

Department of Foreign Affairs and Trade

Activity Schedule 50 to the Record of Understanding No.
14374

In relation to cooperation between Commonwealth of
Australia represented by the Department of Foreign Affairs
and Trade (**DFAT**) and
Attorney-General's Department (**AGD**)
regarding the Indo-Pacific Justice and Security Program (IP-
JUSP)

This Activity Schedule 50 sets out the objectives of DFAT and AGD (the **Partners**) in relation to the Indo-Pacific Justice and Security program (IP-JUSP) (the **Activity**) which will be implemented under the Record of Understanding signed by the Partners on 15 December 2006 (the **ROU**).

This Activity Schedule (including any attachments) details the scope of the Activity, as well as the contributions and roles of each Partner in relation to the Activity. Unless otherwise stated in this Activity Schedule, the provisions of the ROU will apply.

Signed on behalf of **DFAT** by:

Michael Wilson

Name

Assistant Secretary GFB

Designation

Michael Wilson 4/9/17

Signature and Date

Signed on behalf of **AGD** by:

Karen Moore

Name

Assistant Secretary, International
Legal Assistance

Designation

Karen Moore 4/9/17

Signature and Date

1. INTERPRETATION

- 1.1 The following definitions apply in this Activity Schedule and any attachments unless the contrary intention appears:

Activity	means the project, activity or program of activities described in this Activity Schedule.
Attorney-General's Department	means the Commonwealth of Australia represented by the Attorney-General's Department.
AGD	means the Attorney-General's Department.
AUD	means the Australian Dollar.
Comcare	means the Commonwealth of Australia represented by Comcare.
Commonwealth	means the Commonwealth of Australia.
Deployment (Long-term Posting – LTP)	means a period of duty in an overseas country for longer than 12 months.
DFAT	means the Commonwealth of Australia represented by the Department of Foreign Affairs and Trade.
Fraudulent Activity, Fraud or Fraudulent	means dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes suspected, alleged or attempted fraud.
Funding	means the amount of money as specified in the paragraph titled "Financial Arrangements" of this Activity Schedule that has been approved by DFAT and paid to the Organisation subject to the terms outlined in this Activity Schedule.
GST	means the Commonwealth Goods and Services Tax.
Intellectual Property Rights	means all intellectual property rights, including: <ul style="list-style-type: none"> (a) copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and

	<p>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</p> <p>whether or not such rights are registered or capable of being registered.</p>
Official Development Assistance (ODA)	means resource flows in accordance with the Organisation for Economic Co-operation and Development (Development Assistance Committee) definition found at: http://www.oecd.org/dac/stats/officialdevelopmentassistance/definitionandcoverage.htm .
Overseas Personnel	means Personnel who undertake short term overseas missions, short term assignments or are deployed overseas.
Partners	means DFAT and AGD jointly.
Partner Country	means the country or countries in which the Activity is to be undertaken in whole or in part.
Partner Government	means the Government of the Partner Country.
Partner	means DFAT or AGD as the context requires.
Personnel	means the personnel of AGD who are engaged in the delivery of the Activity, including employees, contractors, grant recipients, agents and volunteers.
PGPA Act	means the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Short-term Assignment (STA)	means a temporary absence from an employee's headquarters while on duty in another single location for a period greater than six months but no more than 12 months. In exceptional circumstances, the Secretary's delegate may determine an assignment of less than 12 months but greater than six months to be a long-term posting.
Short-term Mission (STM)	means a temporary absence from an employee's headquarters while on duty in another location for a period of not greater than six months.
WHS Act	means the <i>Work Health and Safety Act 2011</i> (Cth).

2. COMMENCEMENT AND COMPLETION DATES

- 2.1 The Activity will commence on the date that both Partners sign the Activity Schedule and be completed by **30 June 2021**.

3. **ACTIVITY OBJECTIVES, BACKGROUND AND DESCRIPTION**

3.1 See detailed Investment Design at **Attachment 1**.

4. **RISK MANAGEMENT**

4.1 Pursuant to the ROU, the Partners acknowledge that there will be risks to the successful achievement of the Activity objectives. Identifiable risks for activities implemented as part of the Activity are described in the Risk Register included in the Investment Design at **Attachment 1** to this Schedule or as updated as mutually decided by the Partners during the life of this unless the Partners mutually determine that it is not required for this Activity.

