



MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF
THE REPUBLIC OF INDONESIA
ON THE INDONESIA-AUSTRALIA SKILLS DEVELOPMENT EXCHANGE
PILOT PROJECT

The Government of the Republic of Indonesia (Indonesia) and the Government of Australia (Australia), have reached the following understandings.

1 PURPOSE

- 1.1 The purpose of this Memorandum of Understanding (MOU) is to:
- (a) establish the Indonesia-Australia Skills Development Exchange Pilot Project (**Pilot Project**);
 - (b) outline the scope, terms and conditions of the Pilot Project; and
 - (c) set out, as a principles-based document, the overall framework to implement the Pilot Project.
- 1.2 This Memorandum is administrative in nature and does not intend to create, maintain or govern legal relations or obligations between Australia and Indonesia. The obligations arising under domestic or international law for Australia and Indonesia are not affected by this Memorandum.

2 DEFINITIONS

2.1 Unless the contrary intention appears, a term used in this Memorandum has the meaning shown in the table below:

Business Peak Body	means:
	(a) for Indonesia:
	(i) the Indonesian Chamber of Commerce and Industry, 'Kamar Dagang dan Industri' (KADIN); or
	(ii) Asosiasi Pengusaha Indonesia (APINDO); or
	(iii) the Indonesia-Australia Business Council (IABC);
	(b) for Australia:
	(i) the Australian Chamber of Commerce and Industry (ACCI); or

	(ii) the Australian Industry Group (Ai Group); or
	(iii) the Australia-Indonesia Business Council (AIBC);
Employed	means to be in an employee-employer relationship under a contract of employment and does not include independent contractors;
Exchangee	means an individual who will undertake a Workplace Placement under this MOU;
Host Organisation	means a business enterprise which is hosting an Exchangee to undertake a Workplace Placement under this MOU;
Immigration Authority	means:
	(a) Directorate General of Immigration (Imigrasi) in the case of Indonesia; and
	(b) the Department of Home Affairs (Home Affairs) in the case of Australia;
Migration Law	means legislation, regulations, determinations, other regulations, case law and any policy that governs the entry to, stay in and departure from a country by a non-citizen of that country;
	For Australia this includes: The <i>Migration Act 1958</i> and associated legislation, including but not limited to the <i>Migration Regulations 1994</i> .
	For Indonesia this includes: <i>Law No. 6/2011 on Immigration</i> and its implementing regulation not limited to the <i>Government Regulation No. 31/2013</i> .
Pilot Project Criteria	means eligibility requirements set out in paragraph 5.2 of this MOU;
Regulated Occupation	means an occupation which requires a licence, registration or certification to practice;
Sending Organisation	means a business enterprise which is sending an Exchangee to undertake a Workplace Placement under this MOU;
Visa	means a visa, permit, pass or other document or electronic authority granting an individual the right to enter, stay or work in Australia or Indonesia, including any conditions which attach to it;
Workplace Law	means any legislation, regulation, award,

determination or other instrument at any level of administration, and any case law, which regulate the relationships between employers and employees and between an independent contractor and a principal (including those dealing with workplace health and safety matters, discrimination and workers compensation).

In Australia, this includes the *Fair Work Act 2009 (Cth)*, *Fair Work (Registered Organisations) Act 2009 (Cth)*, and the *Independent Contractors Act 2006 (Cth)*.

In Indonesia this includes:

Law No. 13/2003 on Manpower, Law No. 18/2017 on Indonesian Migrant Worker, Law No. 1/1970 on Occupational, Safety and Health, Law No. 7/1981 on Compulsory Company Manpower Report.

Workplace Placement

Workplace Placement means an **Exchangee's** placement in the **Host Organisation** with the purpose of developing skills and undertaking training in line with the objectives of this MOU and as agreed between the **Host Organisation** and the **Exchangee** and **Sending Organisation**.

