

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE REPUBLIC OF NAURU
ON THE
DEVELOPMENT COOPERATION PROGRAM

GENERAL

1. This Memorandum expresses the understandings of the Government of Australia (“GOA”) and the Government of the Republic of Nauru (“GON”) (“the Partners”) concerning their respective roles and contributions to the Development Cooperation Program (“the Program”) delivered in accordance with the Australia-Nauru Aid Partnership Arrangement 2016-2019 (“the Partnership”) set out in Annex 1 to this Memorandum.

PURPOSE

2. The Partners will cooperate in implementing the Program in support of reducing poverty and securing the sustainable development needs of the Republic of Nauru (“Nauru”) while promoting mutual economic and social links.

COORDINATING AUTHORITIES

3. The Coordinating Authorities for this Memorandum will be:

For the GOA: The Department of Foreign Affairs and Trade (“DFAT”).

For the GON: The Ministry of Foreign Affairs or such other authority the GON may choose to nominate.

4. DFAT or other GOA Agencies may engage suitably qualified Contractor(s) to carry out any part of the GOA’s functions under this Memorandum.

DEFINITIONS

5. For the purposes of this Memorandum:
 - a. “**Activity**” or “**Activities**” means any aspect of development cooperation undertaken pursuant to this Memorandum, including Program activities referred to under paragraphs 6 and 16;
 - b. “**Activity Personnel**” means persons who are not nationals or permanent residents of Nauru, who are working in Nauru on an Activity, and whose salaries and/or other costs are funded from GOA contributions to the Activity;
 - c. “**Activity Supplies**” means equipment, material and other goods supplied for the implementation of Activities, the cost of which is funded from GOA contributions to the Activity, but excludes equipment or goods supplied for the personal use of Activity Personnel such as vehicles or computers;



- d. “**Contractor(s)**” means the contractor(s) contracted by DFAT, both individuals and non-individual entities, or other GOA Agencies on behalf of the GOA to implement an Activity;
- e. “**Dependant(s)**” means the spouse and/or dependant minor children of Activity Personnel or any other person recognised by the Partners as a dependant of Activity Personnel;
- f. “**Intellectual Property**” has the meaning provided for in Article 2 of the Convention Establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967, as amended on 28 September 1979;
- g. “**LE Staff**” means locally engaged staff being nationals from any country, including Nauru, employed locally in Nauru by DFAT to provide support to programmed Activities;
- h. “**Partnership**” means the Australia-Nauru Aid Partnership Arrangement 2017-2019 set out in Annex 1 to this Memorandum;
- i. “**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, scooters, firearms, liquor, tobacco, foodstuffs or other consumables;
- j. “**Program**” means the Australian bilateral Development Cooperation Program in Nauru together with all other Australian Official Development Assistance (“ODA”) to Nauru, including that provided through Australia’s Regional Programs;
- k. “**Regional Programs**” refers to development issues that are common across geographic areas and are best addressed through regional cooperation, regional provision of public goods/services or regional integration with countries working together for their joint and individual benefit to strengthen governance, security, economic growth and sustainable development prospects¹; and
- l. “**Subsidiary Arrangement**” means an arrangement between the GOA and the GON regarding the conduct of an Activity.

PROGRAM ACTIVITIES

- 6. The Program will be directed to assisting mutually determined priority sectors of the Nauru economy in relation to which the GOA has expertise, including but not limited to key areas of support as outlined in the Partnership.
- 7. The Program will be in support of specific Projects, Activities, Facilities and/or Initiatives which are primarily (but need not be exclusively) within those key areas outlined in the Partnership.

¹ *The Framework for Pacific Regionalism*, an update of the *Pacific Plan* originally issued by the Pacific Islands Forum Secretariat in October 2005, sets out a process for developing and prioritising regional public policy.

