



Australian Government

# Australia's Framework for Law and Justice Engagement with the Pacific

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## Foreword

Australia is committed to helping Pacific countries strengthen the rule of law and protect human rights.

Australia has supported programs in the region to build the capacity and effectiveness of police, public prosecutors and defenders, ombudsmen, law officers, correctional services and the judiciary.

Our work has assisted non-government organisations, recognising their valuable role in keeping communities safe and secure.

Effective law and justice systems promote regional security, increase international confidence and help attract foreign investment. They form the basis of secure and stable systems of government and prevent corruption and serious crimes that can impede development. Access to justice is vital for promoting human rights.

There are many examples of successful Australian projects in the region. In Papua New Guinea, Australian Government assistance has helped increase the number of female village court magistrates from 10 in 2004 to 384 in 2009, leading to better access to justice at the village level.

Australian training and mentoring on anti-money laundering and proceeds of crime has assisted the Solomon Islands and Papua New Guinea in major criminal asset recovery. In 2009, Australian Government support to the Fiji Women's Crisis Centre enabled it to meet the immediate needs of 3,734 women subjected to violence.

In 2008, the Australian Government initiated a review of its support to law and justice in Pacific Island Forum member countries. That review pointed to areas for improvement, particularly in the coordination of Australian efforts.

This new Framework for Law and Justice Engagement with the Pacific responds to the review findings. It will guide Australia's future work in the Pacific law and justice sector.

The Framework reinforces Australia's commitment to a regional environment that is stable, peaceful and prosperous.

It complements and builds on the Pacific Partnerships for Development and for Security. It will also see better cooperation across Australian Government agencies engaged in the sector.

Australia's activities will focus on strengthening law and justice systems, improving public administration and governance, and eliminating violence against women. Our work will also support government and community partnerships and respond to common and emerging threats to maritime zones and borders.

The Framework will ensure that Australia's work is well-directed, targeted and comprehensive in the future.



The Hon Robert McClelland MP  
Attorney-General



The Hon Stephen Smith MP  
Minister for Foreign Affairs



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## Introduction

The Prime Minister's First National Security Statement to the Australian Parliament highlighted the importance of promoting an international environment, particularly in the Asia-Pacific region, that is stable, peaceful and prosperous, together with a global rules-based order.<sup>1</sup> Economic, social and institutional development depends on safe and secure communities, serviced by a well functioning and accountable justice system. Efforts to strengthen law and justice are particularly important in fragile and post-conflict settings, where improved community safety and non-violent dispute resolution create a supporting environment within which peace-building and broader development objectives can be achieved.

The possible emergence of tensions or conflict has the potential to threaten stability in our region. Forum Heads of Government recognised this threat in their 2000 Biketawa Declaration. Under the Pacific Plan for Strengthening Regional Cooperation and Integration, Pacific leaders recognised the importance of strengthening legal and law enforcement cooperation as part of broader efforts to enhance and stimulate economic growth, sustainable development, good governance and security for Pacific countries. Australia is committed to working in partnership with our Pacific neighbours to address law and justice issues and priorities.

Developed by relevant Australian Government agencies and endorsed by the Attorney-General, the Hon Robert McClelland MP, and Minister for Foreign Affairs, the Hon Stephen Smith MP, the Framework provides a high-level statement of priorities and principles to guide Australia's future engagement in the Pacific law and justice sector. For the purposes of the Framework, the law and justice sector is intended to include a broad range of government and non-government institutions, including police, departments of justice and Attorneys-General, public prosecutors and defenders, ombudsmen, the legal profession, correctional services, and the judiciary, as well as customary and community-based stakeholders.

The Framework is designed to complement existing plans and strategies and accommodate the identified interests of our Pacific partners, while taking into account the contribution which Australian government agencies and the private sector may offer in strengthening future engagement. Recognising coordination as a central element of aid effectiveness, the Framework will be supplemented by practical mechanisms to improve coordination of Australia's law and justice activities and involvement in the Pacific.

The Framework is designed to ensure close consultation with our Pacific neighbours and will enable flexible responses to be applied that take into account their specific priorities and legal contexts.

<sup>1</sup> *The First National Security Statement to the Australian Parliament*, address by the Prime Minister of Australia, the Hon Kevin Rudd MP, 4 December 2008, at page 6.



## Working in partnership

In the Port Moresby Declaration, Australia announced a new era of engagement with its Pacific partners, based upon mutual respect, mutual responsibility, cooperation and a determination to meet common challenges and shared goals. The Declaration set out a roadmap for accelerated progress towards the United Nations' Millennium Development Goals (MDGs), the internationally agreed development targets for 2015.