3 OBJECTIVES

3.1 The primary objective of the Pilot Project is to enable appropriately skilled individuals to travel between Indonesia and Australia to undertake short-term Workplace Placements for the purpose of skills training with businesses or other organisations in specified sectors.

3.2 The cooperative intent outlined in this MOU reflects Australia and Indonesia's shared desire to:

- (a) facilitate exchanges to share skills and practical work experience between Indonesia and Australia;
- (b) strengthen understanding of business, government and cultural practices in Indonesia and Australia;
- (c) strengthen cooperation between Indonesian and Australian government agencies on collaborative skills development; and

(d) enable business to provide targeted workplace-based training and experience to employees in both Indonesia and Australia to improve skills competencies.

3.3 The Pilot Project will take into account Indonesia and Australia's different levels of development, skills capabilities and development priorities.

4 GOVERNING PRINCIPLES

EXCHANGES

4.1 The Pilot Project will enable exchanges between Indonesia and Australia of:

(a) skilled individuals (Exchangees), who are Employed by a Sending Organisation, to undertake a Workplace Placement and training with a Host Organisation in the sectors listed below:

- (i) Financial and insurance services
- (ii) Mining, engineering and related technical services
- (iii) Information media and telecommunications services

4.2 Exchangees and organisations seeking to participate in the Pilot Project will need to meet the requirements set out in this MOU.

4.3 Any exchange under the Pilot Project will be for a maximum period of up to six months and will be available once only to any individual Exchangee.

BUSINESS SUPPORT FRAMEWORK

4.4 In order to take part in an exchange under the Pilot Project, prospective Exchangees will require the support of a Sending Organisation and a Host Organisation.

4.5 The Sending Organisation and Host Organisation should jointly determine, in writing, the terms and conditions on which they will send and host the Exchangee, in accordance with this MOU.

4.6 The Sending Organisation and Host Organisation will be responsible for arranging and funding Workplace Placements for Exchangees, including: the Exchangee's travel; workplace based training and any formal training; remuneration; health insurance; and, where applicable, sector specific workplace insurance.

4.7 The Host Organisation will be responsible for ensuring all Workplace Law requirements in its jurisdiction, including remuneration and, where applicable, sector specific workplace insurance, are met in respect of the Exchangee.

4.8 The Sending Organisation and Host Organisation should have an existing relationship or establish a relationship for the purpose of arranging an exchange under the Pilot Project. Such exchange relationships may only include exchanges between:

- (a) branches or parts of the same organisation;
- (b) an organisation and an affiliate organisation (for example, between a company and a subsidiary or related entity);
- (c) an organisation and an established partner organisation (for example, between joint venture partners, businesses with existing formal links, or between a business and an established client); or
- (d) organisations that are Members of KADIN, APINDO, IABC, ACCI, Ai Group or AIBC.

SKILLS DEVELOPMENT PLACEMENT CRITERIA

4.9 Australia and Indonesia affirm their intention that any skills development exchanges under the Pilot Project, as described in paragraph 4.1 (a), should be focused on providing Exchangees with appropriate workplace experience and training as set out in this MOU.

4.10 The Sending Organisation and Host Organisation should determine in writing the skills to be developed during a Workplace Placement, including training to be provided.

4.11 Any Workplace Placements undertaken under the Pilot Project will need to be in placements that relate to positions of appropriate skill level.

- (a) For Australia, a position of appropriate skill level means any position in an occupation as defined in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) Skill Level 1-3 within the sectors specified in paragraph 4.1, other than where Australian citizenship or permanent residence is a pre-requisite for employment;
- (b) For Indonesia, a position of appropriate skill level means any position of an occupation requiring a bachelor degree, or diploma 1 and above with 5 years working experience related to the occupations within the sectors specified in paragraph 4.1.

4.12 Exchangees taking part in the Pilot Project may obtain relevant qualifications or certification through participation in relevant courses while on the exchange (for example, formal training for licensing or regulatory purposes for the occupation). The Host Organisation should encourage Exchangees to take an examination for certification during the program, where feasible. While formal training may be undertaken this is not be the primary purpose of the exchange.

