

JOINT REVIEW OF THE ENHANCED COOPERATION PROGRAM (ECP)

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GLOSSARY

AFP	Australian Federal Police
A-G	Attorney-General
AGO	Auditor General Office
AHC	Australian High Commission
ASF	Advisory Support Facility
ATO	Australian Taxation Office
AusAID	Australian Agency for International Development
CAA	Civil Aviation Authority
CACC	Central Agencies Coordinating Committee
CASA	Civil Aviation Safety Authority
CEO	Chief Executive Officer
DCT	Development Cooperation Treaty
DFAT	Australian Department of Foreign Affairs and Trade
DG	Director General
DJAG	Department of Justice and Attorney General
DNPM	Department of National Planning & Monitoring
DOF	Department of Finance
DoFAT	GoPNG Department of Foreign Affairs and Trade
DOT	Department of Transport
DPM	Department of Personnel Management
PM&NEC	Department of Prime Minister & National Executive Council
ECP	Enhanced Cooperation Program

ECP Act	Enhanced Cooperation between Papua New Guinea and Australia Act 2004
ECP Treaty	Joint Agreement on Enhanced Cooperation Treaty between Australia and Papua New Guinea 2004
EPSG	Economic and Public Sector Governance
EPSR	Economic and public sector reform
FMIP	Financial Management Improvement Program
GoPNG	Government of Papua New Guinea
HLC	Annual High Level Consultations between the Government of Papua New Guinea and AusAID
HRM	Human resources management
ICAC	Independent Commission Against Corruption
ICCC	Independent Consumer and Competition Commission
IDC	Inter-departmental committee
IRC	Internal Revenue Commission (Customs)
JAG	Justice Advisory Group
JSC	Joint Steering Committee
L&J	Law and justice
LJSP	Law and Justice Sector Program
LJSWG	Law and Justice Sector Working Group
M&E	Monitoring and evaluation
MDGs	Millennium Development Goals
MTDS	Medium Term Development Strategy
NCM	National Consultative Mechanism
NEC	National Executive Council
NGOs	Non-governmental organisations
NLJS	National Law and Justice Sector
OAG	Office of the Auditor General

PATTS	PNG's twinning scheme with the Australian Treasury
PEFA	Public Expenditure and Financial Accountability
PERR	Public Expenditure Review and Rationalisation
PERRIC	PERR Implementation Committee
PM&NEC	Department of Prime Minister and National Economic Council
PMU	Performance Monitoring Unit
PNG	Papua New Guinea
PNGDF	Papua New Guinea Defence Force
PSRMU	Public Sector Reform Management Unit
RAMSI	Regional Assistance Mission to the Solomon Islands
RPC	Revised Policing Component (of ECP)
RPNGC	Royal Papua New Guinea Constabulary
TA	Technical Assistance
TOR	Terms of Reference
TSCMIC	Transport Sector Coordination, Monitoring and Implementation Committee
USCG	United States Coast Guard
WoG	Whole of government

INTRODUCTION

This joint independent review of the Enhanced Cooperation Program (ECP) was commissioned by the governments of Papua New Guinea (GoPNG) and Australia in July 2007. The review was undertaken by a three-person team between December 2007 and March 2008, and overseen by a Joint Review Steering Committee comprising representatives of the governments of Papua New Guinea and Australia.

The review has as its purpose to provide the two governments with an independent, evidence-based, assessment of the effectiveness of the ECP in its fourth year of implementation. The terms of reference (TOR) for the review state: “The report prepared by the review team will include key findings on achievement to date and lessons learned with reference to issues of relevance, effectiveness, impact and sustainability. The report will also include recommendations for addressing weaknesses and gaps and strengthening the effectiveness of the program, and coordination with the broader aid program.”¹

The TOR for the report require an assessment of:

- (i) The relevance of the ECP in terms of the appropriateness of the original design and objectives;
- (ii) Comparison of achievements against the broad objectives of the program;
- (iii) The effectiveness of the ECP to date in meeting the stated objectives;²
- (iv) Early indications of the impact that the ECP might be having; and
- (v) Sustainability issues.