Through Pacific Partnerships for Development, Australia is now working together with our Pacific neighbours to make more rapid progress towards the MDGs and our partners' own development ambitions. The Partnerships give effect to Australia's commitment under the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action to increasingly align assistance with partner government planning and implementation systems. The Partnerships are also central to our responsibility to implement the Cairns Compact on Strengthening Development Coordination in the Pacific, which calls for improved service delivery and coordination across all sectors (including the law and justice sector) to achieve development outcomes.

Embracing these principles, Australia announced a new initiative for bilateral Partnerships for Security at the 40th Pacific Islands Forum in Cairns. The Security Partnerships will complement the Partnerships for Development by consolidating and strengthening existing bilateral security cooperation between Australia and Pacific island nations. This framework supports the implementation of both the Security and Development Partnerships, recognising the interdependent nature of law, justice and security challenges.

Importantly, this Framework is designed to complement and build on the Pacific Partnerships for Development and Security, as well as local developmental and sectoral policy frameworks and plans in place in Pacific island countries.

## Law and justice challenges in the Pacific

Pacific island countries vary enormously in size and population, as well as politically, culturally and in economic terms. The region faces a wide range of development and security challenges, including high population growth rates, low economic growth, high and growing levels of unemployment and uneven access to basic services. Governance issues and cross-border threats, such as transnational crime, including drug and arms trafficking and illegal migration, further jeopardise economic development and community resilience.

The need to protect scarce Pacific resources, such as fisheries and other natural resources, is also a major challenge.

These challenges exist against a background of climate change and the likelihood of rising sea levels, changes in sea temperature and the prospect of more frequent adverse weather events and natural disasters. The predicted impacts of climate change, such as increasing resource scarcity, are recognised as likely triggers for social unrest into the future, particularly for less stable countries. This accentuates the need for more effective and equitable management of fisheries, forest, land, water and other natural resources.

In some areas of the Pacific, the achievement of human rights goals are still a long way off, including in the areas of gender equality, the treatment of youth, the treatment of disabled persons and access to opportunity for those who are economically or otherwise marginalised. In particular, women have generally poor political and economic status. Women's participation in political leadership is very low. High rates of violence against women are prevalent throughout the region. Women are under-represented in the sector (particularly in management and decision-making positions), have less access to the justice system, and frequently receive inequitable treatment before the law.

Law and justice challenges are recognised internationally as both a cause and a consequence of poverty. The prevalence of crime, violence and conflict increases poverty at the individual, family and community level by inhibiting economic participation, interrupting the availability of basic services, and through the loss of assets such as land, crops and housing. Such weaknesses have a significant dampening effect on all economic activity, greatly reducing the economic opportunities that functioning markets could bring to the disadvantaged sectors of the community. Weaknesses in the law and justice system prevent disadvantaged people from seeking adequate redress in criminal and civil matters, and from protecting their personal property and livelihoods.

A sound, reliable and transparent law and justice system is also crucial to the development of local business enterprises and to attracting foreign investment and business activity. These, in turn, are central to improving prospects for economic growth and employment creation in Pacific island countries.

In addition, Pacific island countries share a number of challenges and pressures, specifically relating to the effective functioning of law and justice systems. These include ensuring compatibility between formal and informal (customary and community-based) systems and limited institutional capacity in governance and public administration. These challenges are often accentuated in rural areas due to the geographical spread of the population and poor infrastructure.

Our Pacific partners recognise that long-term and sustainable improvements to law and justice outcomes in the Pacific are integral to the advancement of outcomes in all areas of development, such as access to basic government services including health and education, increasing employment opportunities, a more inclusive political process and measures to improve the status of women. The performance of the law and justice system is critical to the preservation of fundamental human rights, promotion of the rule of law and access to justice, particularly for the poor and vulnerable. Without development in this area, achievement of the MDGs will be beyond reach.



## Australia's response—what we will work on

*Australia is committed to promoting a regional environment that is stable, peaceful and prosperous. We recognise these interests are common to our neighbours, in what is an increasingly interconnected and interdependent world. Australia is seeking to build on long-standing relationships in the Pacific to improve the overall impact of collective efforts. Australia is committed to the development of law and justice initiatives which support and protect human rights, and promote access to justice in the region. Australia will focus our engagement on law and justice measures that enhance regional security and stability and the rule of law in order to assist our Pacific partners reach the MDGs.*

## Strengthening law and justice systems

Pacific countries inherited their formal systems of law and justice from foreign models. These formal systems were introduced alongside active systems of informal (customary and community-based) approaches for dealing with law and justice issues.