4.13 For Workplace Placements in positions that are Regulated Occupations in Australia and Indonesia, an Exchangee:

- (a) must satisfy licensing or related requirements specified by the regulator for the occupation in the relevant jurisdiction; and
- (b) may complete any training required to meet relevant licensing or related conditions for the occupation as part of the exchange under this MOU provided that such training would be completed in the period of the placement (up to six months).

4.14 As part of the terms and conditions of the exchange determined under paragraph 4.5, the Sending Organisation and Host Organisation should determine in writing the training to be provided.

4.15 Australia and Indonesia acknowledge that training may differ on a case-by-case basis and will depend on the Exchangee's needs and skills development priorities as determined by the Sending Organisation and Host Organisation. Such training may include, but is not limited to, classroom-based learning, technical training and 'on-the-job' skills development, delivered at the workplace or by external providers.

4.16 Host Organisations should provide to Exchangees at the conclusion of an exchange a written statement confirming the training and period of work placement undertaken by the Exchangee.

WORKPLACE REQUIREMENTS

4.17 Workplace Placements undertaken under the Pilot Project need to comply with any relevant licencing requirements and Workplace Law in the jurisdiction in which the exchange is hosted.

4.18 Host Organisations must ensure that Exchangees undertaking a Workplace Placement are afforded all applicable terms and conditions of employment or engagement for the position under the Workplace Law of the host jurisdiction and provide the Exchangee with information on those terms and conditions.

4.19 To avoid any doubt, the Sending Organisation and Host Organisation will be responsible for any costs associated with an Exchangee's training under the Pilot Project, including the Exchangee's participation in any formal training.

MUTUALLY ADVANTAGEOUS OUTCOMES

4.20 The Pilot Project will operate on the principle of delivering mutually advantageous outcomes to strengthen skills and experiences in both Indonesia and Australia.

4.21 Australia and Indonesia affirm their intention to:

- (a) facilitate temporary movement of individuals in both directions between Indonesia and Australia under the terms of the MOU; and
- (b) cooperate with relevant domestic authorities to ensure the effective implementation of the Pilot Project.

5 MANAGEMENT ARRANGEMENTS

5.1 Australia and Indonesia will ensure that appropriate governance arrangements are in place in their respective jurisdictions with domestic authorities and participating organisations to ensure that the Host Organisations comply with relevant Workplace Law. For Workplace Placements undertaken in Australia, the agreement to be annexed to the statutory declaration referred to in paragraph 5.3 will state that Workplace Placement will be carried out in accordance with Australian Workplace Law and that the Exchangee will be afforded all applicable terms and conditions of employment or engagement for the position under Australian Workplace Law.

PILOT PROJECT CRITERIA

5.2 In order to be eligible to participate in the Pilot Project, an Exchangee will need to demonstrate that they meet the following Pilot Project Criteria:

- (a) be full-time Employed by the Sending Organisation;
- (b) be currently working in the Sending Organisation in an occupation relevant to the proposed exchange;
- (c) hold appropriate post-secondary educational qualifications or relevant occupational skills or experience to participate in an exchange;

- (d) that the Sending Organisation has agreed appropriate Workplace Placement arrangements with a Host Organisation, including training to be undertaken and the intended skills development outcomes;
- (e) have the support of the Sending Organisation and Host Organisation for the Workplace Placement;
- (f) have adequate language proficiency for the position and the intent of the exchange; and
- (g) be aged over 18 years at the time the Visa application is made.

