

No. 8 of 2004.

***Enhanced Co-operation between Papua New Guinea and Australia Act 2004.***

Certified on: 9/8/2004.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



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*Enhanced Co-operation between Papua New Guinea and Australia Act 2004.*

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between Papua New Guinea and Australia.**



INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Enhanced Co-operation between Papua New Guinea and Australia Act 2004,***

WHEREAS the Government of Papua New Guinea and the Government of Australia have entered into a Joint Agreement on Enhanced Cooperation between Papua New Guinea and Australia that will enable the deployment by Australia of police and other personnel to Papua New Guinea to work in partnership with the Government of Papua New Guinea to address the issues in areas of governance, law and order and justice, financial management, economic and social progress and capacity in public administration, including the Royal Papua New Guinea Constabulary;

AND WHEREAS it is appropriate that provision be made in Papua New Guinea law for the deployment and operation of personnel involved in the enhanced cooperation;

THEREFORE it is appropriate that the following Act be passed: –

Being an Act to facilitate the implementation of the Joint Agreement on Enhanced Co-operation between Papua New Guinea and Australia, and for related purposes,

MADE by the National Parliament to come into operation on the date of the entry into force of the Agreement.

**PART 1. – PRELIMINARY.**

**1. MATTER OF NATIONAL INTEREST.**

For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

**2. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears –

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**“Agreement”** means the Joint Agreement on Enhanced Cooperation between Papua New Guinea and Australia, the text of which is set out in the Schedule and includes –

- (a) any supplemental arrangements made under Article 19 of the Agreement; and
- (b) any variation of the Agreement made under Article 21 of the Agreement.

(2) A term used in this Act and in the Agreement has the same meaning in this Act as in the Agreement.

**3. APPLICATION ON THIS ACT.**

This Act binds the State.

**PART 2. – AGREEMENT TO HAVE FORCE OF LAW, ETC.**

**4. AGREEMENT TO HAVE FORCE OF LAW, ETC.**

Subject to this Act –

- (a) the provisions of the Agreement have the force of law; and
- (b) to the extent that any rights, powers, functions, jurisdiction or exemptions that the Agreement confers, or any duties or responsibilities that the Agreement imposes, are inconsistent with an Act of the Parliament –
  - (i) that Act is deemed to have been amended to the extent necessary to permit the conferral or imposition; and
  - (ii) the rights, powers, functions, jurisdiction or exemptions are deemed to have been conferred; and
  - (iii) the duties or responsibilities are deemed to have been imposed.

**5. OBLIGATIONS OF DEPARTMENTS, ETC.**

The –

- (a) National Government; and
- (b) Provincial Governments; and
- (c) Local –level Governments; and
- (d) arms, Departments, agencies and instrumentalities of the National Government, Provincial Governments and Local –level Governments; and
- (e) bodies set up by statute or administrative act for governmental or official purposes, shall, so far as it is within their respective powers, take all steps to ensure compliance with the Agreement and with this Act.

**PART 3. – LEGAL ASSISTANT.**

**6. LAWYERS.**

Notwithstanding any other law, a person deployed under Article 5 of the Agreement to work in the legal and judicial system of Papua New Guinea is deemed to have satisfied the provisions of the *Lawyers Act 1986* relating to admission to practice and of the *Lawyers Admission Rules 1990* and may appear in Court and practise law in Papua New Guinea for the purposes related to his deployment under the Agreement.

**7. SOLICITOR-GENERAL.**

(1) Notwithstanding any other law, for the purposes of being appointed as Solicitor –General, a Designated Person is deemed to have satisfied the provisions of the *Lawyers Act 1986* relating to admission to practice and of the *Lawyers Admission Rules 1990* and of the *Attorney-General Act 1989* for the purposes related to his deployment under the Agreement.

(2) Notwithstanding any other law, a person deployed under Article 5 of the Agreement to work in the legal and judicial system of Papua New Guinea as Assistant Solicitor –General is deemed to have satisfied the provisions of the *Lawyers Act 1986* relating to admission to practice and of the *Lawyers Admission Rules 1990*, for the purposes related to his deployment under the Agreement.

**8. STATE PROSECUTORS.**

Notwithstanding any other law, a person deployed under Article 5 of the Agreement to work in the judicial and legal system of Papua New Guinea may as a State Prosecutor is deemed to have satisfied the provisions of the *Lawyers Act 1986* relating to admission to practice and of the *Lawyers Admission Rules 1990* for the purposes related to his deployment under the Agreement.



**PART 4. – MISCELLANEOUS.**

**9. EVIDENCE IN CERTAIN MATTERS.**

(1) Where the Departmental Head of the Department of Foreign Affairs and Immigration, or a person authorized by the Departmental Head, certifies in writing that, at a time specified in the certificate, a person specified in the certificate was, or was not, a Designated Person, the certificate is, in any proceedings in a court or tribunal of Papua New Guinea, sufficient evidence of the facts so certified, unless the contrary is proved.

(2) Where the Departmental Head of the Department of Foreign Affairs and Immigration, or a person authorized by the Departmental Head, certifies in writing that, at a time specified in the certificate, a person specified in the certificate was, or was not, a Related Person, the certificate is, in any proceedings in a court or tribunal of Papua New Guinea, sufficient evidence of the facts so certified, unless the contrary is proved.

**10. REGULATION.**

The Head of State, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all matters, which are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act or the Agreement.

**SCHEDULE 1 – JOINT AGREEMENT OF ENHANCED COOPERATION  
BETWEEN PAPUA NEW GUINEA AND AUSTRALIA.**

Section 2

**RECOGNISING** the history of close cooperation between Papua New Guinea and Australia.

**REINFORCING** the sovereignty and independent of Papua New Guinea.

**RECOGNISING** the importance of respecting, upholding and maintaining the Constitution, laws and culture of Papua New Guinea.