While countries have attempted to develop and adapt both the formal and informal systems to meet current law and justice needs, in most cases the formal systems remain underdeveloped and essentially urban-based, with their reach constrained by geography and lack of resources. At the same time, customary and community-based systems vary in effectiveness, and the formal and informal elements of the system do not always work smoothly together. Both formal and informal systems of justice in the Pacific often perpetuate social inequalities and in many cases provide inadequate protection for citizens.



Australia will support our partners across the Pacific to develop strategies and approaches to law and justice that are appropriate to local circumstances and contexts, including support for the revision of criminal justice legislation, and strengthening police services and independent institutions such as the courts. Australia will also support our partners to develop policy and legal frameworks, particularly those that will better enable their achievement of the MDGs and broader development goals and assist them to implement their international obligations. These strategies are intended to complement and work within existing systems, not override customary laws and practices.

## Public administration and institutional governance

Weak institutional capacity in governance and public administration hamper service delivery across all sectors. Countries across the Pacific are addressing these constraints through a range of public sector reform programs, supported by Australia and other donor partners. However, effective public administration and governance within the law and justice sector institutions carry particular significance given their important role in providing accountability and oversight functions, both in and outside government.

Australia will support improved impartiality, fairness and accountability in public administration and institutional governance in the law and justice sector, including efforts to strengthen:

- leadership, commitment to reform and management capacity
- planning, budgeting, financial and procurement systems, focusing on constructive engagement with central agencies, improved resource allocation, better alignment of recurrent and development budgets, and reducing vulnerability to corruption
- coordination and coherence among law and justice sector agencies, and between those agencies and their partners across sub-national levels of government, within the private sector and among communities
- community support for, understanding of and participation in the justice system, including civil society capacity to hold government accountable for service delivery
- collection, management and analysis of performance information, including communication of information about progress and results
- the delivery of law and justice services and access to legal information, and
- equal access to law and justice services and addressing structural inequalities within the justice system.



## Government-community partnerships for improving service delivery

Across the Pacific, to varying degrees, justice systems are grounded in customary and community-based mechanisms. For example, village leaders play a vital role in mediation of conflicts at the local level, while community groups and NGOs work with local governments on crime prevention activities.

Local level decision-making and dispute-resolution systems also perform valuable roles in providing accessible justice at the local level and, along with community-level policing, are often the primary interface between the formal and informal systems. Although equitable access and inconsistent application of jurisdiction remains a significant concern, these systems provide the bulk of justice services at the local level and contribute vitally to preventing the escalation of local disputes into more serious problems, particularly in the area of land mediation.

Australia will support efforts to improve partnerships between formal and informal law and justice systems, to increase mutual understanding and collaboration between the formal justice sector agencies, NGOs and local communities, and to focus on strengthening the capacity of both government and non-government stakeholders to play their respective roles in the justice system. The International Pro Bono Advisory Group will serve as a mechanism to assist in the coordination of private sector pro bono assistance to justice sector agencies. Australia will support work to ensure access to justice through formal, informal and community-based mechanisms, focussing on access by the vulnerable and those with disabilities. Australia will also support efforts to improve customary and community-based systems, ensuring aspects such as gender equality, are addressed carefully as part of broader reforms.

## Gender equality and violence against women

Australia promotes gender equality as a central principle of all our law and justice engagement in the Pacific. This means working to ensure that men and women have equal access to the justice system and receive equitable treatment before the law. As a particular priority, Australia recognises that reducing violence against women is crucial to achieving equality between men and women and delivering good development outcomes.

Ensuring women have access to justice is key to responding to and preventing violence against women. A country's justice system, including formal, customary and community-based elements, should provide protection for women against violence, act as a deterrent to possible offenders, and impose consequences on those who commit domestic violence and sexual assault.

Australia will support partner countries to increase access to justice for women by:

- supporting governments to review, implement and monitor laws and policies that address violence against women, including through formal, customary and community-based justice systems
- supporting civil society organisations that assist women to access justice, including by increasing women's knowledge of their rights and the legal system
- working with the judiciary to promote awareness about violence against women
- supporting improved police responses to violence against women, and
- supporting increased participation by women in the delivery of police services.

## Emerging national and transnational challenges

Australia recognises the importance of regional collaboration to address the common and emerging threats to our maritime zones and borders. Transnational crimes—such as drug and arms trafficking, electronic crime, human trafficking, people smuggling, money laundering, terrorism, child sex tourism and illegal, unregulated and unreported fishing—are a threat within the region and can have a significant detrimental effect on domestic economies and impede progress towards achieving the MDGs.