5. **WORK HEALTH AND SAFETY (WHS)**

Duties and Implementation of Work Health and Safety

AGD acknowledges that:

- (a) AGD is responsible for exercising the primary duty of care owed by the Commonwealth to AGD personnel;
- (b) DFAT will assist AGD to meet its duty by providing assistance as outlined in Paragraph 5 of this Schedule;
- (c) Apart from AGD officers based in Australian missions overseas and involved in implementing the Activity, it is unlikely that any DFAT officers will be located at the workplace at which the Activity will be primarily undertaken; and
- (d) to the extent that the Commonwealth has control over the work to be performed in relation to the Activity, such control is exercised by AGD.

5.2 The Partners will work together to ensure that the work conducted by each of them and any of their personnel complies with all applicable laws, standards and policies, and provisions of the ROU and this Activity Schedule, that relate to the health and safety of AGD Personnel, DFAT workers and third parties.

5.3 The Partners will each ensure that:

- (a) the Commonwealth complies with its obligations under any applicable WHS law; and
- (b) so far as is reasonably practicable, that their officers (as defined by the WHS Act) and workers comply with their obligations under applicable WHS law.

The other provisions of **Paragraph 5** do not limit this sub-paragraph.

- 5.4 Each Partner will ensure that, so far as it is reasonably practicable, the health and safety of:
- (a) workers engaged, or caused to be engaged by the relevant Partner; and
 - (b) workers whose activities in carrying out work are influenced or directed by the relevant Partner;
- 5.5 Each Partner will ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out to implement the Activity.
- 5.6 The Partners will consult, cooperate and coordinate with each other to comply with the Commonwealth's work health and safety duties and obligations. AGD will facilitate this consultation.
- 5.7 Without limiting this Activity Schedule, either Partner will, on request by the other Partner, give all reasonable assistance to the other Partner by way of provision of information and documents, to assist the Commonwealth and its officers (as defined in the WHS Act) to comply with their obligations under the WHS Act.
- 5.8 The Partner will work together to ensure that workers who are, or are likely to be, directly affected by a matter relating to work health and safety, are consulted about those matters. AGD will facilitate that consultation.
- 5.9 Either Partner may request the other Partner to take specified measures in connection with that Partner's work under this Activity Schedule that the requesting Partner considers reasonably necessary to eliminate or mitigate risks to health and safety of workers. The Partner will discuss the request as soon as practicable after it has been made and determine the steps to be taken, having regard to the capacity of each Partner to practically and adequately deal with the relevant event or circumstance.
- 5.10 If an event occurs in relation to AGD work under this Activity Schedule that leads, or could lead, to the death, or serious injury or illness, of a person (i.e. a Notifiable Incident), AGD will:
- (a) immediately report the matter to the other Partner, including all relevant details that are known;
 - (b) notify the regulator (Comcare) as per the requirements of the WHS Act, unless the injury occurs at an Australian diplomatic post, in which case AGD will consult with DFAT before any Partner notifies the regulator;
 - (c) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:

- (i) its cause; and
 - (ii) what adverse effects (if any) it will have on work under this Activity Schedule, including adverse effects to health and safety;
 - (d) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;
 - (e) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to minimise the risk to health and safety and ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
 - (f) as soon as possible after the Notifiable Incident, give the other Partner a written report giving further details of the Notifiable Incident, including the results of the investigations under Paragraph 5.10(c) above and a statement of the steps the Partners has taken or that the Partner proposes to take as provided by Paragraph 7.1(c) and (d) above; and
 - (g) as soon as possible after the Notifiable Incident, give the other Partner a written report giving full details of its actions in relation to the Notifiable Incident.
- 5.11 Each Partner will fully co-operate, at its own cost, with any investigation by any government agency (including Comcare) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 5.12 AGD will not enter into a contract with respect to this Activity unless the contract obliges the contractor to comply with equivalent provisions to those contained in this **Paragraph 5**.
- 5.13 For the purposes of this **Paragraph 5**, "applicable WHS law" means any applicable work health and safety law, including any corresponding WHS law (as defined in Section 4 of the WHS Act).
- 5.14 A word or expression in this **Paragraph 5** that is:
- (a) used or defined in an applicable WHS law; and
 - (b) is not otherwise defined in this **Paragraph 5** or elsewhere in this Activity Schedule, has, for the purposes of this **Paragraph 5**, the meaning given to it under the applicable WHS law.