8. The Program will be implemented with the support of the Activity Personnel and other LE Staff. LE Staff contribute to the effective and efficient delivery of assistance to Nauru through the provision of administrative support to programmed Activities.
9. Costs and expenses for LE Staff will be met from an allocation of the GOA contribution. Costs and expenses may include:
 - a. salaries and employee entitlements of LE Staff. The GOA will determine salary rates of LE Staff based on current market rates and/or DFAT pay scales for locally engaged staff;
 - b. the provision of capital assets, such as vehicles, information technology, mobile phones, and office furniture required to support the LE Staff. Costs will include the purchase and maintenance of consumables associated with the provision of capital assets to the LE Staff, as required;
 - c. travel costs relating to the monitoring of specific Activities and the overall Program; and
 - d. formal training costs where required by LE Staff for effective performance of their duties. This includes travel costs associated with training.
10. Day to day management and operational responsibility for the LE Staff will rest with GOA representative(s) at the Australian High Commission in Nauru.
11. Approval of the annual LE Staff budget will rest with the GOA.
12. The GOA will select LE Staff based on merit, through an open and transparent process in accordance with the GOA's guidelines for the management of LE Staff as amended from time to time by GOA.
13. LE Staff will be employed under employment contracts arranged by the GOA representative(s) at the Australian High Commission in Nauru.
14. The standard of equipment purchased with GOA funds will be consistent with relevant GOA purchasing and regulatory guidelines.

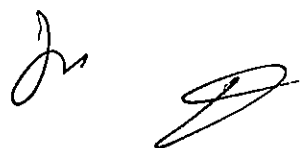
SPECIFIC PROJECTS, ACTIVITIES, FACILITIES OR INITIATIVES

15. In order to give effect to the Program, the GOA and the GON may enter into Subsidiary Arrangements in writing for the purpose of carrying out specific Activities.
16. The Subsidiary Arrangements will refer as appropriate to this Memorandum, and the terms of this Memorandum will, unless otherwise stated, apply to the Activities. Wherever possible, the Subsidiary Arrangements will set out:
 - a. the name and duration of the Activity;
 - b. a description and statement of objectives of the Activity;

- c. the nominated implementing agencies of both Partners;
- d. details of the contributions to the Activity by both Partners including:
 - i. financial contributions;
 - ii. the supply of materials, services and equipment;
 - iii. the numbers and areas of expertise of Activity Personnel and other personnel to be engaged; and
 - iv. estimated annual budgets;
- e. timetable(s) for implementation;
- f. monitoring, review and evaluation arrangements; and
- g. that the Subsidiary Arrangement is not legally binding.

GOVERNMENT OF AUSTRALIA CONTRIBUTIONS

- 17. The provision by the GOA of the Australian contribution to the Program and individual Activities under the Program depends on appropriate annual Australian Parliamentary approval of appropriations in respect to the Program or Activity.
- 18. The Program or Activity financial contribution estimates provided by the GOA will be indicative planning figures only and not binding financial commitments. Annual program estimates will be arranged between the Parties prior to the start of each financial year and any variations discussed as appropriate throughout the year.
- 19. The contributions of the GOA under this Memorandum will support the Activities and may include, but will not be limited to, the following:
 - a. the sending of missions to Nauru to study and analyse opportunities for Australian development assistance;
 - b. the granting of scholarships to nationals of Nauru for studies in Australia, or another country;
 - c. the assignment of experts, advisers and other specialists to Nauru in connection with Activities;
 - d. the provision and transport of Activity Supplies required for the successful execution of development assistance in Nauru;
 - e. the development and implementation of collaborative research between institutions and personnel of Australia and Nauru designed to contribute to the purposes of this Memorandum; and
 - f. any other form of development assistance, reportable as ODA under the OECD Development Assistance Committee ("DAC") guidelines, as may be determined by the Partners.

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20. In addition to meeting costs specified in paragraphs 9 and 19 above and 31 below, the GOA may:
 - a. meet costs related to training, materials, services and equipment (as appropriate for each Activity);
 - b. pay salaries, allowances, travel between Australia and the Activity sites, accommodation costs and living expenses of Activity Personnel; and
 - c. meet costs related to transport of GOA funded equipment, Activity Supplies and Activity Personnel to Activity sites.
21. Another donor or donors may also meet costs referred to in paragraphs 9, 19, 20 and 31 separate from or jointly with GOA, subject to the consent of both Partners.
22. The GOA may, at its discretion, consent to meet costs in addition to those referred to in paragraphs 9, 19, 20 and 31, if requested to do so by the GON.