Following a desk study of background documents on the ECP, the review team spent some weeks interviewing key stakeholder agencies, ECP personnel, their managers and ECP counterpart staff in Papua New Guinea. A week’s visit to Canberra gave the team an opportunity to interview returned ECP employees, as well as partner agency representatives and other departments with an interest or involvement in the program. On the basis of the information and views gained from these meetings and discussions, the team then prepared this report.

We wish to thank the governments of Papua New Guinea and Australia for the opportunity to participate in this review. We acknowledge the support given to us by both governments. The members of the Joint Steering Committee did much to facilitate our work. In particular, we are grateful to Henry Leia for provision of accommodation and support in the Department of Prime Minister and National Executive Council (PM&NEC), and to AusAID for hosting us in Canberra. Our appreciation also goes to all those in PNG and Australia who gave so freely of their time to meet with members of the review team. Their presentations and comments made an invaluable contribution to this report.

¹ TOR Para 7.1(b). Annex 6 contains the full TOR.

² The TOR notes that “this assessment may be limited by the lack of a monitoring and evaluation framework which details more specific expected outcomes and outputs.”

We also wish to record our appreciation of the assistance provided in Port Moresby by Shaska Martin, Farapo Waive and Essence Giyomatala, and by Jennifer Noble and Lucy Carlsen in Canberra.

Sections 1 and 2 of the Report provide an overview of the strengths and weaknesses of the program. Section 3 reviews issues in designing any successor to ECP. Recommendations are included at relevant points in the overview and summarised in Section 4 of the Report.

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EXECUTIVE SUMMARY

ECP is designed to provide long-term, hands-on, technical assistance from senior and highly skilled Australian government officials to key economic, justice and border security agencies in GoPNG.³ The program was developed as a supplementary approach to the traditional but slower process of assisting capacity building for existing GoPNG officials. This ‘fast tracking’ approach was in response to pressing management challenges in the fiscal and security areas at the time the program was created, combined with capacity weaknesses in the responsible GoPNG agencies.

The large-scale sourcing of senior and middle level officials from the Australian public sector under the ECP has provided a form of technical assistance that is unavailable through more conventional aid programs which rely on contracted program consultants and is highly valued by the secretaries of the receiving agencies. It has also encouraged valuable bilateral links between sector agencies in the two countries.

ECP has also contributed to ‘joined-up government’ in the sectors in which it operates, strengthening the focus on good governance, the rule of law and improved service delivery.⁴ The ‘joined-up government’ (networked) approach to the provision of technical assistance across PNG agencies addresses an identified weakness of PNG public sector reform⁵ and is a key feature of the ECP.

However, in ‘mainlining’ government to government assistance into key GoPNG agencies, ECP took on the status of a ‘political’ program managed in country by the Australian High Commission (AHC) and the Department of Prime Minister and National Executive Council (PM&NEC). As a direct government-to-government initiative it has evolved in a way which largely omits several elements of conventional aid program management, in particular joint management of the program with the recipient government (for example, through joint steering committee arrangements), clear capacity building strategies and definition of objectives, and half yearly or annual monitoring of progress toward achieving these objectives.

Concerns about ECP are focused around two issues in particular. The first is the absence of information at central coordinating levels of the PNG Government on what employees are doing and, linked to this, concern about infringement by the program on PNG sovereignty.

The second concern about ECP is linked to possible displacement of local officials by employees and “hollowing out” of local capacity due to the placement of Australian officials in key government positions. This is linked to the lack of a formal ECP capacity building strategy.

In the review team’s view, these concerns reflect shortcomings in the way in which both the PNG and Australian governments have managed the program, particularly with regard to proactively introducing joint management procedures, joint monitoring arrangements and a capacity building strategy focused on the counterparts to each employee. These shortcomings have contributed to negative feelings about ECP in PNG which are normally not associated with Australia’s development cooperation program,

³ Historical background to ECP is at Annex 1.

⁴ Achievements of ECP are reviewed on a sector basis in Annex 2.

⁵ Kavanamur, D, and Robins, G, Review of the Public Sector Reform Program, Report to the Chief Secretary, June 2007, page 52.

such as the views reported in GoPNG's own review of its public sector reform program.⁶ The present review also found concerns about ECP management in some receiving agencies. The views of staff of the PNG Ministry of Finance, at Annex 2, include the comment that "Staff feel that they are not utilised or given opportunity to learn from the deployees."

