

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 Parties”) concerning their respective responsibilities and contributions to the Development Cooperation Program (the Program) delivered through the Partnership for Development signed by the Parties on 7 August 2009. The Partnership for Development is a separate but related arrangement which establishes the Parties’ shared vision to work together in close cooperation to meet common challenges and to raise the standard of living of the people of Nauru. It is supported by schedules which describe implementation strategies, performance measurement and donor coordination arrangements.

PURPOSE

2. The Parties will cooperate in implementing the Program in support of the development needs of the Republic of Nauru.

COORDINATING AUTHORITIES

3. The Coordinating Authorities for this Memorandum will be:

For the GOA: The Australian Agency for International Development (AusAID).

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

DEFINITIONS

4. For the purposes of the Memorandum:
 - (a) “**Activity**” means any aspects of development cooperation that may include forms of development assistance, but not limited to, those described in paragraph 5;

- (b) “**Activity Personnel**” means persons who are not nationals or permanent residents of Nauru, who are working in Nauru on an Activity under this Memorandum and whose salaries and/or other costs are funded from the contribution of the GOA to the Activity;
- (c) “**Activity Supplies**” means equipment, material and other goods supplied for the execution of Activities under this Memorandum, the cost of which is funded from GOA contributions to the Activity;
- (d) “**Contractor(s)**” means the contractor(s) contracted by AusAID or other GOA Agencies on behalf of the GOA to implement an Activity;
- (e) “**Team Leader**” means the designated representative of the contractor contracted by AusAID or other Commonwealth agencies on behalf of the GOA to be responsible for in-country delivery of Australian development assistance to the Activity;
- (f) “**Dependant(s)**” means the spouse and/or dependant minor children of Activity Personnel or any other person recognised by the Parties as a dependant of Activity Personnel;
- (g) “**Development Cooperation 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 in the Pacific but exclusive of the Nauru Australia Compact of Settlement;
- (h) “**Intellectual Property**” will have 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;
- (i) “**Personal and Household Effects**” includes any goods imported by Activity Personnel for their personal use or that of their Dependant(s). It does not include boats, motor vehicles, motor cycles or scooters, firearms, liquor, tobacco, foodstuffs or other consumables;
- (j) “**O-based Staff**” mean nationals from any country, including Nauru, employed locally by AusAID to provide support to programmed Activities; and
- (k) “**Regional Programs**” refers to development issues that are common across the Pacific and are best addressed through regional cooperation, regional provision of public goods/services or regional integration, with Pacific Island Countries working together for their joint and individual benefit.¹

¹ The Pacific Plan, issued by the Pacific Islands Forum Secretariat in October 2005, defines each of these three regional approaches and details when regional approaches to development might be preferred to national approaches (pp 5-6).

PROGRAM ACTIVITIES

5. The Program will be directed to assisting those sectors of the economy of Nauru to which the GON accords greatest priority and in which the GOA has expertise. Key areas of support are outlined in the Australia – Nauru Partnership for Development which is Annex 1 to this Memorandum.
6. The Program carried out by the GOA pursuant to this Memorandum will be in support of specific Projects, Activities, Facilities and/or Initiatives which are primarily (but not exclusively) within those key areas outlined in Annex 1 to this Memorandum.
7. The Program will be implemented with the support of the O-based Staff. The objective of the O-based Staff is to contribute to the effective and efficient delivery of assistance to Nauru through the provision of administrative support to programmed Activities.
 - (a) Costs and expenses of the O-based Staff will be met from an allocation of the GOA contribution, costs may include:
 - i) salaries and employee entitlements of O-based Staff. Salary rates of O-based Staff determined by AusAID Canberra will be based on current market rates and/or post pay scales for locally engaged staff.
 - ii) the provision of capital assets, such as vehicles, information technology, mobile phones, and office furniture required to support the O-based Staff. Costs will include the purchase and maintenance of consumables associated with the provision of capital equipment to the O-based Staff, as required.
 - iii) travel costs relating to the monitoring of specific activities and the overall program.
 - iv) formal training costs where required by O-based Staff for effective performance of their duties. This includes travel costs associated with training.
 - (b) Day to day management and operational responsibility for the O-based Staff will rest with an Australian-based or O-based Staff employed at the Australian diplomatic mission in Nauru.
 - (c) Approval of the annual O-based Staff budget will rest with AusAID Canberra.
 - (d) Selection of O-based Staff will be based on merit and will be carried out through an open and transparent process in accordance with the guidelines for the management of O-based Staff as amended from time to time by GOA.
 - (e) O-based Staff will be employed under employment contracts arranged by the GOA representative(s) of the Australian diplomatic mission in Nauru.
 - (f) The standard of equipment purchased with GOA funds will be consistent with relevant GOA purchasing and regulatory guidelines, and will be complementary to equipment provided at the Post and AusAID, Canberra.

- (g) When assets are no longer required by the O-based Staff they will be disposed of in a manner that is acceptable to the Parties and is in accordance with the asset management manual as amended from time to time by GOA.

