

No. 27466

**AUSTRALIA
and
PAPUA NEW GUINEA**

**Treaty on development cooperation (with annexes and
exchange of letters). Signed at Canberra on 24 May 1989**

Authentic text: English.

Registered by Australia on 30 July 1990.

**AUSTRALIE
et
PAPOUASIE-NOUVELLE-GUINÉE**

**Traité relatif à la coopération au développement (avec annexes
et échange de lettres). Signé à Canberra le 24 mai 1989**

Texte authentique : anglais.

Enregistré par l'Australie le 30 juillet 1990.

TREATY¹ ON DEVELOPMENT CO-OPERATION BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF PAPUA NEW GUINEA

PREAMBLE

The Government of Australia and the Government of Papua New Guinea,

In accordance with the Joint Declaration of Principles Guiding Relations between Australia and Papua New Guinea, signed on 9 December 1987,

Committed to maintaining and strengthening close and friendly relations between Australia and Papua New Guinea,

Recalling the mutual benefits from previous arrangements between the two countries which had contributed to the economic and social development of Papua New Guinea,

Recognising their mutual interest in formalising arrangements for the continuing conduct of development co-operation between the two countries,

Have agreed as follows:

Article 1. DEFINITION

For the purposes of this Treaty:

“Parties” means, unless the text otherwise indicates, Parties to this Treaty.

Article 2. OBJECTIVES AND PRINCIPLES

1. The objective of this Treaty is to set out arrangements relating to development co-operation between Australia and Papua New Guinea in accordance with the Joint Declaration of Principles Guiding Relations Between Australia and Papua New Guinea.

2. Co-operation and exchanges between the two Parties shall be mutually beneficial and based on full participation by both countries having regard to the capacity and resources of both Governments, and on mutual respect.

3. Development co-operation between the Parties shall comprise a wide-ranging combination of agreed measures designed to contribute to development and self-reliance, including capacity building in Papua New Guinea.

4. Development co-operation shall be consistent with both Governments' policies and practices.

5. The Parties shall endeavour to co-ordinate their activities under this Treaty with the activities of other donor governments and international development assistance institutions, including through participation in the Consultative Group on Papua New Guinea.

¹ Came into force on 1 September 1989, the date on which the Parties notified each other of the completion of their respective constitutional and other necessary requirements, in accordance with article 11 (1).

Article 3. DEVELOPMENT ASSISTANCE

1. Development assistance shall be provided as part of an agreed program of co-operation which contributes to development and self-reliance in Papua New Guinea, allows for forward planning and implementation in accordance with policies and priorities set by the Government of Papua New Guinea, and takes due account of the Government of Papua New Guinea and the Government of Australia's Policies on development co-operation.

2. The Government of Australia reaffirms its commitment to provide development assistance to Papua New Guinea mainly in the form of direct grants to the Papua New Guinea Government Budget and jointly programmed aid, supplementary aid and other forms of assistance.

3. The Parties agree to the progressive reduction of Budget support and a progressive increase in jointly programmed aid, supplementary aid and other forms of assistance.

4. All expenditure by the Parties to this Treaty under the provisions of this Treaty shall be subject to the normal annual approval of appropriations by their respective Parliaments.

5. The levels of budget support and jointly programmed aid shall be determined at the same time. Those levels shall be conveyed in separate arrangements between the Parties which shall form part of the Treaty.

Article 4. BUDGET SUPPORT

1. Budget support assistance shall be provided by the Government of Australia to the Government of Papua New Guinea at a progressively diminishing rate.

2. The amount of Budget support shall be determined by the Government of Australia in consultation with the Government of Papua New Guinea for a period of five (5) years.

3. The amount of such Budget support shall be the subject of a review between the Parties at the expiration of three (3) years from the date of coming into operation of this Treaty and thereafter at three (3) yearly intervals in order to permit a continuous mid-term planning cycle in Papua New Guinea.

4. Budget support allocations shall be paid in Australian dollars and in the terms of both the respective Governments' financial years.