GOVERNMENT OF THE REPUBLIC OF NAURU CONTRIBUTIONS

23. The GON will meet all costs incurred by it in Nauru in support of each Activity other than those which the GOA or any other donor has decided to meet in accordance with paragraphs 9, 19, 20 and 31 of this Memorandum.
24. The costs to be met by the GON will normally include:
 - a. salaries and allowances of personnel, other than Activity Personnel and other LE Staff;
 - b. materials, services and equipment for the Activity as mutually determined between the Partners;
 - c. furnished office premises and office services on the sites of Activities where such premises and services are needed by Activity Personnel to carry out their duties; and
 - d. other measures within the jurisdiction of the GON (such as the provision of land) which may facilitate the implementation of the Activities.
25. The GON will provide ongoing budget support to relevant GON Ministries and State Owned Enterprises to ensure the sustainability of the achievements of Activities once GOA contributions have ceased.

REVIEW, MONITORING AND EVALUATION

26. The Partners may review the progress of each Activity at times arranged between and mutually convenient to the Partners. The reviews may be carried out by a joint investigation team appointed by the Partners and independent of Activity Personnel or other individuals involved in the Activities. The Partners may mutually arrange for joint evaluation of Activities to assess the effectiveness and impact of those Activities.

27. In addition, the Partners may mutually arrange for joint evaluation and review of the overall Program on an annual basis, to inform the future development cooperation assistance between the GOA and the GON.

JOINT COORDINATION

28. The Partners will hold regular officials-level consultations to consider:
- a. the direction, composition and contribution of Australian development assistance to the development of Nauru;
 - b. the effectiveness of the administration and impact of the GOA's development cooperation assistance to Nauru; and
 - c. future development cooperation assistance between the GOA and the GON.
29. Representatives of the Coordinating Authorities and other relevant institutions and organisations of the GOA and the GON may attend the consultations.
30. Through their Coordinating Authorities, the Partners will monitor the implementation of the Activities and direct any reasonable action as may be deemed necessary to ensure that issues mutually determined to be within the control of either Partner, which may threaten the achievement of the objectives of the Program or of any of the Activities, are resolved in a timely and appropriate manner.

ACTIVITY PERSONNEL

31. Salaries and other costs associated with the employment of Activity Personnel will be funded from GOA Contributions.
32. For the purposes of the Program, the GON, in accordance with Nauruan law, will support the deployment of Activity Personnel by:
- a. granting exemption from income taxes on salaries, and allowances;
 - b. granting exemption from import and other duties on Personal and Household Effects;
 - c. granting exemption from import duties on one motor vehicle for the personal use of each Activity Personnel provided that the vehicle is re-exported on departure of the Activity Personnel or duty is paid on its assessed value at time of sale or disposal within Nauru;
 - d. assisting in clearance through customs of Personal and Household Effects and the motor vehicle referred to in paragraph 32(c) above;
 - e. granting Activity Personnel all rights and entitlements accorded to non-accredited aid personnel of any other donor country or organisation; and
 - f. expediting the issue of all documentation required for the entry and exit of Activity Personnel and their Dependant(s) to and from Nauru, and for the performance of work by Activity Personnel, including the granting of exemption from visa fees. The GOA will meet other visa requirements including the provision of character references, police records and medical

certificates for Activity Personnel and their Dependant(s); unless GON provides a written exemption on a case by case basis.