**RECALLING** the Joint Declaration of Principles Guiding Relations Between Australia and Papua New Guinea signed in Canberra on 9 December 1987;

**NOTING** the Joint Statement Between The Papua New Guinea Minister for Foreign Affairs and Immigration, the Rt Hon. Sir Rabbie Namaliu, KCMG MP and the Australian Minister for Foreign Affairs, the Hon. Alexander Downer, MP which was made on 18 September 2003.

**NOTING** further the Joint Statement's reference to the progress that has been made by Papua New Guinea in facilitating growth and stability and noting that more needs to be done in advancing this progress with further support and involvement of Australia;

**NOTING** further that Australia and Papua New Guinea Minister have decided in principle on a framework of cooperation which will include the placement of Australian officials in positions in departments and agencies of the Papua New Guinea Government and other Australia assistance in law and order, policing, justice issues, financial and economic arrangements and related governance concerns;

**RECALLING** the Concept of Assistance for a Policing Assistance Package to the Royal Papua New Guinea Constabulary which was referred to in an exchange of letters between the Commissioner of the Australian Federal Police and the Commissioner of the Royal Papua New Guinea Constabulary on 17 November 2003, and adopted by both Governments at the Australia-Papua New Guinea Ministerial Forum on 11 December 2003;

**DESIRING** to further enhance law and justice, the Governments of Australia and Papua New Guinea.

**HAVE AGREED** as follows:

**Article 1**

**Definitions**

- (a) **“Designated Person”** means any person notified by the Government of Australia to the Papua New Guinea Department of Foreign Affairs and Immigration pursuant to either Article 3.10 or Article 5.3.

- (b) **“Assisting Australian Police”** means the group of Assisting Australia Police Personnel deployed to Papua New Guinea pursuant to this Agreement.
- (c) **“Assisting Australia Police Personnel”** means any member or individual representative of the Australian Federal Police or the police force of any other Australian jurisdiction who is deployed to Papua New Guinea pursuant to this Agreement and is notified to Papua New Guinea Department of Foreign Affairs and Immigration pursuant to Article 3.10.
- (d) **“Member”** means any police officer, member of the Australian Federal Police or of the police force of any other Australian jurisdiction.
- (e) **“Related Person”** means any dependants and family of a Designated Person notified by the Government of Australia to the Papua New Guinea Department of Foreign Affairs and Immigration.

## **Article 2**

### **Purposes**

Australia may, in consultation with the Government of Papua New Guinea to work in partnership with the Government of Papua New Guinea to address core issues in Papua New Guinea in the areas of governance, law and order and justice, financial management, economic and social progress as well as capacity in public administration, including the Royal Papua New Guinea Constabulary.

## **Article 3**

### **Status of Assisting Australian Police**

1. Nothing in this Article is intended to impinge on the authority of the RPNGC Police Commissioner. The RPNGC Police Commissioner has ultimate command and control of the RPNGC. On a day to day basis, Assisting Australian Police will comply with the lawful directions, organisational strategies and effective control of the RPNGC as required by the Commissioner of the RPNGC or his delegate, subject to this Article. They will be subject to the regular management of their immediate supervisor, except where a direction, order or request, conflicts with their responsibilities to Australian laws, regulations or orders.
2. It is the intention of this Article that the Assisting Australian Police shall work cooperatively with the Government of Papua New Guinea and its authorities in order to achieve the purposes set out in Article 2.
3. The most senior Member of the Assisting Australian Police, shall be the head of the Assisting Australian Police, with responsibility for general administration and control of the Assisting Australian Police.
4. Assisting Australian Police Personnel are subject to the orders of, and instructions from the head of the Assisting Australian Police. The head of the Assisting Australian Police shall report to the Commissioner of the Royal Papua New Guinea Constabulary. The head of the Assisting Australian Police shall be responsible to the Commissioner of the Australian Federal Police.

5. Any tasks or orders carried out by Assisting Australian Police Personnel shall be consistent with the laws, procedures and standards of conduct applicable to them in Australia. Assisting Australian Police Personnel will be subject to Australian disciplinary laws and procedures.

6. Subject to this Agreement, Assisting Australian Police Personnel shall not be subject to any regulations concerning the administration or discipline of the Royal Papua New Guinea Constabulary, or to the jurisdiction of any Papua New Guinea disciplinary authority, court or tribunal.

7. Members of the Assisting Australian Police shall exercise the functions, powers, authorities and privileges exercised by members of the Royal Papua New Guinea Constabulary, including the power of arrest.

8. In exercising their powers referred to in Article 3.7, the Members of the Assisting Australian Police shall work in partnership with the Royal Papua New Guinea Constabulary.

9. The provision of the police assistance may be the subject of arrangements subsidiary to this Agreement between the Commissioners of the Australian Federal Police and the Royal Papua New Guinea Constabulary. In providing this assistance there shall be close cooperation and consultation between the head of the Assisting Australian Police and the Commissioner of the Royal Papua New Guinea Constabulary.

10. Australia shall notify the Department of Foreign Affairs and Immigration and the Royal Papua New Guinea Constabulary of the names of Assisting Australian Police Personnel deployed to Papua New Guinea.

11. Assisting Australian Police Personnel, together with their service vehicles, vessels, aircraft, equipment and supplies, shall enjoy freedom of movement throughout Papua New Guinea.

12. For the purposes of Article 2, Assisting Australian Police Personnel shall have the authority to install and operate radio and satellite sending and receiving stations to make direct contact with Australia and within Papua New Guinea. They shall do so in consultation with Papua New Guinea Radio and Telecommunication Technical Authority (PANGTEL).

#### **Article 4**

##### **Uniform and Carriage of Weapons**

1. Members of the Assisting Australian Police may wear their Australian uniform, or such uniform as agreed under Article 3.9, when on official duty in Papua New Guinea.

2. Members of the Assisting Australian Police may possess, carry and use arms in accordance with their internal orders or rules, and in a manner compatible with the possession, carriage and use of arms by the Royal Papua New Guinea Constabulary.