6. OVERSEAS PERSONNEL

6.1 Overseas Personnel Terms and Conditions

- (a) Terms and conditions for AGD Personnel will be specified prior to overseas travel and arranged with the individual prior to the overseas travel.
- (b) AGD will administer the salary and conditions of service package of personnel travelling overseas, in accordance with:
 - (i) the relevant AGD Overseas Deployment Conditions Agreement for existing deployments that commenced prior to 1 July 2017, until the earlier of the date upon which they conclude their deployment or 30 June 2020; or
 - (ii) the DFAT Whole of Government Overseas Conditions of Service Policy or its successor, and the salary and allowance calculator provided by DFAT for deployments that commence on or after 1 July 2017, or
 - (iii) the DFAT Whole of Government Overseas Conditions of Service Policy or its successor for Short Term Assignments, or
 - (iv) the terms and conditions for the Short Term Mission as determined by AGD.

6.2 Overseas Personnel Recruitment and Pre-Departure Training

- (a) All Australian officials employed for the purposes of individual activities under this Activity Schedule remain employees of the relevant agency at all times;
- (b) Australian Government officials recruited under this Activity Schedule should be selected in a transparent and merit-based way. Selection should be based on their skills and experience and ability to contribute to developing capacity in their partner organisations.
- (c) DFAT will advise on and/or provide relevant DFAT pre-departure training, as requested by AGD and accepted by DFAT.
- (d) AGD will organise security briefings and registration with the DFAT online Smartraveller service.

6.3 Overseas Personnel Insurances

- (a) AGD will provide the following insurances for Overseas Personnel whilst they are overseas:
 - (i) appropriate medical and dental health insurance
 - (ii) personal effects insurance, and
 - (iii) evacuation (medical or otherwise) insurance.
- (b) AGD will provide appropriate insurance for any counterpart agency officials travelling for the purpose of this Activity.

6.4 Overseas Personnel Operational Support

- (a) Overseas personnel will receive in-country support from the DFAT Post as described in the DFAT-AGD WOG Service Level Agreement dated 1 July 2017 and any successor agreement.

6.5 Overseas Personnel (Travel)

- (a) Where Personnel travel internationally as part of an Activity, AGD will undertake all logistical arrangements in support of travel by Overseas Personnel unless otherwise determined by the Partners, including but not limited to:
 - (i) visas, passports, flights and accommodation;
 - (ii) payment of per diems, reimbursements, travel and other overseas allowances; and
 - (iii) advance notice, by cable, of planned travel by its Personnel to a Partner Country or Counterpart Agency in relation to the Activity, including: title of the Activity and Activity Schedule number, name(s) and designation(s) of the Personnel travelling; travel itinerary of the Personnel travelling, and a brief statement of the objectives of the travel.

6.6 Overseas Personnel Conduct

- (a) AGD will use all reasonable endeavours to ensure that AGD Personnel comply with the AGD Enterprise Agreement or Australian Workplace Agreements (whichever is relevant), the Australian Public Service Code of Conduct and the DFAT Code of Conduct for Overseas Service.
- (b) Pursuant to the ROU, DFAT will refer information it receives pertaining to AGD Personnel involvement in:
 - (i) potential breaches of operational procedures or determinations; or
 - (ii) other behaviour or incidents that potentially compromise the delivery of the Australian Government's activities under this Activity Schedule,to AGD for their management.
- (c) DFAT will consult with AGD to confirm the perception that the behaviour of any AGD Personnel or their recognised dependant/s is damaging or is likely to damage the reputation of the Australian Government or the Australian aid program overseas. AGD will negotiate with DFAT on the appropriate course of action including whether to suspend or terminate their involvement in the Activity. Where such a scenario is likely to have significant and immediate effect, DFAT will refer the matter to the Head of Mission/Head of Post (ie the senior officer leading the relevant Australian embassy, high commission, consulate or representative office).