Australia will continue to work with our legal and law enforcement colleagues to address transnational threats to our region. We will focus our engagement on working with our Pacific partners to ensure that the appropriate legislative frameworks are in place to enforce and prosecute the criminal threats faced by the region, including through effective international crime cooperation, and to freeze, seize and confiscate the proceeds of those crimes.

We will work closely with our Pacific partners to improve monitoring, control and surveillance of Pacific fisheries, and will also continue to work together to target and disrupt other forms of transnational crime and ensure the development and exchange of information to strengthen our response to and understanding of regional crime issues.

## Responding to instability and external shocks

International economic downturn, domestic or regional political instability, conflict, natural disasters and other climate-related events have the potential to reduce economic growth, shift short term priorities, and limit the capacity of our partners to implement law and justice reforms. Existing and emerging health pandemics, such as influenza and HIV and AIDS, also present significant national and transnational challenges to countries in the Pacific.

Australia will support improved planning and budgeting within the law and justice sector, together with increased coordination and partnership among sector stakeholders, to enable our partners to respond more effectively to external shocks, including strategic reprioritisation of available resources as required. Australia will also support efforts in the law and justice sector to respond to the realities of health pandemics and to look for opportunities within the sector's mandate to contribute to prevention, care and impact-mitigation efforts.



## Australia's response—how we will work

### Timeframes and sequencing

Australia is committed to supporting our Pacific partners to achieve positive outcomes in the short, medium and longer term. To address urgent challenges, Australia will provide targeted and specialised assistance. However, Australia recognises that technical responses in the short term will have a sustained impact only if they are balanced with support for longer term, system-wide capacity building. Australia will complement short term assistance with efforts to build and embed institutional linkages that will enable more sustainable access to, and sharing of, technical expertise and resources over the longer term. Australia will also support our partners to develop and refine their own reform processes to provide a comprehensive and locally-driven basis for Australia's engagement into the future.

### A collaborative approach

Australia's engagement will focus on law and justice issues which have long term strategic value for the region. We will align our engagement to partner countries' development plans, their strategies for law and justice reform and operational imperatives. Australia will work with Pacific partners to identify shared priorities for engagement and reform in the law and justice sector and tailor programs to individual countries' requirements.

### Sustainable impact

Australia commits to engagement which achieves lasting results and a sustainable impact. We will advocate joint ownership and mutual accountability for law and justice sector assistance—with buy-in from major players, political will and tangible support from officials at all levels. Our preference will be to work within partner countries' structures and to implement affordable locally-based solutions. Given the interdependencies across the law and justice sector and with broader development goals, Australia recognises the importance of holistic, coordinated, system-wide responses. We will work with our neighbours to align law and justice assistance with broader government reform efforts.

### Building local capacity

Australia's law and justice engagement will contribute to capacity building efforts at individual, organisational and institutional levels. Australia will provide a range of support that is flexible and responsive to identified priorities, including financial assistance, access to technical expertise, institutional partnerships, and people-to-people contacts.

To enhance coordination in the delivery of private sector pro-bono assistance to the Pacific region, the Australian Attorney-General has established an International Pro-Bono Advisory Group. To bolster bilateral efforts, Australia will also contribute to cross-regional policy dialogue and collaboration by participating in and supporting a range of multi-country law and justice networks, such as the Pacific Prosecutors Association, the Oceania Customs Organisation, the Pacific Islands Law Officers Network, the Pacific Judicial Conference, the Pacific Ombudsmen Alliance and the Pacific Islands Chiefs of Police.

## Coordinated assistance

Australia takes a 'whole-of-government' approach to law and justice engagement in the Pacific. We will strengthen coordination mechanisms within the Australian Government to ensure that the broad range of Australian assistance is complementary and mutually reinforcing. Australia is also committed to working closely with New Zealand, the development banks and other development and law enforcement partners to provide a coordinated, collaborative and harmonised approach to law and justice sector reform in the Pacific in accordance with the provisions of the Cairns Compact.

We commit to reducing aid fragmentation, eliminating duplication of effort and rationalising activities to make them more cost effective. We will embrace opportunities for partnership with non-government organisations and the private sector to ensure the best use of resources and expertise through mechanisms such as the Australian Attorney-General's Department's International Pro Bono Advisory Group and national judicial organisations.

## Planning, performance and predictable financing

Australia's engagement with our neighbours will be based on clearly articulated objectives and will be directed to key challenges in the law and justice sector identified through joint planning and analysis.

We commit to working together with our neighbours to develop ways of tracking performance and reporting on the results of our combined efforts to ensure that future engagement in the law and justice sector is informed by lessons learned and evidence of progress. Australia will work with other donor partners to provide our neighbours with indicative and transparent long term commitments for law and justice engagement and assistance.