5. Budget support allocations shall be paid by twelve (12) equal monthly instalments at the commencement of each month.

Article 5. JOINTLY PROGRAMMED AID

1. The Government of Australia shall provide jointly programmed aid to the Government of Papua New Guinea, consistent with both Governments' policies, priorities and practices.

2. Levels of jointly programmed aid shall be determined in Australian currency on an indicative basis for a five (5) year period and reviewed every three (3) years.

3. The indicative level of jointly programmed aid and specific funding proposals shall be set out in separate arrangements between the Parties.

4. The Parties agree that the Government of Papua New Guinea shall be eligible for access to a facility to enable the carry-over of unexpended program or project funds, from one Australian financial year to the succeeding year, in the event that such a facility is introduced by the Government of Australia in its overall development assistance program.

5. Jointly programmed aid shall be made available by the Government of Australia to the Government of Papua New Guinea in any of the forms in which, under prevailing Australian aid policy such aid is normally made available to recipients of Australian aid programmed on a country basis and shall include, but is not limited to, the forms of development assistance as set out in Annex A.

6. The extent of usage of any form of jointly programmed aid shall be determined by consultation from time to time within the annual indicative level of jointly programmed aid.

Article 6. SUPPLEMENTARY ASSISTANCE

1. In addition to jointly programmed aid the Government of Australia agrees to provide the Government of Papua New Guinea access to other forms of supplementary assistance provided by Australia within its overall development assistance program including, but not limited to, the forms of such assistance as set out in Annex B.

2. The Government of Australia agrees to consider providing the Government of Papua New Guinea with access to all new or additional forms of development assistance which may be introduced from time to time into Australia's development assistance program, on terms to be negotiated by the Parties.

Article 7. HUMAN RESOURCE DEVELOPMENT

1. The Parties acknowledge the crucial importance of human resource development and institutional strengthening to the development of Papua New Guinea.

2. The Parties agree to co-operate in undertaking training and similar activities in Papua New Guinea, Australia and other countries. Such training and similar activities shall include the public and private sectors as well as rural and non-formal sectors.

3. The Parties shall endeavour to support co-operative activities between educational, training and research institutions of both countries.

4. The Parties agree to encourage and strengthen links between institutions through co-operation in information and personnel exchanges, regular consultations, mutual access to facilities and carrying out joint activities or programs especially in training and applied research into issues relating to the development of Papua New Guinea or other countries.

5. The Government of Australia recognises the importance of access to Australian educational institutions of Papua New Guinea students and shall continue to provide Papua New Guinea with a significant allocation of places in such institutions.

6. The Parties shall co-operate in sponsoring regional training programs in Papua New Guinea institutions for students from other developing countries, especially those of the South Pacific region.

Article 8. PROCEDURE AND CONDITIONS APPLYING TO JOINTLY PROGRAMMED AID AND SUPPLEMENTARY ASSISTANCE

1. The Parties agree to develop a co-operative approach to the management of jointly programmed aid and other forms of assistance provided to Papua New Guinea.

2. Details of the administrative arrangements and responsibilities of the Parties in relation to the implementation of development assistance provided under the provisions of this Treaty shall be as set out in Annex C.

3. The Parties shall hold program consultations at least annually, normally alternating between the two countries. The consultations shall consider and review general program policies and objectives, future years' activities and specific project progress.

Article 9. CONSULTATION AND REVIEW

1. The Parties shall hold annual high level consultations which shall normally be held alternately in the two countries. These consultations shall consider and assess the contribution of development co-operation to the bilateral relationship. The Parties shall normally discuss the role of budget support, jointly programmed aid, supplementary assistance and other forms of assistance in the development of Papua New Guinea.

2. The Parties may undertake periodic development reviews to ensure the effective implementation of development co-operation arrangements, jointly or separately. Such reviews may be undertaken within the framework of the Consultative Group on Papua New Guinea, or by taking account of available economic reviews on Papua New Guinea or by such other means as may be determined by the Parties.