7. Canberra Based Staffing Arrangements

- 7.1 DFAT and AGD will implement the staffing arrangements as outlined in the IP-JuSP Design at Attachment 1 or as subsequently decided by the Partners.
- 7.2 In the event DFAT is unable to allocate a suitable DFAT officer to undertake the role of DFAT Activity Manager, AGD will release a suitably qualified officer on a temporary transfer to fill this position and perform related work as directed by DFAT. Such an arrangement may be on a rolling twelve-month basis as mutually decided by the Partners.

8. DEVELOPMENT SPECIFIC POLICES AND PRINCIPLES

- 8.1 AGD acknowledges that it and its Personnel will have regard to all applicable Australian and DFAT policies and guidance that apply to the delivery of ODA to foreign countries, as updated from time to time, including:
 - (a) “Promoting Opportunities for All: Gender Equality and Women’s Empowerment” (November 2011) accessible at: <http://www.dfat.gov.au/about-us/publications/Pages/promoting-opportunities-for-all-gender-equality-and-women-s-empowerment.aspx>;
 - (b) “Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia’s aid program” accessible at: <http://dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020.aspx>;
 - (c) “Child Protection Policy” (January 2017) accessible at: <http://www.dfat.gov.au/aid/topics/safeguards-risk-management/child-protection/Pages/child-protection.aspx>;
 - (d) “Environment Protection Policy for the Aid Program” (December 2014) accessible at: <http://dfat.gov.au/aid/topics/safeguards-risk-management/environmental-protection/Pages/environmental-protection.aspx>
 - (e) “Effective Governance Strategy” (March 2015) accessible at <http://dfat.gov.au/about-us/publications/Pages/effective-governance-strategy-for-australias-aid-investments.aspx> ; and
 - (f) “Development Approaches to Countering Violent Extremism” (March 2017) accessible at <http://dfat.gov.au/about-us/publications/Pages/development-approaches-to-countering-violent-extremism.aspx>

9. MULTILATERAL ASSESSMENT

- 9.1 Where AGD works with a multilateral agency through an Activity Schedule, AGD will use the Australian Multilateral Assessment and subsequent Multilateral Performance Scorecards to inform and regularly review its decisions on the Activity delivered by the multilateral agency.

10. FINANCIAL ARRANGEMENTS

- 10.1 The financial arrangements outlined below will apply to the Activity.
- 10.2 The maximum amount payable by DFAT in respect of the Activity is AUD \$15,800,000. DFAT will not be liable for any amount, costs or expenditure incurred by AGD in excess of this amount.
- 10.3 Payment to AGD will be made within 30 days of receipt of a correctly rendered invoice by DFAT.
- 10.4 A detailed budget for the first year of this Activity is included in the design at **Attachment 1** to this Schedule. Detailed budgets for Years Two to Four will be submitted to the Steering Committee as part of the Annual Planning process.
- 10.5 DFAT will pay AGD on an advance basis. Advance payments will be acquitted by AGD with clarity referencing the budget items presented in Attachment 1 and the budget items as mutually determined by the Partners through the Steering Committee. Acquittals will be certified by the responsible PGPA Act delegate in AGD before presentation to DFAT.
- 10.6 DFAT will make payments as follows:

Indicative Date	Trigger	Tranche	Amount AUD
August/September 2017	Signing of Activity Schedule by both Partners	1	\$2,000,000
February 2018	DFAT's acceptance of reporting on activities to date and forward workplan for January – June 2018	2	Up to \$1,950,000
August 2018	DFAT acceptance of 2017-18 Annual Program Monitoring Report, Annual Expenditure Report and Annual Workplan for Year Two	3	\$3,950,000
August 2019	DFAT acceptance of 2018-19 Annual Program Monitoring Report and Annual Expenditure Report and Annual Workplan for Year Three	4	\$3,950,000

August 2020	DFAT acceptance of 2019-20 Annual Program Monitoring Report and Annual Expenditure Report and Annual Workplan for Year Four	5	\$3,950,000
MAXIMUM TOTAL FUNDING AMOUNT			\$15,800,000

10.7 If:

- (a) Funds Acquittal identifies that AGD has significant unspent monies from a previous tranche(s); or
- (b) in DFAT's opinion, AGD has not made satisfactory progress against the mutually decided benchmarks and milestones for the Activity,

then DFAT, may, after consultation with AGD reduce the amount of the next tranche and/or the overall amount of the Funding and/or arrange a no-cost extension to the time frame of the Activity Schedule. Changes to this Activity Schedule will only be effected if mutually determined in writing and signed by both Partners in the form of a Variation to the Activity in accordance with **Paragraph 13**.

