

Head Record of Understanding

Dated: [129 August 2006

Between:

the Australian Agency for International Development ("AusAID") ABN 62 9215 58838

and

the Human Rights and Equal Opportunity Commission ("HREOC") ABN 47 996 232 602

(each a "Party")

In Relation to Joint AusAID-HREOC Activities.

This Record of Understanding sets out the shared goals of AusAID and HREOC in relation to Joint AusAID-HREOC Activities, the partnership principles under which they will work together and the contribution each Agency will make, in pursuit of these goals. The Record of Understanding also sets out the means by which the Parties will ensure that they satisfy the accountability obligations to which they are subject.

AusAID and HREOC each agree to carry out their respective obligations in accordance with this Record of Understanding.

Signed on behalf of AusAID by:

Scott Dawson
.....

Deputy Director General, AusAID

Signature

[Signature]
.....

Signed on behalf of HREOC by:

JOHN WILLIAM YON DOUSSA
.....

Signature

[Signature]
.....
President

1. COMMENCEMENT AND TERM

- 1.1 This Record of Understanding and its Schedules and Attachments (together the "ROU") commence on the date it is signed by both Parties and will continue until a date agreed in writing by the Parties.

2. PURPOSE

- 2.1 The purpose of this ROU is to set out the operational arrangements that will guide cooperation between AusAID and HREOC in advancing the Australian Government's policies of promoting growth, stability and prosperity in the Asia Pacific region.
- 2.2 This ROU details how the Parties will work together and itemises overall principles and obligations, including accountability requirements.
- 2.3 Each activity implemented under this ROU will be agreed in writing between the Parties in the format set out in Annexure A, and will form a separate Schedule to this ROU.

3. INTERPRETATION

3.1 Definitions

The following definitions apply in this ROU:

AusAID means the Commonwealth of Australia represented by the Australian Agency for International Development.

AusAID Personnel means personnel either employed by AusAID, or engaged by AusAID on a contract basis, or agents of AusAID engaged in activities implemented under this ROU.

Commonwealth means the Commonwealth of Australia.

Confidential Information means information that:

- a) is designated by either Party as confidential; or
- b) each Party knows or could reasonably be expected to know is confidential, including without limitation information relating to the business or affairs of the Commonwealth or the Government of another country.

HREOC	means the Commonwealth of Australia represented by the Human Rights and Equal Opportunity Commission.
HREOC Personnel	means personnel either employed by HREOC, or engaged by HREOC on a sub-contract basis, or agents of HREOC engaged in activities implemented under this ROU.
Intellectual Property	means business names, copyrights, patents, trademarks, service marks, trade names, designs and similar industrial, commercial and intellectual property.
Party	means the Australian Agency for International Development or HREOC as the context requires.
Parties	means the Australian Agency for International Development and HREOC.
ROU	means this Record of Understanding.
Schedule	means a schedule to this ROU which sets out the written agreement of the Parties in respect of each activity implemented under this ROU.

3.2 In this ROU, unless a contrary intention appears:

- (a) reference to an Annexure is a reference to an Annexure to this ROU;
- (b) words in the singular include the plural and vice versa; and
- (c) words importing one gender include each of the other genders.

4. PARTNERSHIP PRINCIPLES

4.1 The Parties agree to work towards shared goals in accordance with the following partnership principles:

- (a) The relationship of the Parties will be one of equal partnership, valuing the contribution each Party can make to the reaching of common goals and recognising that each Party has different skills, attributes and strengths.
- (b) The partnership will be underpinned by mutual respect, professionalism, honesty, cooperation, the sharing of ideas and open, two-way communication at all levels.