#### **Article 5**

### **Status of Other Personnel**

1. Australia may, in consultation with the Government of Papua New Guinea, deploy Australian personnel to work in government departments and agencies, and the legal and judicial system, of Papua New Guinea.
2. A Designated Person appointed to a position or office within a government department, agency or the legal and judicial system of Papua New Guinea shall exercise the relevant powers and duties of that position or office.
3. Australia shall notify the Papua New Guinea Department of Foreign Affairs and Immigration of the names of all personnel deployed to Papua New Guinea pursuant to this Article.

### **Article 6**

#### **Related Persons**

1. Articles 7.1, 8, 10, 12, 13.2, 13.3, 14.3 and 17.3 of this Agreement shall apply to Related Persons.
2. Australia shall notify the Papua New Guinea Department of Foreign Affairs and Immigration of the name of all related persons in Papua New Guinea.
3. Related Persons shall be granted visas allowing a Related Person to undertake employment in Papua New Guinea.

### **Article 7**

#### **Observance of Papua New Guinea Law**

1. Designated Persons and Related Persons shall observe and respect the laws and regulations of Papua New Guinea.
2. The conduct of Designated Persons in Papua New Guinea shall also be governed by a Code of Conduct to ensure Designated Persons act in a professional manner, observing and respecting the laws of Papua New Guinea and fully respecting the culture of Papua New Guinea. Designated Persons shall not be required to act in a manner inconsistent with this Code of Conduct.

### **Article 8**

#### **Criminal Jurisdiction**

1. Subject to the provisions of this article, Papua New Guinea and Australia shall have concurrent jurisdiction over Designated and Related Persons with respect to offences committed within the territory of Papua New Guinea and punishable by the law of Papua New Guinea.
2.
  - (a) Australia shall have the right to exercise exclusive jurisdiction over Designated and Related Persons subject to Australian law but not by Papua New Guinea law.

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- (b) Where a Designated or Related Person has committed an offence punishable by Papua New Guinea law but not by Australian law, the exercise of jurisdiction shall take place after mutual consultation and a decision of the Joint Steering Committee taken in accordance with Article 9 of this Agreement.
3. In the cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:
- (a) Australia shall have the primary right to exercise jurisdiction over Designated and Related Persons subject to Australian law in relation to:
- (i) offences against the property of Australia
  - (ii) offences against the person or property of a Designated or Related Person; or
  - (iii) acts or omissions of Designated Persons that are taken in the course of, or are incidental to, official duties.
- (b) In the case of offences not covered by subparagraph 3(a), the exercise of jurisdiction shall take place after mutual consultation and a decision of the Joint Steering Committee taken in accordance with Article 9 of this Agreement.
- (c) For the purposes of sub-paragraph (a)(iii) of this paragraph a certificate issued by the authorities of Australia that the offence arose out of an act or omission done in the course of, or incidental to, official duties, shall, in any proceedings before a court or tribunal, be conclusive evidence of the facts so certified.
- (d) Legal proceedings shall not commence, for the purposes of sub-paragraph 2(b) and 3(b), where a certificate has been issued by the authorities of Australia which states that the offence is under investigation or consideration in accordance with Article 9. Legal proceedings shall not commence until the investigation or consultation is completed, and a certificate is issued by the representatives of the Parties which states that the proceedings may commence.
- (e) If the State having the primary right to exercise jurisdiction under this article decides not to exercise jurisdiction under this article decides not to exercise jurisdiction, it shall notify the authorities of the other State in writing as soon as practicable. The authorities of the State having primary jurisdiction shall give sympathetic consideration to a request from the authorities of the other state for waiver of jurisdiction. Regard shall be had for the responsibilities of the authorities of Australia for the good order and discipline of Designated and Related Persons subject to Australian law

4. The designated authorities of Australia and the authorities of Papua New Guinea shall assist each other in the arrest of Designated or Related Persons in Papua New Guinea and, subject to paragraphs 6 and 7 of this article, in handling them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

5. The designated authorities of Papua New Guinea shall immediately notify the designated authorities of Australia of the detention of any Designated or Related Person.

6. Where the authorities of Papua New Guinea have detained a Designated or Related person with respect to an offence over which Papua New Guinea and Australia have concurrent jurisdiction, the authorities of Papua New Guinea shall immediately, upon request by Australia, release the Designated or Related Person to the custody of Australian authorities. In such circumstances consultations

7. The Government of Papua New Guinea may request the Government of Australia to arrange for the departure from Papua New Guinea of any Designation Person or Related Person over whom Australia has exercised jurisdiction pursuant to sub-paragraphs 2 and 3. Upon receipt of such a request the head of the Assisting Australian Police shall arrange for the departure of that Designated Person or Related Person from Papua New Guinea as soon as practicable.

8. The authorities of Australia and the authorities of Papua New Guinea shall notify each other by regular updates of all cases falling within this article.

9. Papua New Guinea shall not carry out the death sentence on a Designated or Related Person.

10. Where an accused has been tried in accordance with the provisions of this article by the authorities of Australia or by the authorities of Papua New Guinea, and has been convicted or acquitted (which expressions shall include any other final disposal of a charge) they may not be tried again for the same or substantially the same offence by the authorities of either State. This paragraph shall not prevent the authorities of Australia from dealing with a Designated or Related Person for any violation of rules of discipline or code of conduct breaches arising from an act or omission which constituted an offence for which he was tried by the authorities of Papua New Guinea.

11. In addition to the provisions of any agreement entered into between Australia and Papua New Guinea concerning the transfer of prisoners from one country to the other, where a Designated or Related Person has been sentenced under the law of Papua New Guinea to a sentence of imprisonment and the Designated or Related Person makes a request, which is supported by the authorities of Australia, that the sentence of imprisonment be served in Australia, this request shall be given sympathetic consideration by the authorities of Papua New Guinea.