PILOT PROJECT PROCEDURE

5.3 For a Workplace Placement in Australia, the Host Organisation will complete a statutory declaration signed by a duly authorised agent of the Host Organisation, which must be provided to the Exchangee. The statutory declaration must reflect the following:

- (a) the fact that the Host Organisation and Sending Organisation have reached an agreement on a Workplace Placement in respect of the Exchangee under the MOU on the Indonesia-Australia Skills Development Exchange Pilot Project, with such agreement attached to the statutory declaration; and
- (b) that the Host Organisation has informed the Exchangee of the particular aspects of the agreement pertaining to the Host Organisation's compliance with the terms of the MOU and the Host Organisation's undertaking to ensure that the Exchangee is afforded all applicable terms and conditions of employment or engagement for the position under the Workplace Law of Australia and to provide the Exchangee with information on those terms and conditions.

5.4 The agreement between the Host Organisation and the Sending Organisation to be annexed to the statutory declaration referred to in paragraph 5.3 must include, at a minimum:

- (a) the name and address of the Exchangee;
- (b) the full-time occupation the Exchangee holds in the Sending Organisation, including a description of the duties undertaken by the trainee in the Sending Organisation;
- (c) the relationship between the Hosting Organisation and the Sending Organisation (see paragraph 4.8);

- (d) qualifications held by the Exchangee, including certified copies of qualifications held;
- (e) details of the proposed Workplace Placement, including the skill level required which must be consistent with the requirement at 4.10(a);
- (f) details of the training to be provided to the Exchangee by the Hosting Organisation and the training outcomes expected to be achieved;
- (g) confirmation that the Exchangee has consented to Australia or Indonesia sharing personal information that the Exchangee or the Host Organisation provides to Australia or Indonesia, about the Exchangee, within its agencies;
- (h) an undertaking that the Host Organisation will comply with the terms of the MOU in respect of the proposed Workplace Placement; and
- (i) an undertaking that the Host Organisation will meet its obligations under Australian Workplace Law in respect of the Exchangee for the purposes of their Work Placement, and include details in relation to this such as:
 - (i) appropriate arrangements for funding the Exchangee's travel (including return airfares) and associated fees and administrative costs;
 - (ii) remuneration of the Exchangee;
 - (iii) arrangement for health insurance for the Exchangee; and
 - (iv) where applicable, sector specific workplace insurance.

5.5 The Exchangee will request the appropriate Indonesian Government authority (Ministry of Manpower of the Republic of Indonesia) and the appropriate Australian Government authority (Department of Foreign Affairs and Trade) to each provide respective letters supporting the Workplace Placement. For Australia this request for a letter of support will include a certified copy of the statutory declaration provided by the Hosting Organisation (paragraph 5.3).

5.6 For a Workplace Placement in Indonesia, the Host Organisation must obtain a letter of support from one of the Indonesian Business Peak Bodies. The Ministry of Manpower will issue the Foreign Worker Utilization Plan (RPTKA) following receipt of a letter from the Host Organisation with the detail (copy of passport and curriculum vitae) of the Exchangee. For the submission process, the Host Organisation or Business Peak Body could access the official website, www.tka-online.kemnaker.go.id, to submit the application.

IMMIGRATION FORMALITIES

5.7 Exchangees will need to apply for an appropriate Visa to enter the country that will host the proposed exchange under the Pilot Project. The Exchangee will be responsible for providing to the relevant Immigration Authority all documentation required for a Visa application.

5.8 In the case of an application for an Australian Visa, the Exchangee will provide the letters of support referred to in paragraph 5.5 to the Australian Immigration Authority as part of the Exchangee's Australian visa application.

5.9 In the case of an application for an Indonesian visa, the Exchangee should submit a copy of the approved Foreign Worker Utilization Plan (RPTKA) in order to obtain a visa and limited stay permit for the workplace placement as referred to in paragraph 5.6.

6 VISA ARRANGEMENTS

6.1 To apply for a Visa under the Pilot Project, an applicant will need to submit the following documents for processing:

- (a) relevant **Visa application** form required by the Immigration Authority;
- (b) the **letters of support** referred to in paragraph 5.5;
- (c) evidence of **financial support** and **health insurance** for the applicant during the exchange;
- (d) evidence of payment of the **Visa application charge**; and
- (e) any **other documents** required by the Immigration Authority.