Article 10. AMENDMENT AND IMPLEMENTATION

1. The Parties shall consult upon request of either Government regarding any matter relating to the interpretation or implementation of this Treaty and shall endeavour jointly in a spirit of co-operation and mutual trust to resolve any difficulties or misunderstanding which may arise.

2. The Parties may conclude arrangements relating to implementation of particular activities provided for under this Treaty. Such arrangements shall take full account of the principles underlying the commitment of the Parties to development co-operation as set out in this Treaty and the Joint Declaration of Principles Guiding Relations between Papua New Guinea and Australia.

3. This Treaty may be amended at any time in accordance with the Parties' respective constitutional requirements.

Article 11. ENTRY INTO FORCE AND DURATION

1. This Treaty shall enter into force on the date on which the Parties exchange notes notifying each other that their respective constitutional and other requirements necessary to give effect to the Treaty have been complied with.

2. Either Party may terminate this Treaty by notifying the other Party through the diplomatic channel of its intention to do so. Such notice shall take effect six months from the date of its receipt by the other Party.

3. Notwithstanding paragraphs 2 and 3 of this Article, activities undertaken pursuant to this Treaty shall continue to be governed by its terms until their completion.

DONE at Canberra, in duplicate, this 24th day of May 1989.

For the Government
of Australia:

[Signed — Signé]¹

For the Government
of Papua New Guinea:

[Signed — Signé]²

¹ Signed by Bob Hawke — Signé par Bob Hawke.

² Signed by Rabbie L. Namaliu — Signé par Rabbie L. Namaliu.

ANNEX A

FORMS OF JOINTLY PROGRAMMED AID

- (a) Projects
- (b) Development import grants or commodity aid
- (c) Staffing assistance
- (d) Co-financing
- (e) Joint ventures
- (f) Fellowships
- (g) Australian development assistance courses (long- and short-term)
- (h) AIDAB Centre for Pacific Development and Training courses
- (i) *Ad hoc* visits
- (j) Small grants scheme
- (k) Development food aid
- (l) Regional programs
- (m) Payment of overseas students charges for PNG nationals studying in Australia
- (n) Payment of overseas students subsidies

ANNEX B

OTHER FORMS OF SUPPLEMENTARY ASSISTANCE

- (a) Emergency and Humanitarian Relief
- (b) Development Import Finance Facility
- (c) Australian Centre for International Agricultural Research
- (d) International Development Program
- (e) Project Subsidy Scheme for Non-Government Organisations
- (f) International Seminars Support Scheme
- (g) International Trade Development Centre
- (h) South Pacific Trade Commission
- (i) Direct Aid Program (Head of Mission Discretionary Aid Fund)
- (j) Emergency Food Aid
- (k) Women in Development Fund
- (l) The Equity and Merit Scholarship Scheme

ANNEX C

PROCEDURES AND CONDITIONS APPLYING TO JOINTLY PROGRAMMED AID
AND SUPPLEMENTARY ASSISTANCE1. *Definitions*

In this Annex:

(1) "Australian institutions" includes companies, partnerships, associations, statutory authorities, government bodies and other organisations which are engaged in a project in Papua New Guinea to which this Annex applies;

(2) "Australian personnel" means persons who are not nationals or permanent residents of Papua New Guinea who are working in Papua New Guinea on a project to which this Annex applies and whose salaries or other costs are funded from the Australian contribution to that project;

(3) "Dependant" means the spouse or child of Australian personnel or any other person recognized by the Parties as a dependant of a member of Australian personnel;

(4) "Personal, professional and technical material" means equipment and other goods imported by Australian personnel or Australian institutions for their professional use while engaged in a project to which this Annex applies;

(5) "Project" includes programs and projects arranged pursuant to the Treaty on Development Co-operation, and all other development co-operation activities arranged between the Parties; and

(6) "Project supplies" means equipment, material and other goods supplied for a project to which this Annex applies, the cost of which is funded from the Australian contribution to the project.

2. *Application*

The provision of this Annex shall apply to all development co-operation projects arranged between the Parties, unless they mutually decide otherwise.