12. Whenever a Designated or Related Person is prosecuted under the jurisdiction of Papua New Guinea, the Designated or Related Person shall be entitled;

(a) to a prompt and speedy trial;

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- (b) to be informed, in advance of trial, of the specific charge or charges to be made against them;
- (c) to be confronted with the witnesses against them;
- (d) to have compulsory process for obtaining witnesses in their favour, if they are within the jurisdiction of Papua New Guinea;
- (e) to have legal representation of their own choice for their defence or to have free or assisted legal representation under the conditions prevailing for the time being in the part of Papua New Guinea in which they are being prosecuted;
- (f) if they consider it necessary, to have the services of a competent interpreter;
- (g) to be held in safe, secure and humane conditions, and
- (h) to communicate with a representative of Australia and, where the rules of the court permit, to have such representative at their trial.

**Article 9**

**Consultation and Complaints**

1. The Parties will establish a Joint Steering Committee to ensure continuing consultation on implementation of the Enhanced Cooperation Program. The Joint Steering Committee shall comprise members nominated by each Party.
2. As a matter of priority, the Joint Steering Committee shall determine the manner in which it shall meet and operate.
3. Any member of the Joint Steering Committee may request consultations between them on the implementation of Article 8 and consideration under subparagraphs 8(2)(b) and 8(3)(b) regarding the commencement of legal proceedings. At the request of either Party, an investigation shall be carried out into the incident which gave rise to the request for consultations prior to the commencement of those consultations. Consultations under this sub-section shall be held as soon as practicable after such an investigation is completed. The Parties to this Agreement shall in all cases including those giving rise to concurrent jurisdiction assist each other in the carrying out of all necessary investigations and proceedings into offence, and in the collection and the production of evidence including the seizure of and the handing over of objects, documents, articles and proceeds in connection with an offence, in accordance with their laws. The handing over of such objects, documents, articles and proceeds may, however, be made subject to their return within any reasonable time specified by the authority delivering them.
4. Decisions of the Joint Steering Committee shall be made by agreement between the Parties.
5. Any member of the Joint Steering Committee may put in writing any complaint regarding the conduct of a Designated or Related Person and regarding implementation of Article 8.



6. Any complaint made pursuant to paragraph 4 may be the subject of consultation under this Article.

### **Article 10**

#### **Obligations under International Law**

In giving effect to this Agreement, the Parties shall act in a manner consistent with their obligations under international law. The Parties agree that Designated Persons shall act in a manner consistent with Australia's obligations under international law.

### **Article 11**

#### **Claims and Civil Jurisdiction**

1. Designated Persons shall not be subject to civil jurisdiction of the courts and tribunals of Papua New Guinea with respect to acts or omissions done within the course of, or incidental to, official duties.
2. For the purposes of paragraph 1 of this Article, a certificate issued by the authorities of Australia that the action arose out of an act or omission done in the course of, or incidental to, official duties shall, in any proceedings before a court or tribunal, be conclusive evidence of the facts so certified.
3. Each Party waives any claim against other Party in respect of any act or omission of any Designated Person in the course of, or incidental to, official duties.
4. The Parties shall consult in accordance with Article 9 of this Agreement on claims not otherwise covered by this Article.

### **Article 12**

#### **Customary Law**

Designated and Related Persons shall not be subject to any proceedings in Papua New Guinea to enforce Papua New Guinea customary law, including, but not limited to, proceedings in village courts.

### **Article 13**

#### **Entry and Departure**

1. Papua New Guinea authorities shall facilitate the entry into, and departure from, Papua New Guinea of Designated Persons. Such facilitation shall include the grant of a special exemption visa or successor visa of that type. The Government of Papua New Guinea shall grant all Designated Persons exemption from departure tax.
2. Designated Persons shall be exempt from any laws and orders governing the residence of aliens in Papua New Guinea, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Papua New Guinea.

3. Designated Persons may import into and export from Papua New Guinea without licence, other restriction or registration and free of customs, duties and taxes, and inspection, any equipment (including vehicles, vessels and aircraft) and other supplies required by them for the purpose of their operations, or other forms of cooperation under this Agreement, together with personal effects of, and items for the personal consumption or use by, Designated Persons. Any personal property imported duty-free which is sold in Papua New Guinea by a Designated Person to persons other than those entitled to duty-free import privileges shall be subject to customs and other duties on its value at the time of sale.

#### **Article 14**

##### **Transport and Financial Arrangements**

1. Papua New Guinea authorities shall register free of charge, vehicles, vessels and aircraft and other equipment, including medical equipment and supplies, provided or used by Designated Persons in the course of official duties. Papua New Guinea authorities shall accept as valid, without a test or fee, a permit or licence by a Designated Person for the operation of vehicles, vessels or aircraft, and other equipment and supplies, issued by Australian authorities.

2. Australia shall be responsible for the salary, allowances, removal expenses, costs of transport to Papua New Guinea, and medical and dental expenses of Designated Persons.

3. Remittances between Australia and Papua New Guinea shall be freely allowed for:

- (a) funds derived by Designated Persons
- (b) funds derived by Designated Persons from sources outside Papua New Guinea, subject to any relevant laws, regulations or policies of Australia; and
- (c) funds derived from the proceeds of sales or personal effects or other property used by Designated Persons while serving in Papua New Guinea which are disposed of in connection with their departure from Papua New Guinea.

4. Designated Persons shall be exempt from taxation by the Government of Papua New Guinea on their pay and other emoluments. They shall also be exempt from any other direct taxes (including death duties), fees and charges.

5. Designated Persons may purchase locally produced goods and commodities that they require in fulfilment of the purposes of Article 2 free of duties, taxes and charges.

#### **Article 15**

##### **Accommodation and Facilities**

1. Subject to paragraph 2, Australia shall cover the personal accommodation and transport costs of Designated Persons.

2. Unless otherwise negotiated, the Government of Papua New Guinea shall provide Designated Persons, free of charge, with unrestricted use of, and access to, suitable premises (including facilities and administrative support) as may be necessary for the fulfilment of the official duties of Designated Persons.

3. Unless otherwise negotiated, Designated Persons shall have the right to the use of water, electricity and other public utilities free of charge for the purposes of carrying out their official duties.

4. Designated Persons may generate, transmit and distribute electricity for their own use free of charge and without being subject to regulation or licensing requirements.

