which will provide essential facilities for the professional development programs and other measures to increase the effectiveness of the NPF that will follow.

There will also be a refurbishment of office furniture and equipment to considerably improve the working conditions of the NPF including an overall upgrading of the IT infrastructure. In addition, there will be an upgrading of the existing Police Fleet including vehicles, motorcycles and bicycles as well as ongoing servicing.

(3) Training & Professional Development

The Training and Professional Development will focus on the provision of multi-level training for literacy, prosecutions, record management, workforce planning and professional development. This will include the development of internal policies in respect of recruitment, training, advancement, development and annual assessments.

FUNDING IN 2006-07

The Parties anticipate that funding in 2006-07 will enable continued implementation of the Joint Country Strategy. The Parties acknowledge that performance in implementing agreed economic, governance and law and justice reforms will influence the scope and focus of assistance in 2006-07. Once both Parties have accepted the scope and focus of development assistance in 2006-07, the details of this assistance will become an additional Schedule to this MOU.

**SCHEDULE C TO THE MOU BETWEEN AUSTRALIA AND NAURU:
REFORM COMMITMENTS BY THE GOVERNMENT OF NAURU**

The funding and activities described in Schedule B are an assurance of Australia's commitment to assist Nauru implement necessary reforms that enhance Nauru's viability. In 2005-06, Australia is proposing to provide up to \$23.4 million in development cooperation assistance to Nauru. Further to paragraph 9 of this MOU, the agreed economic, governance and law and justice reforms for implementation by Nauru over 2005-06 are set out below:

Aid coordination and development planning

- Identification of a single Minister to coordinate and prioritise Nauru's requests for Australian assistance and be the primary point of engagement for bilateral aid dialogue, coordination and joint decision-making.
- Provision of information, including funding levels, of all donor assistance to Nauru in budget documents and to the Parliament, as required under Article 59 of the Nauru Constitution.
- Endorsement of a National Development Strategy and implementation of the priority activities that it identifies.

Governance, economic development and reform and public sector management

- Development of a public sector reform program.
- Continued cessation of issuing new 'investor passports'.
- Meeting all requirements of the process for removal from FATF blacklist and taking all necessary steps to ensure Nauru's ongoing compliance.
- The same procedures for expenditure and receipt of government funds being applied to all government accounts, including offshore accounts.
- Provide Australian in-line officials access to all Nauru Government accounts.
- Strict control of use of Bank of Nauru cheques by individuals, government departments or instrumentalities with the aim of eventually phasing out their use altogether.
- Minimum security upgrade at Nauru International Airport, to meet standards of regional carriers.
- Substantial restructuring and rightsizing of RONPHOS;
 - o any phosphate mining to be undertaken on a commercial basis.
- Maintain procedures for meeting payments on debts owed to IntelSat for telecommunications costs.
- Preparation and submission of more detailed annual reports and financial statements produced by all state-owned enterprises.
- Progress in developing a long-term sustainable fisheries management plan.
- Allocation in budget for adequate maintenance of Nauru's airport.
- Establish a process for funding regular maintenance of the Menen Hotel.
- Enter into negotiations with Australia on a Taxation Information Exchange Agreement.

Infrastructure reform

- Reform of power and water services including:
 - o removal of responsibility for power generation from RONPHOS.

- o establishment of a new entity with responsibility for management and provision of power and water services,
 - o appointment of a suitably qualified CEO to manage the interim provision of services.
 - Allocation of budget funding to purchase fuel for power generation. This allocation should steadily increase over the period 2005-09, so that by 2009 Nauru takes responsibility for funding fuel purchases.
 - Establish and implement a power demand management strategy.
- Legal**
- Full cooperation and disclosure of information as part of a forensic audit (commencing in early-2006 and continuing through 2007) to assess and identify funds movement.

Police development program

- Commitment to reform of the Nauru Police Force.

In 2006-07, Australia is proposing to provide up to \$17.1 million in development assistance, linked to Nauru's performance in implementing agreed reforms in 2005-06. In 2006-07, it is anticipated a number of further reforms will be implemented including the following:

Governance, economic development and reform and public sector management

- Agreement to implement the preferred option identified through the ADB Technical Assistance on reforming power and water services;
 - o phased introduction of a broader user pays system for power services.
- Implementation of the public sector reform strategy, resulting in implementation of an affordable scale of salary payments, and design of a strategy for a substantial reduction in the size of the Nauru public service.
- Strengthening of education sector, including curriculum reform, teacher retraining and rationalisation of the number of schools on Nauru.
- Developing and improving health services to a more sustainable level with greater focus on primary health care, including nutrition;
 - o Nauru to take increasing responsibility for funding and procuring pharmaceuticals.
- Provision of suitably qualified local counterparts to take over from deployed Australian personnel, with the latter taking part in the selection of suitable counterparts.
- Analysis of appropriate telecommunication services on Nauru with a view to restructuring RONTTEL and possibly having telecommunication services provided by the private sector.