CONTRACTORS

33. Charges and costs associated with the engaging of Contractors are to be funded from GOA Contributions.
34. For the purposes of the Program, the GON, in accordance with Nauruan law, will support the deployment of Contractors who are not nationals or permanent residents of Nauru by:
 - a. granting exemption from all income taxes and taxes on Contractor salaries, fees and allowances;
 - b. granting exemption from import and other duties on Contractor office and Activity or Program materials, including construction materials;
 - c. granting exemption from import duties on motor vehicles for the use of any Contractor(s), provided that the vehicle is re-exported on departure of the Contractor(s) or duty is paid on its assessed value at time of sale or disposal within the Nauru;
 - d. assisting in clearance through customs of and the motor vehicles referred to in paragraph (c) above;
 - e. granting all rights and entitlements accorded to non-accredited aid contractor of any other donor country or organisation; and
 - f. expediting the issue of all documentation required for the entry and exit of any Contractor(s), Contractor staff and any of their dependents to and from Nauru, and for the performance of work by any Contractor(s), including the granting of exemption from visa fees. The GOA will meet other visa requirements including the provision of character references, police records and medical certificates for the Contractor and their staff, unless GON provides a written exemption on a case by case basis.

ACTIVITY SUPPLIES

35. GON will, in accordance with Nauruan law:
 - a. exempt Activity Supplies from import duties and other taxes, or pay those duties and taxes; and
 - b. facilitate movement of the Activity Supplies by providing appropriate customs and transport facilities including:
 - i. payment of any necessary storage costs at the first port of discharge of the Activity Supplies in Nauru; and
 - ii. taking responsibility for all formalities of clearance including payment of or exemption from import duties, service tax and port tax and other taxes, or charges of a similar nature.

36. Activity Supplies will be available only for use for the purposes of the Activity and will not be withdrawn from that use without the consent of both Partners. The designated Activity Personnel will exercise control over the Activity Supplies for the duration of the Activity or until such other time as mutually arranged between the Partners.
37. The Activity Supplies identified by GOA for return to Australia will not be subject to duties, taxes or levies upon export from Nauru.
38. During the period of the Activity, vehicles and computers supplied for the use of Activity Personnel will remain under the control of the designated Activity Personnel and will not be transferred to the GON.
39. At completion of each Activity and subject to paragraphs 41 to 42 below, all Activity Supplies will be transferred to another Activity under this Memorandum or alternatively if there is no such Activity be dealt with as mutually determined between the Partners.

2004 POLICE AGREEMENT NOT AFFECTED

40. Personnel deployed pursuant to the provisions of the Agreement between Australia and Nauru Concerning Additional Police and Other Assistance to Nauru, signed on 10 May 2004, continue to be subject to the provisions of that Agreement.

WARRANTIES

41. Following testing of any Activity Supplies supplied to the GON pursuant to this Memorandum, the GON will bear all risks associated with the installation and maintenance of the Activity Supplies once the GOA hands over any such Activity Supplies, subject to any express warranties given to the GOA by the suppliers of the Activity Supplies.
42. With respects to any Activity Supplies that are the subject to express warranties given to GOA, the GOA will exercise any right under such warranties it may have against the suppliers on behalf of the GON on request from the GON.

INTELLECTUAL PROPERTY

43. Notwithstanding paragraph 39 above, the GOA will retain its ownership of all Intellectual Property rights attached to the Activity Supplies and vested in the GOA.
44. In accordance with the cooperative nature of the Program, ownership of any Intellectual Property rights developed through Activities will be equitably apportioned between the Partners.
45. If Intellectual Property developed through an Activity is likely to be of substantial commercial value, the Partners will enter into a further arrangement providing for the equitable apportionment of profits, royalties or licence fees relating to the Intellectual Property. The apportionment will be made taking into account the following factors:
 - a. the intellectual contributions of the Partners;

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- b. the contribution of Intellectual Property, materials, research effort and preparatory work of the Partners;
 - c. the facilities provided by the Partners; and
 - d. such other relevant considerations as the Partners may mutually determine.
- a. Neither Partner will, without the written approval of the other Partner, do anything prejudicial to the Intellectual Property rights of that other Partner or any national of the country of that other Partner.

SECURITY

- 46. The GON will arrange, as far as may be necessary in the circumstances, protective services required to ensure the safety and security of:
 - a. the person and property of the Activity Personnel and their Dependant(s);
 - b. other personnel engaged in an Activity; and
 - c. Activity Supplies.