### **Article 16**

#### **Communications and Postal Services**

1. Designated Persons shall enjoy the right of unrestricted communications for appropriate purposes by radio, television, or any other means and of establishing the necessary facilities for maintaining such communications within and between premises used by Designated Persons, including the laying of cables and land lines and the establishment of fixed and mobile radio and satellite sending and receiving stations.

2. Designated Persons may process and transport mail addressed to or sent from Designated Persons. Papua New Guinea shall not interfere with the mail of Designated Persons. Mail services to Designated Persons shall be free from interference.

### **Article 17**

#### **Health and Safety**

1. Designated Persons who are medical, nursing or paramedic staff may treat Designated Persons and other persons, including residents of Papua New Guinea, as required without being subject to registration or licensing under the laws and regulations or orders of Papua New Guinea.

2. The Government of Papua New Guinea shall provide all practicable assistance to Designated Persons in relation to health and safety issues that may arise.

3. Designated Persons may take charge of, and repatriate, the body of a Designated Person who has died in Papua New Guinea.

4. The Government of Papua New Guinea shall provide a safe and secure workplace to Designated Persons, appropriate to the official duties being carried out by the Designated Persons.

### **Article 18**

#### **Additional Matters**

Any matter not covered by this Agreement shall be the subject of mutually acceptable arrangements made from time to time between the Parties.

**Article 19**

**Supplemental Arrangements**

Supplemental arrangements for the carrying out of this Agreement shall be made as required between the Governments of Papua New Guinea and Australia.

**Article 20**

**Dispute Resolution**

Any matter arising under this Agreement with respect to its interpretation, application or implementation shall be settled by consultation or negotiation between the Parties and shall not be referred to any third party or tribunal for resolution.

**Article 21**

**Variation and suspension**

The Parties may agree to a variation or suspension of this Agreement or a part or parts thereof.

**Article 22**

**Entry into Force and Duration**

1. This Agreement shall be open for signature by the Parties.
2. Each Signatory shall notify the other in writing of the completion of the constitutional formalities by its laws for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of the two notifications by Papua New Guinea and Australia.
3. Unless otherwise mutually agreed by the Parties, this Agreement shall expire on the complete withdrawal of all Designated Persons from Papua New Guinea.
4. Expiry of this Agreement shall not affect any liabilities, rights and obligations arising out of the Agreement, and any immunity relating to actions taking place during the period of the Agreement.
5. This Agreement shall prevail over any existing agreement as between any of the Parties to this Agreement to the extent necessary to give effect to this Agreement.

**IN WITNESS WHEREOF** the undersigned being duly authorised by their respective Governments have signed this Agreement.

**DONE** in duplicate at **Port Moresby** this **30th** day of **June 2004**

For the Government of  
Papua New Guinea

For the Government of  
Australia

**R. L. Namaliu (Sgd.)**

**Alexander Downer (Sgd.)**

**RECOGNISING** the history of close cooperation between Papua New Guinea and Australia.

**REINFORCING** the sovereignty and independent of Papua New Guinea.

**RECOGNISING** the importance of respecting, upholding and maintaining the Constitution, laws and culture of Papua New Guinea.

**RECALLING** the Joint Declaration of Principles Guiding Relations Between Australia and Papua New Guinea signed in Canberra on 9 December 1987;

**NOTING** the Joint Statement Between The Papua New Guinea Minister for Foreign Affairs and Immigration, the Rt Hon. Sir Rabbie Namaliu, KCMG MP and the Australian Minister for Foreign Affairs, the Hon. Alexander Downer, MP which was made on 18 September 2003.

**NOTING** further the Joint Statement's reference to the progress that has been made by Papua New Guinea in facilitating growth and stability and noting that more needs to be done in advancing this progress with further support and involvement of Australia;

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**RECALLING** the Concept of Assistance for a Policing Assistance Package to the Royal Papua New Guinea Constabulary which was referred to in an exchange of letters between the Commissioner of the Australian Federal Police and the Commissioner of the Royal Papua New Guinea Constabulary on 17 November 2003, and adopted by both Governments at the Australia-Papua New Guinea Ministerial Forum on 11 December 2003;

**DESIRING** to further enhance law and justice, the Governments of Australia and Papua New Guinea.

**HAVE AGREED** as follows:

### **Article 1**

#### **Definitions**

- (a) **“Designated Person”** means any person notified by the Government of Australia to the Papua New Guinea Department of Foreign Affairs and Immigration pursuant to either Article 3.10 or Article 5.3.
- (b) **“Assisting Australian Police”** means the group of Assisting Australia Police Personnel deployed to Papua New Guinea pursuant to this Agreement.

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- (c)    **“Assisting Australia Police Personnel”** means any member or individual representative of the Australian Federal Police or the police force of any other Australian jurisdiction who is deployed to Papua New Guinea pursuant to this Agreement and is notified to Papua New Guinea Department of Foreign Affairs and Immigration pursuant to Article 3.10.
- (d)    **“Member”** means any police officer, member of the Australian Federal Police or of the police force of any other Australian jurisdiction.
- (e)    **“Related Person”** means any dependants and family of a Designated Person notified by the Government of Australia to the Papua New Guinea Department of Foreign Affairs and Immigration.

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**Purposes**

Australia may, in consultation with the Government of Papua New Guinea to work in partnership with the Government of Papua New Guinea to address core issues in Papua New Guinea in the areas of governance, law and order and justice, financial management, economic and social progress as well as capacity in public administration, including the Royal Papua New Guinea Constabulary.