- 10.8 The unexpended part of funds paid by DFAT (if any) will be refunded to DFAT unless alternative arrangements are negotiated between the Partners. Any assets acquired under this Activity will be disposed of as mutually determined between the Partners.

11. **CLAIMS FOR PAYMENT**

- 11.1 Invoices will be submitted when due in accordance with this Activity Schedule, in a form identifying this Activity Schedule title and its number. Invoices will also contain the Payment Event number(s) notified by DFAT; the amount of funding to be paid by DFAT together with any relevant substantiating material; and the name of the DFAT representative.

- 11.2 All invoices will be made to:

Chief Finance Officer
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton ACT 0221 AUSTRALIA

- 11.3 Invoices should be sent to the above address. Alternatively DFAT will accept electronic invoices. These can be sent to accounts@dfat.gov.au and a copy sent to the DFAT Activity Manager.

12. REPORTING, DECISION MAKING, MONITORING AND EVALUATION

- 12.1 The Activities under this Schedule will be governed by a Steering Committee as described in Attachment 1.
- 12.2 Both Partners note that it is essential to ensure the performance and impact of Activities that they are adequately and effectively monitored and assessed, and as such will undertake reporting, monitoring and evaluations in accordance with the specific Partner's arrangements described in the Investment Design at Attachment 1 or as subsequently decided by the Partners.
- 12.3 DFAT is committed to managing for measurable results and accordingly, to monitoring and reporting for measurable results. AGD will support DFAT's performance reporting requirements.
- 12.4 Furthermore, unless specifically excluded in an Activity Schedule AGD will, in accordance with the Performance Assessment Framework to be decided between the Partners:
 - (a) conduct systematic and regular evidence-based assessment and reporting on the performance and quality of Activity;
 - (b) focus on results at all stages, including working collaboratively with other agencies, where relevant, to strengthen a results focus, applying lessons learnt to improve the focus on results for Activity;
 - (c) cooperate fully with DFAT and their agents should the Activity be subject to an evaluation; and
 - (d) commit to taking action to improve, including responding to requests to prepare and submit a Performance Improvement Plan, or cancel any Activity that is found to be performing unsatisfactorily.

13. VARIATIONS

- 13.1 Either Partner may propose variations to this Activity Schedule at any time for the purpose of improving delivery of the Activity, including its efficiency, cost-effectiveness and development impact.
- 13.2 This Activity Schedule can only be varied in writing signed by each Partner.
- 13.3 The Partner proposing the variation should set out in writing:
 - (a) details of the proposed variation to the Activity and reasons for the request;
 - (b) the impact the proposed variation will have on effective delivery of the Activity, and/or the budget.

14. LIAISON AND NOTICES

14.1 The contact officer for each Partner is the Activity Manager. Each Partner's address for the service of notices for the purposes of this Activity is as follows:

DFAT:

To: Michael Wilson, Assistant Secretary, Governance, Fragility and Water Branch

Postal Address: Department of Foreign Affairs and Trade, RG Casey Building,
John McEwen Crescent, Barton ACT 0221 AUSTRALIA

Street Address: Department of Foreign Affairs and Trade, RG Casey Building,
John McEwen Crescent, Barton ACT 0221 AUSTRALIA

Email: michael.wilson@dfat.gov.au

Telephone: 02 6261 1111

AGD

To: Karen Moore, Assistant Secretary, International Legal Assistance

Postal Address: Robert Garran Officers, 3-5 National Circuit BARTON ACT 2600

Street Address: Robert Garran Offices, 3-5 National Circuit BARTON ACT 2600

Email: karen.moore@ag.gov.au

Telephone: 02 6141 4075