3. *Contributions of the Government of Australia*

The contributions of the Government of Australia for development projects shall include, but not be limited to the following:

- (a) The cost of professional and other services required for development projects;
- (b) The cost of providing project supplies and the cost of transportation of project supplies to the port of entry in Papua New Guinea;
- (c) The cost of travel, living allowances, fees and other associated costs in relation to student scholarships and training awards.

4. *Contributions of the Government of Papua New Guinea*

The contributions of the Government of Papua New Guinea shall include, but not be limited to, the following:

- (a) Transportation within Papua New Guinea in accordance with the requirements of development projects arranged between the Parties;
- (b) Facilitation of travel within Papua New Guinea by Australian personnel in the performance of their duties;
- (c) Grant of permission to use means of communications in Papua New Guinea appropriate to the needs of the development projects involved;

(d) Provision of furnished office premises and office services on the sites of development projects where such premises and services are needed by Australian firms and Australian personnel to carry out their duties; and

(e) Provision of reports, records, maps, statistics and other information related to development projects and likely to assist Australian personnel in carrying out their duties.

5. *Co-ordinating Authorities*

1. Each Party shall co-ordinate aid projects through its co-ordinating authority.

2. Unless the Party concerned designates another co-ordinating authority:

(a) The Australian International Development Assistance Bureau of the Department of Foreign Affairs and Trade shall be the Australian co-ordinating authority; and

(b) The Department of Finance and Planning shall be the co-ordinating authority of Papua New Guinea.

6. *Responsibility*

1. Final responsibility for the implementation of agreed projects rests with the Government of Papua New Guinea.

2. Responsibility for development and direction of a project, where it is deemed appropriate, shall be vested in a Project Co-ordinating Group. The Chairman of the Project Co-ordinating Group shall be the Secretary of the Department of Finance and Planning of Papua New Guinea. The Project Co-ordinating Group shall include the head of the body or authority designated by the Government of Papua New Guinea as the implementing agency; the Australian team leader, who is to be appointed by the Government of Australia in consultation with the Government of Papua New Guinea; and a person nominated by the Australian High Commission in Port Moresby. The Project Co-ordinating Group shall meet not less than twice per year. The Project Co-ordinating Group shall:

(a) Advise on co-ordination and disposition of project personnel;

(b) Advise on the co-ordination of the operation of the project team;

(c) Review and report on progress to the Parties; and

(d) Recommend to the parties changes in program budget and future development.

3. Responsibility for efficient management of a project shall be vested in the head of the implementing agency, who shall prepare regular reports to the Parties on progress of the project.

7. *Duties, levies and taxes on Australian institutions*

The Government of Papua New Guinea shall exempt Australian institutions and organisations from income taxes or other similar taxes on income or profits, and other remuneration derived from activities performed in Papua New Guinea to which this Annex applies. Furthermore, Australian institutions shall be exempted from those taxes on income derived from projects performed outside Papua New Guinea from which income is not transferred into Papua New Guinea.

8. *Remittance of funds*

The Government of Papua New Guinea, in accordance with its laws, shall assist Australian personnel and Australian institutions and organisations in the repatriation of their funds.

9. *Project supplies and personal professional and technical material*

1. Unless otherwise agreed by the Parties ownership of project supplies rests with the Government of Papua New Guinea.

2. In respect of project supplies and personal, professional and technical material, whether to be imported from outside or procured within Papua New Guinea, the Government of Papua New Guinea shall:

- (a) Exempt from payment of customs duties, excise duties, sales tax, other duties, taxes, levies and other charges of a similar nature upon these items;
- (b) Facilitate the movement of project supplies by providing appropriate customs and wharfage facilities in the port closest to the project site and shall be responsible for the expeditious transport of such supplies to the site;
- (c) Unless provided otherwise by mutual arrangement between the Parties, provide expeditious transport to the site of the project; and
- (d) Exempt from or be responsible for inspection fees and storage charges and all other levies, duties, fees or charges on project supplies purchased in or imported into Papua New Guinea.