- (c) Each Party recognises its roles and functions in relation to the activity are guided by its respective responsibilities within the Commonwealth Government.
- 4.2 The Parties acknowledge that each of them brings different skills, attributes and strengths to the partnership.
- (a) AusAID's strengths lie in:
 - (i) the provision of development policy advice drawing on a deep knowledge and understanding of developing countries in our region and the long-term aspects of development;
 - (ii) management of Australian development cooperation programs focussed on achieving growth, stability and effective governance; and
 - (iii) well-established networks and relationships with partner governments and other key partners and extensive overseas infrastructure and delivery systems.
 - (b) HREOC's strengths lie in:
 - (i) direct knowledge and experience in the operation of a an independent national human rights institution;
 - (ii) knowledge of international human rights standards and Australian experience in developing measures to implement those standards;
 - (iii) management of international technical cooperation programs aimed at strengthening the protection and promotion of human rights, through the matching of Australian expertise with the priorities of partner governments and organisations; and
 - (iv) well-established relationships and networks with Australian organisations and professionals working in areas relevant to the protection and promotion of human rights.

5. ACCOUNTABILITY FRAMEWORK

- 5.1 The Parties will cooperate in advancing best practice in implementing activities noting AusAID's ultimate responsibility to account for and report on the development program funds made available for activities funded under this ROU.

6. JOINT RESPONSIBILITIES

- 6.1 Achieving greater coordination in policy advice and program and service delivery is a high priority of public administration in Australia. Whole of government denotes

public service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues.

- 6.2 In this context, setting objectives, priorities and performance indicators for activities covered under this ROU is the joint responsibility of the Parties.
- 6.3 The Parties have an obligation to assist each other in meeting their accountability obligations including:
 - (a) appearances before Parliamentary and Cabinet Committees;
 - (b) relevant discussions and negotiations with other portfolios; and
 - (c) providing assistance necessary to respond to Parliamentary Questions on Notice and Ministerial correspondence.

7. HREOC RESPONSIBILITIES

- 7.1 HREOC will comply fully with AusAID accountability requirements for reimbursement of development program funds, including (for each activity) provision of:
 - (a) a work program linked to agreed priorities and performance indicators;
 - (b) a budget with a breakdown relevant to the program as specified in the relevant Schedule;
 - (c) written advice on proposed changes to work programs and budgets; and
 - (d) assistance with forward estimates for budgets, and other expenditure updates as required.
- 7.2 In furtherance of specific activity objectives HREOC will:
 - (a) provide appropriately qualified and experienced HREOC personnel in order to perform its obligations under this ROU; and
 - (b) be responsible for the performance and conduct of all HREOC personnel involved with activities implemented under this ROU including taking all reasonable endeavours to ensure that, in the course of carrying out those activities, HREOC personnel comply with APS Values, the APS Code of Conduct and the Public Service Act 1999 (Cth).

8. AusAID's RESPONSIBILITIES

- 8.1 AusAID will:
 - (a) Provide funding as agreed in the relevant Schedule;

- (b) provide appropriately qualified and experienced AusAID personnel in order to perform its obligations under this ROU;
- (c) be responsible for the performance and conduct of all AusAID personnel involved with activities implemented under this ROU and will take all reasonable endeavours to ensure that, in the course of carrying out those activities, AusAID personnel comply with APS Values, the APS Code of Conduct and the Public Service Act 1999 (Cth); and
- (d) where appropriate, provide advice and assistance to HREOC in relation to the implementation of Australian Government policies on developmental aid to foreign countries.

9. RISK ASSESSMENT AND MANAGEMENT

- 9.1 The Parties acknowledge that there will be risks to successful achievement of the objectives of the specific activities under this ROU. Identifiable risks for activities implemented under this ROU should be set out in a risk management matrix attached to the relevant Schedule unless the Parties agree that it is not required for a particular activity.
- 9.2 HREOC and AusAID each agree to monitor, report on and manage the risks in respect of which they have been assigned responsibility in the relevant risk management matrices and to update these risk management matrices accordingly.

10. REPORTING, MONITORING AND EVALUATION

- 10.1 AusAID and HREOC agree that it is essential to ensure that the performance and impact of specific activities under this ROU are adequately and effectively monitored and assessed. Activity should be monitored and evaluated in accordance with the framework set out in the relevant Schedule unless the Parties agree that it is not required.