EQUALITY OF TREATMENT

- 47. The GON will ensure that Australian organisations, Activity Personnel and their Dependant(s) are accorded no lesser benefits, privileges and exemptions than those accorded to other non-Nauru organisations, governments or nationals under any other bilateral arrangement for development cooperation assistance.

CLAIMS RELATING TO PROGRAM ACTIVITIES

- 48. The GON releases the GOA, Activity Personnel and their Dependents from all actions, suits, proceedings, claims and demands which the GON may have now or in the future against them or any of them in relation to loss or damage resulting from, or consequent upon, the Activities.
- 49. The GON will ensure that the GOA and the Activity Personnel are not liable for:
 - a. any actions, suits, proceedings, claims and demands which any other party have now or in future against them or any of them in relation to loss or damage resulting from, or consequent upon, the Activities; and
 - b. any claim for contributions which any party may have now or in future against any of them in respect of any such actions, suits, proceedings, claims and demands.
- 50. The release and limitation of liability in paragraphs 49 and 50 will not apply if the Partners have mutually decided that an action, suit, proceeding, claim or demand arises from a criminal act, gross negligence or wilful misconduct of the GOA, Activity Personnel or their Dependents.

UNDERTAKING TO PREVENT FINANCING OF TERRORISM

- 51. Both Partners are firmly committed to the international fight against terrorism and, in particular, the financing of terrorism consistent with United Nations Security



Council (UNSC) resolutions relating to terrorism, including UNSC Resolution 1373 (2001), 1267 (1999), 1989 (2011) and 2253 (2015) and related resolutions.

52. Both Partners reaffirm their commitment to the principles of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999).
53. The Partners will cooperate to ensure that any funding provided pursuant to this Memorandum is not used, directly or indirectly, to provide support to individuals or entities associated with terrorism.
54. If, during the term of this Memorandum, either Partner discovers an organisation or individual subject to this Memorandum is associated with terrorism, it will immediately inform the other Partner.

SETTLEMENT OF DIFFERENCES

55. This Memorandum is neither a treaty nor an instrument of treaty status. Consequently, differences which may arise concerning the interpretation or application of the Memorandum will not be subject to adjudication or arbitration by any national or international court or tribunal but will instead be dealt with in an amicable way as the appropriate method of achieving the peaceful settlement of those differences.
56. The Partners will consult together at any time upon request of either Partner regarding any matter relating to the terms of this Memorandum and will endeavour jointly in a spirit of cooperation, good faith and mutual trust to resolve expeditiously any difficulties or misunderstandings that may arise.

AMENDMENTS

57. This Memorandum may be amended at any time by mutual decision in writing in the form of a formal Exchange of Letters between the Partners.

ENTRY INTO EFFECT AND DURATION

58. This Memorandum will take effect on signature by the Partners and will remain in effect until terminated.
59. Paragraph 34 will apply retrospectively as of 1 July 2016
60. The Partners may terminate this Memorandum by mutual decision in writing or by either Partner giving the other Partner at least three months' written notice of its intention to terminate.
61. The termination of this Memorandum will not affect any Subsidiary Arrangements existing on the date of termination, unless stated otherwise in such Subsidiary Arrangements or the Partners otherwise mutually arrange.

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Signed at Yaren, Nauru this 25th day of October 2017

For the Government of Australia


For the Government of the
Republic of Nauru

Signature

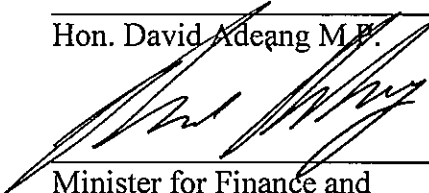
Signature

H.E. John Donnelly

Hon. David Adeang M.P.



Australian High Commissioner to Nauru



Minister for Finance and
Sustainable Development

**ANNEX 1: AUSTRALIA – NAURU AID PARTNERSHIP ARRANGEMENT
2016-2019**