SPECIFIC PROJECTS, ACTIVITIES, FACILITIES OR INITIATIVES

- 8. In order to give effect to the Program under this Memorandum the GOA and the GON will enter into further Subsidiary Arrangements in writing for the purpose of carrying out specific Activities.
- 9. Such Subsidiary Arrangements will refer as appropriate to this Memorandum, and the terms of this Memorandum will, unless otherwise stated, apply to such Activities. Wherever possible, such Subsidiary Arrangements will set out:
 - (a) the name and duration of the Activity;
 - (b) description and statement of objectives of the Activity;
 - (c) the nominated implementing agencies of both Parties;
 - (d) details of the contributions to the Activity by both Parties including:
 - (i) financial contributions;
 - (ii) materials, services and equipment to be supplied;
 - (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; and
 - (f) monitoring, review and evaluation arrangements.
- 10. The Parties to this Memorandum may consent in writing to amend the Subsidiary Arrangements for each Activity.

GOVERNMENT OF AUSTRALIA CONTRIBUTIONS

- 11. The provision by the GOA of the Australian contribution to the Program and individual Activities under the Program depends on annual Australian Parliamentary approval of appropriations.
- 12. Program or Activity financial contribution estimates will be indicative planning figures and not 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.
- 13. The contributions of the GOA under this Memorandum will support the program Activities and may include, but 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;
 - (f) any other form of development assistance, reportable as Official Development Assistance (ODA) under the OECD Development Assistance Committee (DAC) guidelines as may be determined by the Parties.
14. The GOA may meet costs related to training, materials, services and equipment as appropriate for each Activity, together with payment of salaries, allowances, travel between Australia and the Project areas, accommodation costs and living expenses of Activity Personnel.
 15. The GOA may meet costs associated with transport of GOA funded equipment, Activity Supplies and personnel to Activity sites.
 16. Another donor or donors may also meet costs included in paragraphs 11, 12 and 13 above, subject to the consent of both Parties.
 17. The GOA may, at its discretion, consent to meet costs in addition to those included in paragraphs 13, 14 and 15 above, as a consequence of a request to do so from the GON.

GOVERNMENT OF THE REPUBLIC OF NAURU CONTRIBUTIONS

18. 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 7, 9, 13, 14, 15, 16 and 17 above.
19. The costs to be met by the GON will normally include:
 - (a) both salaries and allowances of personnel other than Activity Personnel;
 - (b) materials, services and equipment for the Activity as mutually determined between the Parties;
 - (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 execution of the Activities arranged under this Memorandum.
20. The GON will provide ongoing budget to relevant GON Ministries and State Owned Enterprises (SOEs) to ensure the sustainability of the achievements of Program supported Activities once GOA contributions have ceased.

REVIEW, MONITORING AND EVALUATION

21. A review of progress of each Activity may be made at times arranged between and mutually convenient to the Parties. Such a review will be carried out by a joint investigation team appointed by the Parties and independent of Activity Personnel or individuals involved in the Activities. The Parties may mutually arrange for joint evaluation of Activities to assess the effectiveness and impact of those Activities.
22. In addition, the Parties may mutually arrange for joint evaluation of the overall Program which would occur on an annual basis to inform the future development cooperation assistance between the GOA and the GON.

JOINT COORDINATION

23. There will be regular consultations between officials of the Parties to consider:
 - (a) the direction, composition and contribution of Australian development cooperation assistance to the development of Nauru;
 - (b) the effectiveness of the administration and impact of development cooperation assistance; and
 - (c) future development cooperation assistance between the GOA and the GON.
24. Representatives of the Coordinating Authorities and other relevant institutions and organisations of the GOA and the GON may attend the meetings.
25. A joint MOU Facilitating Committee comprising representatives of GOA and GON will be established and will meet on a regular basis at times to be mutually determined by the GOA and GON. The Facilitating Committee 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 GOA or GON, which may threaten the achievement of the objectives of the Development program or of any of the Activities, are resolved in a timely and appropriate manner.

ACTIVITY PERSONNEL

26. For the purposes of the Program, the GON will, in accordance with Nauruan law, facilitate 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 of Activity Personnel and their Dependant(s);
 - (c) granting exemption from import duties on one motor vehicle for the personal use of each Activity Personnel provided that it be re-exported on departure of the Activity Personnel or duty paid on its assessed value at time of sale or disposal within the Republic of Nauru;
 - (d) assisting in clearance through customs of the goods mentioned in subparagraphs (b) and (c);

- (e) granting 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 the Republic of Nauru, and for the performance of work by Activity Personnel, including the granting of exemption from visa fees. Other visa requirements including the provision of character references., police records and medical certificates for Activity Personnel and their Dependant(s) will be provided unless GON provides a written exemption on a case by case basis.