3. Project supplies provided for a specific project to which this Annex applies shall be available only for the purpose of that specific project and shall not be withdrawn from that use without the mutual agreement of the co-ordinating authorities. The Australian co-ordinating authority shall exercise administrative control over such supplies for the duration of the project or until both authorities agree that they may be released from the project.

10. *Intellectual Property*

(a) Recognising that it is desirable to use or exploit advances or discoveries which may be made in the course of a project under this Annex, the co-ordinating authorities shall discuss:

- (i) The equitable allocation of ownership of all intellectual property arising directly or indirectly from a project;
- (ii) The equitable licensing of such other intellectual property; and
- (iii) Where it is within their power, the equitable licensing of such other intellectual property as is necessary for the utilisation of the results of the project.

(b) In fulfilling their obligations under sub-paragraph 10(a), the co-ordinating authorities shall have regard to relevant considerations, including:

- (i) The intellectual contributions of each country;
- (ii) The financial contributions of each country;
- (iii) The contribution of intellectual property, materials, research effort and preparatory work of each country;
- (iv) The facilities provided by each country; and
- (v) Such other relevant considerations as the co-ordinating authorities may mutually determine.

(c) "Intellectual Property" shall include the rights relating to:

- (i) Literary, artistic and scientific works, usually referred to as copyright;
- (ii) Inventions in all fields of human endeavour, usually referred to as patents;
- (iii) Scientific discoveries;
- (iv) Industrial designs;
- (v) Trademarks, service marks, and commercial names and designations;
- (vi) Protection against unfair competition; and
- (vii) All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including any rights in computer software and mask works, and intellectual activity arising solely or partly by the restraint of confidence.

11. *Duties, levies and taxes for Australian personnel*

1. The Government of Papua New Guinea shall facilitate the recruitment and employment by the Government of Australia or its co-ordinating authority or representative, of personnel required for the projects to which this Annex applies, by:

- (a) Granting exemption from income or other taxes on salaries and allowances;
- (b) Granting exemption from import duties and any other charges on personal and household effects imported at the time of first taking up duty in Papua New Guinea or during a period of six months after that date;
- (c) Granting to Australian project personnel all rights and entitlements accorded to the aid personnel of any other donor country;
- (d) Expediting the issue of all documentation required for entry of and performance of work by, project personnel;
- (e) Granting exemption from import duty or any charge levied on one motor vehicle per person if that vehicle is imported or purchased within six months of taking up duty in Papua New Guinea. If that motor vehicle is sold to a person without similar privileges before the expiration of a period of two years after the date of importation or purchase of the vehicle, the person shall pay an amount equivalent to the import duty and import levy that was payable on the vehicle at the date on which it was imported or purchased reduced to make allowance on a pro rata basis for the period for which the vehicle has been used;

2. Australian personnel shall not engage in any form of employment in Papua New Guinea other than that provided for by the terms of their contracts. Dependants of Australian personnel shall not engage in any form of regular employment in Papua New Guinea without the prior written approval of the Government of Papua New Guinea through the Secretary of Foreign Affairs.

12. *Export of personal professional and technical material and personal and household effects*

In respect of the export from Papua New Guinea of personal, professional and technical material and personal and household effects at the end of the assignment of Australian personnel, the Government of Papua New Guinea shall:

- (a) Exempt them from export duty or any charge levied; and
- (b) Expedite their clearance through customs.

13. *Facilitation of Development Activities*

(a) The Government of Papua New Guinea shall facilitate the implementation of the projects to which this Annex applies by taking all necessary measures, including the issue of visas, work permits, licences and other necessary documents to Australian institutions, organisations and personnel and issue of visas and other documents for members of the families of Australian personnel.

(b) The Government of Papua New Guinea shall issue to Australian personnel multiple exist and re-entry visas which shall be valid for one year or for the duration of their assignment to a project in Papua New Guinea, whichever is the lesser.