6.2 For an exchange in Australia, individuals in Indonesia will need to apply for a *Temporary Work (International Relations) Visa (Subclass 403) – Government Agreement Stream* or its equivalent. Visa applications must be submitted online, through the Department of Home Affairs' online system, ImmiAccount.

6.3 For an exchange in Indonesia, the Host Organisation in Indonesia will need to apply for a visa index 312, Limited Stay Visa. Visa applications should be submitted for processing to an Indonesian Directorate General Immigration Office in Indonesia or The Indonesian Embassy in Australia.

6.4 Visas issued will not exceed six months in length and will not include provisions for extending stay or for spouses or dependants to accompany the Exchangee.

VISA DECISIONS

6.5 In addition to meeting the requirements of this MOU, all applicants must meet any requirements set out in the relevant Migration Law before they can be granted a Visa under the Pilot Project.

6.6 The decision to grant a Visa under the Pilot Project remains the prerogative of the respective Immigration Authorities.

6.7 The relevant Immigration Authority will make a Visa decision on a case-by-case basis, and in accordance with the requirements set out in this MOU and in the relevant Migration Law.

7 PARAMETERS

7.1 Australia and Indonesia jointly determine what limits will apply to the Pilot Project in relation to the following:

- (a) the number of places under the Pilot Project from each country:
 - (i) in the first year – up to 100 Exchangees granted;
 - (ii) in the second year – up to 200 Exchangees granted;
 - (iii) in the third year – up to 300 Exchangees granted;
 - (iv) in the fourth year – up to 400 Exchangees granted; and
 - (v) in the fifth year - up to 500 Exchangees granted.
- (b) a limit of 20 Exchangees granted per organisation per year unless Australia and Indonesia otherwise jointly determine.
- (c) The number of places from Australia or Indonesia is not cumulative each year. That is, there can be no more than 1,500 places granted under the Pilot Project from Australia or Indonesia over the five-year life of the pilot.

7.2 Each rise in annual intake outlined in paragraph 7.0 is subject to Australia and Indonesia's mutual approval, following a review of the Pilot Project as provided in paragraph 13 and in accordance with paragraph 14.

8 EXCHANGE OF INFORMATION

8.1 Australia and Indonesia will assist each other, wherever possible, with interpretation of rules, regulations and any other requirements necessary for meeting commitments under this MOU.

9 COMMUNICATION STRATEGY AND MEDIA

9.1 Australia and Indonesia and Business Peak Bodies will promote the Pilot Project among relevant stakeholders in Indonesia and Australia.

9.2 Australia and Indonesia may jointly determine a consistent strategy for communicating with internal and external stakeholders regarding the Pilot Project. This may include jointly developing communication and promotion materials, such as guidelines and information pamphlets, where appropriate.

9.3 Australia and Indonesia will endeavour to collaborate on any media releases and other communication with the media and other stakeholders regarding the Pilot Project.

10 OFFICIAL DISCLOSURE AND CONFIDENTIALITY

10.1 Australia and Indonesia will endeavour to:

- (a) share with each other information relevant to the Pilot Project; and
- (b) consider any stakeholder requests for information and consult one another where needed.

10.2 Australia and Indonesia will maintain appropriate confidentiality and ensure that information collected and used in conjunction with the Pilot Project is not subject to unauthorised access, interference, use, loss or disclosure at any time.

10.3 Australia and Indonesia will provide guidance on the arrangements established by this Memorandum with the relevant government agencies and stakeholders involved in the management of the Pilot Project.

10.4 In keeping with principles outlined in paragraphs 10.1 through 10.3, Australia and Indonesia will comply with any relevant legislative and policy requirements in relation to official disclosure, and confidentiality and ensure their officers, employees, consultants and contractors are fully aware of their obligations.