**Article 3**

**Status of Assisting Australian Police**

1. Nothing in this Article is intended to impinge on the authority of the RPNGC Police Commissioner. The RPNGC Police Commissioner has ultimate command and control of the RPNGC. On a day to day basis, Assisting Australian Police will comply with the lawful directions, organisational strategies and effective control of the RPNGC as required by the Commissioner of the RPNGC or his delegate, subject to this Article. They will be subject to the regular management of their immediate supervisor, except where a direction, order or request, conflicts with their responsibilities to Australian laws, regulations or orders.
2. It is the intention of this Article that the Assisting Australian Police shall work cooperatively with the Government of Papua New Guinea and its authorities in order to achieve the purposes set out in Article 2.
3. The most senior Member of the Assisting Australian Police, shall be the head of the Assisting Australian Police, with responsibility for general administration and control of the Assisting Australian Police.
4. Assisting Australian Police Personnel are subject to the orders of, and instructions from the head of the Assisting Australian Police. The head of the Assisting Australian Police shall report to the Commissioner of the Royal Papua New Guinea Constabulary. The head of the Assisting Australian Police shall be responsible to the Commissioner of the Australian Federal Police.

5. Any tasks or orders carried out by Assisting Australian Police Personnel shall be consistent with the laws, procedures and standards of conduct applicable to them in Australia. Assisting Australian Police Personnel will be subject to Australian disciplinary laws and procedures.

6. Subject to this Agreement, Assisting Australian Police Personnel shall not be subject to any regulations concerning the administration or discipline of the Royal Papua New Guinea Constabulary, or to the jurisdiction of any Papua New Guinea disciplinary authority, court or tribunal.

7. Members of the Assisting Australian Police shall exercise the functions, powers, authorities and privileges exercised by members of the Royal Papua New Guinea Constabulary, including the power of arrest.

8. In exercising their powers referred to in Article 3.7, the Members of the Assisting Australian Police shall work in partnership with the Royal Papua New Guinea Constabulary.

9. The provision of the police assistance may be the subject of arrangements subsidiary to this Agreement between the Commissioners of the Australian Federal Police and the Royal Papua New Guinea Constabulary. In providing this assistance there shall be close cooperation and consultation between the head of the Assisting Australian Police and the Commissioner of the Royal Papua New Guinea Constabulary.

10. Australia shall notify the Department of Foreign Affairs and Immigration and the Royal Papua New Guinea Constabulary of the names of Assisting Australian Police Personnel deployed to Papua New Guinea.

11. Assisting Australian Police Personnel, together with their service vehicles, vessels, aircraft, equipment and supplies, shall enjoy freedom of movement throughout Papua New Guinea.

12. For the purposes of Article 2, Assisting Australian Police Personnel shall have the authority to install and operate radio and satellite sending and receiving stations to make direct contact with Australia and within Papua New Guinea. They shall do so in consultation with Papua New Guinea Radio and Telecommunication Technical Authority (PANGTEL).

#### **Article 4**

##### **Uniform and Carriage of Weapons**

1. Members of the Assisting Australian Police may wear their Australian uniform, or such uniform as agreed under Article 3.9, when on official duty in Papua New Guinea.

2. Members of the Assisting Australian Police may possess, carry and use arms in accordance with their internal orders or rules, and in a manner compatible with the possession, carriage and use of arms by the Royal Papua New Guinea Constabulary.

#### **Article 5**

**Status of Other Personnel**

1. Australia may, in consultation with the Government of Papua New Guinea, deploy Australian personnel to work in government departments and agencies, and the legal and judicial system, of Papua New Guinea.
2. A Designated Person appointed to a position or office within a government department, agency or the legal and judicial system of Papua New Guinea shall exercise the relevant powers and duties of that position or office.
3. Australia shall notify the Papua New Guinea Department of Foreign Affairs and Immigration of the names of all personnel deployed to Papua New Guinea pursuant to this Article.

**Article 6**

**Related Persons**

1. Articles 7.1, 8, 10, 12, 13.2, 13.3, 14.3 and 17.3 of this Agreement shall apply to Related Persons.
2. Australia shall notify the Papua New Guinea Department of Foreign Affairs and Immigration of the name of all related persons in Papua New Guinea.
3. Related Persons shall be granted visas allowing a Related Person to undertake employment in Papua New Guinea.

**Article 7**

**Observance of Papua New Guinea Law**

1. Designated Persons and Related Persons shall observe and respect the laws and regulations of Papua New Guinea.
2. The conduct of Designated Persons in Papua New Guinea shall also be governed by a Code of Conduct to ensure Designated Persons act in a professional manner, observing and respecting the laws of Papua New Guinea and fully respecting the culture of Papua New Guinea. Designated Persons shall not be required to act in a manner inconsistent with this Code of Conduct.

**Article 8**

**Criminal Jurisdiction**

1. Subject to the provisions of this article, Papua New Guinea and Australia shall have concurrent jurisdiction over Designated and Related Persons with respect to offences committed within the territory of Papua New Guinea and punishable by the law of Papua New Guinea.
2.
  - (a) Australia shall have the right to exercise exclusive jurisdiction over Designated and Related Persons subject to Australian law but not by Papua New Guinea law.



(b) Where a Designated or Related Person has committed an offence punishable by Papua New Guinea law but not by Australian law, the exercise of jurisdiction shall take place after mutual consultation and a decision of the Joint Steering Committee taken in accordance with Article 9 of this Agreement.

3. In the cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:

(a) Australia shall have the primary right to exercise jurisdiction over Designated and Related Persons subject to Australian law in relation to:

- (i) offences against the property of Australia
- (ii) offences against the person or property of a Designated or Related Person; or
- (iii) acts or omissions of Designated Persons that are taken in the course of, or are incidental to, official duties.

(b) In the case of offences not covered by subparagraph 3(a), the exercise of jurisdiction shall take place after mutual consultation and a decision of the Joint Steering Committee taken in accordance with Article 9 of this Agreement.

(c) For the purposes of sub-paragraph (a)(iii) of this paragraph a certificate issued by the authorities of Australia that the offence arose out of an act or omission done in the course of, or incidental to, official duties, shall, in any proceedings before a court or tribunal, be conclusive evidence of the facts so certified.

(d) Legal proceedings shall not commence, for the purposes of sub-paragraph 2(b) and 3(b), where a certificate has been issued by the authorities of Australia which states that the offence is under investigation or consideration in accordance with Article 9. Legal proceedings shall not commence until the investigation or consultation is completed, and a certificate is issued by the representatives of the Parties which states that the proceedings may commence.