11. SUB-CONTRACTS AND THIRD PARTY CONTRACTS

- 11.1 It is the intention of the Parties that neither will sub-contract to any firm or individual any part of the services or works which are the subject of this ROU, or otherwise contract a third party in connection with activities under this ROU, without consultation with the other.
- 11.2 Where the Parties have agreed that one or both Parties may enter into sub-contracts or other third party contracts under this clause, the Party so contracting will be solely responsible for all matters in connection with the contracts and contractors including without limitation:
 - (a) compliance with all legal and regulatory requirements in relation to such contracting (including without limitation the Commonwealth Procurement Guidelines); and

- (b) the engagement, management, coordination and payment of, and all communications with, such contractors.

12. FINANCIAL ARRANGEMENTS AND PAYMENTS

12.1 Financial Arrangements

- (a) The financial arrangements for each activity will be set out in the relevant Schedule.

12.2 Payments and Invoices

- (a) AusAID will make payment of any sums under a Schedule (if any) within 30 days of receipt of a correctly rendered invoice.
- (b) An invoice is correctly rendered if:
 - (i) the invoice details all services and works provided, and records the amount payable in respect of each category of services and works described in the relevant Schedule; and
 - (ii) the invoice is for an amount calculated correctly in accordance with entitlements under the relevant Schedule; and
 - (iii) a person holding the necessary authority has certified that:
 - (A) the invoice has been correctly calculated;
 - (B) the services and works included in the invoice have been performed in accordance with the relevant Schedule; and
 - (C) in the case of reimbursable costs, that these costs have actually been paid.
- (c) If an invoice is rendered incorrectly, any underpayment or overpayment will be recoverable by or from the Party making payment against the invoice as the case may be and may be offset against or added to amounts subsequently due by that Party.
- (d) A Party need not pay an amount disputed in good faith by it until the dispute is resolved.
- (e) Invoices involving foreign exchange transactions must be made in the equivalent Australian dollar amount calculated on the date of the actual foreign exchange transaction.

12.3 Accounts, Records and Access

- (a) The Parties will keep proper and detailed accounts and records in relation to any services or works performed, or expenditure incurred by them, under this ROU including in relation to foreign exchange transactions. Each Party will maintain such accounts and records for a minimum period of seven years following the completion of the services or works performed.
- (b) Each Party will provide the other with sufficient access to its financial management information to enable the other to monitor expenditure, resolve queries, complete internal audit processes and comply with regulatory requirements and procedures including without limitation those imposed by the Financial Management and Accountability Act (1997) and the Australian National Audit Office.

13. INTELLECTUAL PROPERTY

- 13.1 The full legal rights to all Intellectual Property arising out of the activities which are the subject of this ROU will be owned by the Commonwealth. Responsibility for and arrangements regarding the registration, licensing and other matters associated with protection of such Intellectual Property will be agreed between the Parties and in accordance with any Treaty or Memorandum of Understanding between the Commonwealth and the benefiting country that may apply. This may include granting the benefiting country a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit the material for the purposes of the Commonwealth.

14. DISPUTE RESOLUTION

- 14.1 Where any dispute arises between Parties under this ROU the Parties will take all necessary steps to resolve the dispute by negotiation in good faith. Wherever possible disputes should be resolved at the lowest level through direct negotiations bearing in mind whole of government principles.

15. TERMINATION AND SUSPENSION

- 15.1 Activities may be terminated due to a change in government policies.
- 15.2 Either Party may terminate this ROU by providing 90 days written notice to the other.
- 15.3 Where either Party is prevented from performing its obligations in a Schedule under this ROU by circumstances or events reasonably beyond its control, it will promptly notify the other Party and take all reasonable steps to mitigate the impact (financial or otherwise) on activities. The Parties will discuss the circumstances or events and may agree that further implementation of activities should be suspended or terminated.

- 15.4 Upon termination or suspension under this clause, the Parties will discuss in good faith the financial and other arrangements applicable to the termination or suspension. AusAID will pay HREOC such amount as is fair and reasonable in the circumstances based upon the proportion of work completed by HREOC prior to such termination or suspension and otherwise in accordance with the relevant Schedule.