11 DISPUTE RESOLUTION

11.1 Any dispute between Australia and Indonesia concerning the interpretation or the implementation of this MOU will be settled amicably through consultations or negotiations.

11.2 Disputes will not be referred to any dispute resolution body or tribunal.

11.3 Despite the existence of a dispute, Australia and Indonesia will continue to perform their respective roles under this MOU, unless requested not to do so by either Australia or Indonesia or unless the MOU is suspended in accordance with paragraph 11.4.

11.4 Australia or Indonesia may, by providing a written notice, suspend operation of this MOU until the dispute is resolved to the satisfaction of both Australia and Indonesia. A suspension may be lifted following a further written notice.

11.5 Where this MOU is suspended:

- (a) the arrangements under the MOU will continue to apply in respect of any holder of a Visa issued under the MOU who remains in Indonesia or Australia at that time, until the expiration of that Visa; and
- (b) the provisions of this MOU concerning costs, confidentiality and the settlement of disputes will continue in effect notwithstanding the suspension.

12 COMMENCEMENT, DURATION AND TERMINATION

COMMENCEMENT

12.1 This MOU comes into effect at the same time as the date of entry into force of the Indonesia-Australia Comprehensive Economic Partnership Agreement.

DURATION

12.2 This MOU remains in effect for five years, unless Australia and Indonesia otherwise determine in writing. Australia and Indonesia may jointly decide to extend the Pilot on such terms and conditions as agreed by Australia and Indonesia.

TERMINATION

12.3 This MOU may be terminated at any time.

12.4 In order to terminate this MOU, Australia or Indonesia will provide written notification to the other at least two months before the intended date of termination.

12.5 In the event that this MOU is terminated:

- (a) the arrangements under the MOU will continue to apply in respect of any holder of a Visa issued under the MOU who remains in Indonesia or Australia at that time, until the expiration or revocation of that Visa; and
- (b) the provisions of this MOU concerning costs and confidentiality will continue in effect notwithstanding the termination of this MOU.

13 REVIEWS

13.1 Australia and Indonesia in consultation with Business Peak Bodies will review this MOU on an annual basis or within such other period as jointly determined. The first review will take place nine months from the date on which the MOU came into effect.

13.2 As part of each review, Australia and Indonesia will consider the operation and implementation of the MOU, including but not limited to:

- (a) any issues affecting the implementation of the MOU;
- (b) the extent to which the MOU is achieving its objectives;
- (c) the management of the MOU, including any issues identified by the Business Peak Bodies;
- (d) any reported compliance issues concerning Exchangees or organisations participating in the Pilot Project; and
- (e) any other issues that Australia and Indonesia consider relevant to the Pilot Project.

14 AMENDMENT

14.1 If Australia and Indonesia amend this MOU, any amendment will:

- (a) be made jointly by Australia and Indonesia;
- (b) be made in writing; and

(c) come into effect as specified in paragraph 0.

14.2 Unless otherwise stated, an amendment to this MOU comes into effect on:

- (a) the date on which it is signed by both Australia and Indonesia; or
- (b) in the event that Australia and Indonesia do not sign the amendment on the same day, the date on which the last of the two signs.

15 CONTACTS

15.1 For Ministry of Manpower of the Republic of Indonesia:

Direktorat Pengendalian Penggunaan Tenaga Kerja Asing (Directorate Controlling of Foreign Worker Utilization).

15.2 For Department of Foreign Affairs and Trade:

Regional Trade Agreements Division.

SIGNATURES


SIGNED in duplicate at Jakarta on the 4th day of March 2019 in the English and Indonesian languages, both texts being equally valid. In case of any divergence in the interpretations, the English text will prevail.

For the Government of
Australia:



First Assistant Secretary
Regional Trade Agreements Division
Department of Foreign Affairs and Trade

For the Government of
the Republic of Indonesia:



Secretary General
Ministry of Manpower