(e) If the State having the primary right to exercise jurisdiction under this article decides not to exercise jurisdiction under this article decides not to exercise jurisdiction, it shall notify the authorities of the other State in writing as soon as practicable. The authorities of the State having primary jurisdiction shall give sympathetic consideration to a request from the authorities of the other state for waiver of jurisdiction. Regard shall be had for the responsibilities of the authorities of Australia for the good order and discipline of Designated and Related Persons subject to Australian law

4. The designated authorities of Australia and the authorities of Papua New Guinea shall assist each other in the arrest of Designated or Related Persons in Papua New Guinea and, subject to paragraphs 6 and 7 of this article, in handling them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

5. The designated authorities of Papua New Guinea shall immediately notify the designated authorities of Australia of the detention of any Designated or Related Person.

6. Where the authorities of Papua New Guinea have detained a Designated or Related person with respect to an offence over which Papua New Guinea and Australia have concurrent jurisdiction, the authorities of Papua New Guinea shall immediately, upon request by Australia, release the Designated or Related Person to the custody of Australian authorities. In such circumstances consultations

7. The Government of Papua New Guinea may request the Government of Australia to arrange for the departure from Papua New Guinea of any Designation Person or Related Person over whom Australia has exercised jurisdiction pursuant to sub-paragraphs 2 and 3. Upon receipt of such a request the head of the Assisting Australian Police shall arrange for the departure of that Designated Person or Related Person from Papua New Guinea as soon as practicable.

8. The authorities of Australia and the authorities of Papua New Guinea shall notify each other by regular updates of all cases falling within this article.

9. Papua New Guinea shall not carry out the death sentence on a Designated or Related Person.

10. Where an accused has been tried in accordance with the provisions of this article by the authorities of Australia or by the authorities of Papua New Guinea, and has been convicted or acquitted (which expressions shall include any other final disposal of a charge) they may not be tried again for the same or substantially the same offence by the authorities of either State. This paragraph shall not prevent the authorities of Australia from dealing with a Designated or Related Person for any violation of rules of discipline or code of conduct breaches arising from an act or omission which constituted an offence for which he was tried by the authorities of Papua New Guinea.

11. In addition to the provisions of any agreement entered into between Australia and Papua New Guinea concerning the transfer of prisoners from one country to the other, where a Designated or Related Person has been sentenced under the law of Papua New Guinea to a sentence of imprisonment and the Designated or Related Person makes a request, which is supported by the authorities of Australia, that the sentence of imprisonment be served in Australia, this request shall be given sympathetic consideration by the authorities of Papua New Guinea.

12. Whenever a Designated or Related Person is prosecuted under the jurisdiction of Papua New Guinea, the Designated or Related Person shall be entitled;

(a) to a prompt and speedy trial;

- (b) to be informed, in advance of trial, of the specific charge or charges to be made against them;
- (c) to be confronted with the witnesses against them;
- (d) to have compulsory process for obtaining witnesses in their favour, if they are within the jurisdiction of Papua New Guinea;
- (e) to have legal representation of their own choice for their defence or to have free or assisted legal representation under the conditions prevailing for the time being in the part of Papua New Guinea in which they are being prosecuted;
- (f) if they consider it necessary, to have the services of a competent interpreter;
- (g) to be held in safe, secure and humane conditions, and
- (h) to communicate with a representative of Australia and, where the rules of the court permit, to have such representative at their trial.

#### **Article 9**

##### **Consultation and Complaints**

1. The Parties will establish a Joint Steering Committee to ensure continuing consultation on implementation of the Enhanced Cooperation Program. The Joint Steering Committee shall comprise members nominated by each Party.
2. As a matter of priority, the Joint Steering Committee shall determine the manner in which it shall meet and operate.
3. Any member of the Joint Steering Committee may request consultations between them on the implementation of Article 8 and consideration under subparagraphs 8(2)(b) and 8(3)(b) regarding the commencement of legal proceedings. At the request of either Party, an investigation shall be carried out into the incident which gave rise to the request for consultations prior to the commencement of those consultations. Consultations under this sub-section shall be held as soon as practicable after such an investigation is completed. The Parties to this Agreement shall in all cases including those giving rise to concurrent jurisdiction assist each other in the carrying out of all necessary investigations and proceedings into offence, and in the collection and the production of evidence including the seizure of and the handing over of objects, documents, articles and proceeds in connection with an offence, in accordance with their laws. The handing over of such objects, documents, articles and proceeds may, however, be made subject to their return within any reasonable time specified by the authority delivering them.
4. Decisions of the Joint Steering Committee shall be made by agreement between the Parties.
5. Any member of the Joint Steering Committee may put in writing any complaint regarding the conduct of a Designated or Related Person and regarding implementation of Article 8.

6. Any complaint made pursuant to paragraph 4 may be the subject of consultation under this Article.

**Article 10**

**Obligations under International Law**

In giving effect to this Agreement, the Parties shall act in a manner consistent with their obligations under international law. The Parties agree that Designated Persons shall act in a manner consistent with Australia's obligations under international law.

**Article 11**

**Claims and Civil Jurisdiction**

1. Designated Persons shall not be subject to civil jurisdiction of the courts and tribunals of Papua New Guinea with respect to acts or omissions done within the course of, or incidental to, official duties.

2. For the purposes of paragraph 1 of this Article, a certificate issued by the authorities of Australia that the action arose out of an act or omission done in the course of, or incidental to, official duties shall, in any proceedings before a court or tribunal, be conclusive evidence of the facts so certified.

3. Each Party waives any claim against other Party in respect of any act or omission of any Designated Person in the course of, or incidental to, official duties.

4. The Parties shall consult in accordance with Article 9 of this Agreement on claims not otherwise covered by this Article.

**Article 12**

**Customary Law**

Designated and Related Persons shall not be subject to any proceedings in Papua New Guinea to enforce Papua New Guinea customary law, including, but not limited to, proceedings in village courts.