16. USE OF ROU INFORMATION

- 16.1 The Parties may disclose matters relating to this ROU, including this ROU, except where such disclosure will breach the Privacy Act 1988 (Cth) or any other Commonwealth law, to Commonwealth departments and agencies, Ministers and Parliamentary Secretaries, and to Parliament, including responding to requests for information from Parliamentary Committees or inquiries.

17. CONFIDENTIALITY AND PUBLIC COMMENT

- 17.1 Neither Party will, without the prior written approval of the other Party, make public or disclose to any other person any Confidential Information. In granting its written approval, a Party may impose such terms and conditions as it deems appropriate.
- 17.2 The Parties will discuss whether it is appropriate to publicise activities and reach agreement on when to consult with the other Party on the nature, form, content and manner of future publicity. Neither Party will make any press, media or other public announcement in relation to activities covered by this ROU without having reached this agreement.

18. COUNTER TERRORISM

- 18.1 The Parties note their obligations:
- (a) to comply with the Australian Government's policy and laws consistent with relevant international counter-terrorism Treaties and UN Security Council Resolutions of not providing direct or indirect support or resources to organisations and individuals associated with terrorism; and
 - (b) to ensure that funding provided under this ROU is expended in a manner consistent with UN Security Council Resolutions and related Australian laws.
- 18.2 If during the course of this ROU any link whatsoever is discovered with any organisation or individual associated with terrorism, the party that becomes aware of the link will immediately inform the other Party.

19. CONFLICTS OF INTEREST AND ANTI-CORRUPTION

- 19.1 Each Party confirms that no conflict of interest exists or is likely to arise in relation to the performance of its obligations under this ROU. Each Party will use its best endeavours to ensure that no such conflict of interest arises and will notify the other Party promptly in the event that a potential or actual conflict of interest arising out of performance under this ROU occurs. In such circumstances the Parties will discuss and agree to the taking of such actions as may be necessary to ensure that the conflict of interest is avoided.
- 19.2 Each Party will use its best endeavours to ensure that no offer, gift or payment, consideration or benefit of any kind that would or could be considered an illegal or corrupt practice, will be made or received either directly or indirectly, as an inducement or reward in relation to performance under this ROU including the selection and engagement of any contractors by either Party.

20. LIASION AND NOTICES

- 20.1 The contact Officer for each Party and each Party's address for the service of notices under this ROU is as follows:

HREOC:

Contact:

Up to November 2006: David Robinson,
Deputy Director, International Programs.

From November 2006; Mr Bill Kennedy,
Director, International Programs

Telephone: 02-9284-9616

Facsimile: 02-9284-9611

Postal Address: GPO Box 5218, Sydney,
NSW 2001

Street Address: Level 8, 133 Castlereagh
Street, Sydney, NSW, 2000

AusAID

Contact:

Myrtle de Souza

Operational Support Unit

02 6286 4834

02 6206 4877

GPO Box 887 CANBERRA
ACT 2601

62 Northbourne Avenue
Canberra ACT 2601

21. AMENDMENTS

- 21.1 The Parties may amend or vary this ROU at any time by agreement in writing signed by their respective authorised representative.
- 21.2 The Parties may amend or vary a Schedule at any time by substituting the Schedule in its entirety with the amended or varied Schedule as agreed by the Parties in writing.

ANNEXURE A

(Example)

Schedule [insert number] to the Head Record of Understanding

In Relation to cooperation between HREOC and AusAID to [Title].

This Schedule [insert number] sets out the shared goals of AusAID and HREOC (the **Parties**) in relation to the **[insert description of activity] (Activity)** which will be implemented under the Record of Understanding signed by the Parties on **[insert date when signed] (ROU)**. This Schedule (including any Attachments) itemises the scope of the activity, contributions of each Party to the Activity and sets out the accountability obligations of each Party, including the means for monitoring and evaluation. Unless otherwise stated in this Schedule, the terms and conditions of the ROU will apply.

Signed on behalf of **AusAID** by:

Signed on behalf of **HREOC** by:

.....

.....

Name and Designation

Name and Designation

Signature

Signature

[insert name of Activity] (Activity)

S1 COMMENCEMENT AND COMPLETION DATES

S1.1 The Activity will commence on [Start Date] and be completed by [End Date].