ACTIVITY SUPPLIES

27. In respect of Activity Supplies the GON will, in accordance with Nauruan law:
- (a) exempt from import duties and other taxes, or pay such duties thereon;
 - (b) facilitate movement of such supplies by providing appropriate customs and wharfage facilities including payment of any necessary storage costs at the first port of discharge of the Activity Supplies in the Republic of Nauru; and
 - (c) be responsible 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.
28. Activity Supplies will be available only for use within the Activity and will not be withdrawn from that use without the consent of both Parties. The Team Leader or designated Activity Personnel will exercise control over such supplies for the duration of the Activity or until such other time as mutually arranged between the Parties.
29. Those Activity Supplies identified by GOA for repatriation will not be subject to duties, taxes or levies upon export.
30. At completion of each Activity under this Memorandum, subject to paragraphs 29 and 32 below, all Activity Supplies will, by mutual consent of the Parties, be transferred to another Activity under the Program or become the property of the GON.

2004 POLICE AGREEMENT NOT AFFECTED

31. 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

32. 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 equipment once handed over, subject to any express warranties held by the GOA in relation to the suppliers of this equipment. In return for this undertaking, the GOA, on behalf of the GON will exercise any rights it may have against the suppliers of such equipment should such equipment be found to be defective in any manner.

INTELLECTUAL PROPERTY

33. Notwithstanding paragraph 30 of this Memorandum, all Intellectual Property rights attached to the Activity Supplies and which are vested in the GOA, will be retained by the GOA.
34. In accordance with the cooperative nature of the Program, ownership of any Intellectual Property rights developed through Activities will be equitably apportioned between both Parties.
35. Where such Intellectual Property is likely to be of substantial commercial value, both Parties will enter into a further arrangement providing for the equitable apportionment of profits, royalties or licence fees relating to such Intellectual Property.
36. Such an apportionment will be made taking into account the following factors:
- (a) the intellectual contributions of the Parties;
 - (b) the contribution of Intellectual Property, materials, research effort and preparatory work of the Parties;
 - (c) the facilities provided by the Parties; and
 - (d) such other relevant considerations as the Parties may mutually determine.
37. Each Party will not, without the written approval of the other Party, make any use of any Intellectual Property contributed to, or arising from, this Memorandum, or Activities under this Memorandum, or do anything prejudicial to the Intellectual Property rights of that other Party or any national of the country of that other Party.

SECURITY

38. 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 under this Memorandum; and
 - (c) Activity Supplies.

EQUALITY OF TREATMENT

39. Australian organisations, Activity Personnel and their Dependant(s) will be accorded no lesser benefits, privileges and exemptions than those accorded to other non-Nauruan organisations or nationals under any other bilateral arrangement for development cooperation.

CLAIMS RELATING TO PROGRAM ACTIVITIES IN THE REPUBLIC OF NAURU

40. In regards to claims related to Activities in the Republic of Nauru:
- (a) The GON will release the GOA and the Activity Personnel from all actions, suits, proceedings, claims and demands which the GON may have now or in future against them or any of them in relation to loss or damage resulting from, or consequent upon, the Activities.
 - (b) The GON will indemnify and at all times hereafter keep indemnified the GOA and the Activity Personnel against:
 - (i) all 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
 - (ii) 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.
 - (c) The release and indemnity referred to in this paragraph will not apply where it has been mutually decided by the Parties that a claim arises from a criminal act, gross negligence or wilful misconduct.
 - (d) Should the GOA or any Activity Personnel invoke the release and indemnity provided for in this paragraph 40, the GOA will provide all reasonable assistance to the GON in the defence of such action, suit, proceeding, claim or demand, as the case may be.

SETTLEMENT OF DIFFERENCES

41. The Parties will consult together at any time upon request of either Party regarding any matter relating to the terms of the Memorandum and will endeavour jointly in a spirit of cooperation and mutual trust to resolve any difficulties or misunderstandings that may arise.

AMENDMENTS

42. This Memorandum may be amended at any time by an arrangement in writing in the form of an Exchange of Letters between the Parties.

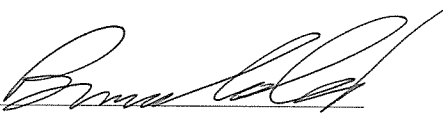
ENTRY INTO EFFECT AND DURATION

43. This Memorandum will take effect on signature. Either Party may terminate this Memorandum by giving written notice of its intention to terminate to the other Party; in which case, this Memorandum will terminate three months after the date that the other party receives that notice of the intention to terminate.
44. The responsibility of the Parties for Activities under this Memorandum being carried out pursuant to Subsidiary Arrangements begun prior to the receipt of the termination notice referred to in clause 43 above will continue until the completion of such Activities, or unless otherwise arranged between the Parties.

Signed at Nauru this 17th day of March 2011

For the Government of Australia

For the Government of the
Republic of Nauru


Signature of representative


Signature of representative

HE Bruce Cowled
Printed name of representative

Hon. Dr. Kieren Keke
Printed name of representative

Australian High Commissioner to Nauru
Official title of representative

Minister for Foreign Affairs and
Trade
Official title of representative

ANNEX 1: AUSTRALIA – NAURU PARTNERSHIP FOR DEVELOPMENT