**Article 13**

**Entry and Departure**

1. Papua New Guinea authorities shall facilitate the entry into, and departure from, Papua New Guinea of Designated Persons. Such facilitation shall include the grant of a special exemption visa or successor visa of that type. The Government of Papua New Guinea shall grant all Designated Persons exemption from departure tax.

2. Designated Persons shall be exempt from any laws and orders governing the residence of aliens in Papua New Guinea, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Papua New Guinea.

3. Designated Persons may import into and export from Papua New Guinea without licence, other restriction or registration and free of customs, duties and taxes, and inspection, any equipment (including vehicles, vessels and aircraft) and other supplies required by them for the purpose of their operations, or other forms of cooperation under this Agreement, together with personal effects of, and items for the personal consumption or use by, Designated Persons. Any personal property imported duty-free which is sold in Papua New Guinea by a Designated Person to persons other than those entitled to duty-free import privileges shall be subject to customs and other duties on its value at the time of sale.

#### **Article 14**

##### **Transport and Financial Arrangements**

1. Papua New Guinea authorities shall register free of charge, vehicles, vessels and aircraft and other equipment, including medical equipment and supplies, provided or used by Designated Persons in the course of official duties. Papua New Guinea authorities shall accept as valid, without a test or fee, a permit or licence by a Designated Person for the operation of vehicles, vessels or aircraft, and other equipment and supplies, issued by Australian authorities.

2. Australia shall be responsible for the salary, allowances, removal expenses, costs of transport to Papua New Guinea, and medical and dental expenses of Designated Persons.

3. Remittances between Australia and Papua New Guinea shall be freely allowed for:

- (a) funds derived by Designated Persons
- (b) funds derived by Designated Persons from sources outside Papua New Guinea, subject to any relevant laws, regulations or policies of Australia; and
- (c) funds derived from the proceeds of sales or personal effects or other property used by Designated Persons while serving in Papua New Guinea which are disposed of in connection with their departure from Papua New Guinea.

4. Designated Persons shall be exempt from taxation by the Government of Papua New Guinea on their pay and other emoluments. They shall also be exempt from any other direct taxes (including death duties), fees and charges.

5. Designated Persons may purchase locally produced goods and commodities that they require in fulfilment of the purposes of Article 2 free of duties, taxes and charges.

#### **Article 15**

##### **Accommodation and Facilities**

1. Subject to paragraph 2, Australia shall cover the personal accommodation and transport costs of Designated Persons.

2. Unless otherwise negotiated, the Government of Papua New Guinea shall provide Designated Persons, free of charge, with unrestricted use of, and access to, suitable premises (including facilities and administrative support) as may be necessary for the fulfilment of the official duties of Designated Persons.

3. Unless otherwise negotiated, Designated Persons shall have the right to the use of water, electricity and other public utilities free of charge for the purposes of carrying out their official duties.

4. Designated Persons may generate, transmit and distribute electricity for their own use free of charge and without being subject to regulation or licensing requirements.

### **Article 16**

#### **Communications and Postal Services**

1. Designated Persons shall enjoy the right of unrestricted communications for appropriate purposes by radio, television, or any other means and of establishing the necessary facilities for maintaining such communications within and between premises used by Designated Persons, including the laying of cables and land lines and the establishment of fixed and mobile radio and satellite sending and receiving stations.

2. Designated Persons may process and transport mail addressed to or sent from Designated Persons. Papua New Guinea shall not interfere with the mail of Designated Persons. Mail services to Designated Persons shall be free from interference.

### **Article 17**

#### **Health and Safety**

1. Designated Persons who are medical, nursing or paramedic staff may treat Designated Persons and other persons, including residents of Papua New Guinea, as required without being subject to registration or licensing under the laws and regulations or orders of Papua New Guinea.

2. The Government of Papua New Guinea shall provide all practicable assistance to Designated Persons in relation to health and safety issues that may arise.

3. Designated Persons may take charge of, and repatriate, the body of a Designated Person who has died in Papua New Guinea.

4. The Government of Papua New Guinea shall provide a safe and secure workplace to Designated Persons, appropriate to the official duties being carried out by the Designated Persons.

### **Article 18**

#### **Additional Matters**

Any matter not covered by this Agreement shall be the subject of mutually acceptable arrangements made from time to time between the Parties.

**Article 19**

**Supplemental Arrangements**

Supplemental arrangements for the carrying out of this Agreement shall be made as required between the Governments of Papua New Guinea and Australia.

**Article 20**

**Dispute Resolution**

Any matter arising under this Agreement with respect to its interpretation, application or implementation shall be settled by consultation or negotiation between the Parties and shall not be referred to any third party or tribunal for resolution.

**Article 21**

**Variation and suspension**

The Parties may agree to a variation or suspension of this Agreement or a part or parts thereof.

**Article 22**

**Entry into Force and Duration**

1. This Agreement shall be open for signature by the Parties.
2. Each Signatory shall notify the other in writing of the completion of the constitutional formalities by its laws for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of the two notifications by Papua New Guinea and Australia.
3. Unless otherwise mutually agreed by the Parties, this Agreement shall expire on the complete withdrawal of all Designated Persons from Papua New Guinea.
4. Expiry of this Agreement shall not affect any liabilities, rights and obligations arising out of the Agreement, and any immunity relating to actions taking place during the period of the Agreement.
5. This Agreement shall prevail over any existing agreement as between any of the Parties to this Agreement to the extent necessary to give effect to this Agreement.

**IN WITNESS WHEREOF** the undersigned being duly authorised by their respective Governments have signed this Agreement.

**DONE** in duplicate at **Port Moresby** this **30th** day of **June 2004**

For the Government of  
Papua New Guinea

For the Government of  
Australia

**Sch. 1**      *Enhanced Co-operation between Papua New Guinea and Australia*  
2004

**R. L. Namaliu (Sgd.)**

**Alexander Downer (Sgd.)**