S2 ACTIVITY GOAL AND OBJECTIVES

S2.1 [Describe in terms of outcomes]

S2.2

S3 ACTIVITY DESCRIPTION

S3.1 [Would normally include: a description of inputs; outputs; and management arrangements]

S3.2 [Include details of identifiable risks in risk management matrix if required and reporting requirements in M&E framework if required]

S4 FINANCIAL ARRANGEMENTS

S4.1 The financial arrangements outlined below will apply to the Activity.

S4.2 The maximum amount payable by AusAID in respect of this Activity is A\$[] plus GST if any up to a maximum amount of A\$[]. AusAID will not be liable for any amount, costs or expenditure incurred by HREOC in excess of this amount.

S4.3 AusAID will pay HREOC the sums in accordance with the budget and timetable set out below. The unexpended part of advances paid by AusAID (if any) will be refunded to AusAID.

[Insert or Attach Budget/Payment Mechanism/Timetable. This may be advance payment for inputs, payments in arrears for inputs, payments on the basis of achieving specific outputs or a combination of these.

The Budget may specify:

(i) The cost of inputs as follows:

Name	In Australia (\$/day)	Overseas (\$/day)	Duration	Total

*Identifying the cost of inputs assists to determine costs where there is a change in the amount of inputs to be provided.

(ii) Payments on the basis of outputs as follows:

Output	Milestone No.	Milestone Description	Verifiable Indicators	Amount \$

(iii) The payment of reimbursable costs as follows:

The following reimbursable costs will be paid [in arrears/monthly/quarterly][specify maximums where appropriate]:

- Airfares
- Departure Taxes
- Medical, Dental and Evacuation Insurance
- Travelling allowances
- Inoculations
- Per diems]

S4.4 HREOC will arrange, pay for and maintain for the duration of the Activity:

- (a) adequate medical and dental insurance for HREOC personnel who are engaged to operate outside their country of permanent residence;
- (b) adequate insurance for medical evacuation and evacuation resulting from an insured event for all HREOC personnel

S4.5 Except for amounts referable to GST referred to in 2 and 3 above, all taxes, duties and charges imposed or levied in connection with the performance of this Activity will be borne by HREOC.

S4.6 Claims for Payment of sums due and payable in respect of the Activity will be submitted in a form identifiable with the services and in accordance with Clause 12 of the ROU. Claims will be forwarded as follows:

Email (Preferably): accountsprocessing@ausaid.gov.au

Post to: AusAID
 Attention: Chief Finance Officer
 GPO Box 887
 Canberra ACT 2601
 Australia

S4.7 Except as otherwise specified, these amounts are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses.

S5 LIAISON AND NOTICES

S5.1 The contact Officer for each Party is the Activity Manager. Each Party's address for the service of notices for the purposes of this Activity is as follows:

HREOC:

Contact: Up to November 2006: David Robinson,
Deputy Director, International Programs
From November 2006: Bill Kennedy,
Director, International Programs

Telephone: 02-9284-9616

Facsimile: 02-9284-9611

Postal Address: GPO Box 5218, Sydney,
NSW, 2001

Street Address: Level 8, 133 Castlereagh
Street, Sydney, NSW, 2000

AusAID:

Contact: []

Telephone: (02) 6206 []

Facsimile: (02) 6206 []

Postal Address: GPO Box 887
Canberra ACT 2601

Street Address: 62 Northbourne Avenue
Canberra ACT 2601

Attachment 1

RISK MANAGEMENT MATRIX

[illegible]

Suggested classifications:

Likelihood	Degree of Impact
Almost certain - expected to occur in most circumstances	Severe - would stop achievement of functional goals and objectives
Likely - will probably occur in most circumstances	Major - would threaten goals and objectives; requires close management
Possible - might occur at some time	Moderate - would necessitate significant adjustment to the overall function
Unlikely - could occur at some time	Minor - would threaten an element of the function
Rare - may occur only in exceptional circumstances	Negligible - routine procedures sufficient to deal with the consequences