(c) The Government of Papua New Guinea shall accord Australian personnel and Australian institutions any benefits not specifically provided for in this Annex, which are granted by the Government of Papua New Guinea to personnel and institutions from countries other than Australia.

(d) The Government of Papua New Guinea shall make available to Australian firms and Australian personnel details of local laws and regulations which may affect them in the performance of their duties.

14. *Claims*

The Government of Papua New Guinea shall bear all risks associated with projects carried out in Papua New Guinea to which this Annex applies and shall be responsible for dealing with any claims which may be brought by third parties against the Government of Australia, the servants or representatives of the Government of Australia, Australian personnel or Australian institutions or organisations and shall hold harmless the Government of Australia, the servants of the Government of Australia, Australian personnel and Australian institutions in case of any claim resulting from projects to which the Treaty applies, except where it is mutually decided by the Parties that such claims arise from gross negligence or wilful misconduct on the part of servants or representatives of the Government of Australia.

15. *Security*

The Government of Papua New Guinea shall extend security arrangements to Australian personnel and their dependants similar to those that are available to all persons and property in Papua New Guinea, including to other foreign aid projects, personnel attached to those projects and their dependants.

16. *Subsidiary arrangements*

In relation to projects and activities under this Annex, the co-ordinating authorities may enter into specific arrangements for their implementation.

EXCHANGE OF LETTERS

I

PRIME MINISTER
CANBERRA

24 May 1989

My dear Prime Minister,

I have the honour to refer to the Joint Declaration of Principles Guiding Relations between Australia and Papua New Guinea signed on 9 December 1987 and the Treaty on Development Cooperation between the Government of Australia and the Government of Papua New Guinea done at Canberra on 24 May 1989 (the Treaty).

In pursuance of Article 3(5) of the Treaty and following close consultations between our two Governments, I am pleased to confirm the agreement of the Government of Australia to extend levels of budget support and jointly programmed aid to the Government of Papua New Guinea under the following arrangements:

(a) The level of budget support and the indicative level of jointly programmed aid, in millions of Australian dollars, which the Government of Australia shall provide to the Government of Papua New Guinea for each of the Australian financial years between 1 July 1989 and 30 June 1994 shall be as follows:

<i>Year</i>	<i>Budget Support</i>	<i>Jointly programmed Aid</i>
1989/90.....	275	20
1990/91.....	275	25
1991/92.....	275	30
1992/93.....	275	30
1993/94.....	260	35

Subject to Article 5(4) of the Treaty, unexpended programmed or project aid funds shall not be carried over from one Australian financial year to the succeeding year.

(b) The level of budget support, in millions of Australian dollars, which the Government of Australia shall provide to the Government of Papua New Guinea for each of the Papua New Guinea financial years between 1 July 1989 and 30 June 1994 shall be as follows:

<i>Year</i>	<i>Budget Support</i>
1 July–31 December 1989.....	137.5
1990.....	275
1991.....	275
1992.....	275
1993.....	267.5
1 January–30 June 1994.....	130

I have further the honour to propose, Excellency, that if the Government of Papua New Guinea agrees to the foregoing, this letter and your letter in reply thereto in affirmation of your Government's agreement shall constitute an agreement between our two governments, to enter into force on the date of your letter in reply.

Yours Sincerely,

[Signed — Signé]¹

The Hon. Rabbie L. Namaliu CMG, MP
Primer Minister of Papua New Guinea

II

PRIME MINISTER
PAPUA NEW GUINEA

24 May 1989

Dear Bob,

I have the honour to refer to your letter dated 24.5.1989 the full content of which reads as follows:

[See letter I]

I have further the honour to confirm that the foregoing is acceptable to the Government of Papua New Guinea and to agree that your letter and this letter shall constitute an agreement between our two Governments, which shall enter into force on the date of this reply.

Yours Sincerely,

[Signed — Signé]²

The Hon. R. J. L. Hawke, MP
Prime Minister of Australia

¹ Signed by Bob Hawke — Signé par Bob Hawke.

² Signed by Rabbie L. Namaliu — Signé par Rabbie L. Namaliu.