The existence of such views is a matter of concern. ECP offers to GoPNG the full-time services of highly experienced Australian government officials for extended periods. However, these officials are also high cost, and any successor to ECP should proactively realise the *full* potential of this very direct approach to development assistance. This will require strengthened management by both governments.

However, the present review found, regardless of such concerns about management, there was a universally positive attitude in the receiving agencies to the benefits of ECP, due to the skills that it makes available, and a desire that it be renewed.

The central message of this report is that any successor to ECP should retain a separate program identity within Australia's assistance to PNG but address past management shortcomings. This should be achieved through a program design which adopts the best of: the core *management practices* of conventional aid budget programs (i.e. equal sharing of management with the recipient, formalised monitoring and evaluation, explicit capacity building strategy); and the core *program architecture* of ECP (a unique government-to-government placement of skilled Australian officials from a range of Australian agencies, and a whole of sector approach to designing these deployments).

The former would be essential to ensure consistency with Australia signing the Joint Commitment of Principles for Aid Effectiveness in Papua New Guinea (the Kavieng Declaration⁷), and to remedy shortcomings in the current ECP design which lead to a sense of unequal partnership. The latter would ensure continuation of the unique benefits for PNG agencies of access to long term inputs from highly qualified senior government officials from another country, and the scope for international policy dialogues between their respective agencies.

Recommendation 1: Any successor to ECP should retain its core features of direct assistance to key PNG agencies by highly skilled and experienced Australian public servants, operating within a sector wide focus, but be managed in a way which is consistent with Australia's signing of the PNG Commitment on Aid Effectiveness (the Kavieng Declaration).

⁶ See the Kavanamur Review page 55 for comments about ECP made to that Review. For example: Employees "are regarded as having ambiguous or dual reporting relationships, firstly to "Canberra" (the formal reporting relationship) and secondly, to their host agency (the informal reporting relationship); their loyalties are seen to reside with their employing Australian agency; they are sometimes perceived to lack respect for their host agency and its personnel." Also, most employees "do not regard skills transfer as a priority or function of their roles."

⁷ The Kavieng Declaration on Aid Effectiveness was signed by the Government of Papua New Guinea and its Donor Partners in February 2008. The PNG Commitment on Aid Effectiveness: A Joint Commitment of Principles and Actions between the Government of Papua New Guinea and Development Partners was signed on 2 July 2008.

How might a successor to ECP be configured? In the review team's view, the sector coordination arrangements in the PNG law and justice (L&J) sector provides some useful lessons.

A joint steering committee (JSC) structure 'in country'

Consistent with the (recently signed) "Joint Commitment of Principles and Actions between the Government and Development Partners", a successor to ECP should be *jointly* managed in-country by the Australian and PNG governments. This could be through a formally structured management arrangement such as a joint steering committee (JSC) for each sector. A JSC arrangement should tap into existing PNG structures and processes to the extent possible rather than creating new ones, which would be relatively easy to achieve for the law and justice sector but more difficult in the area of economic and public sector reform (EPSR).

Strategic oversight of the ECP as a whole should continue to be provided by the annual High Level Consultations (HLC) mechanism and the senior officials' meetings supporting this consultation, and the Ministerial Forum. This could involve a standard agenda item for the ECP in each of these fora, covering progress and issues arising from the implementation of ECP, and including information from strengthened performance monitoring arrangements. Normal interaction between the PM&NEC and AHC will also include discussion about the program, its progress and problems. The combination of sector JSCs, ongoing interaction between PM&NEC and the AHC, the HLC mechanism and the annual Ministerial Forum and should obviate the need for any further overarching committee structure specifically for joint ECP management.

A JSC structure might also provide a connection (not achieved by ECP) to GoPNG's own public sector reform program.⁸

Recommendation 2: Any successor to ECP should be to a greater extent jointly managed by the Australian and PNG Governments in country. This could be through a formally structured management arrangement such as a joint steering committee (JSC) for each sector. This should be chaired by the secretary of the lead agency in the sector. Consistent with Australia's signing of the PNG Commitment on Aid Effectiveness, a JSC arrangement should tap into existing and developing PNG processes to the greatest extent possible rather than creating new ones, as well using existing and developing PNG and AusAID coordination processes.

Recommendation 3: The joint recruitment arrangements for the law and justice sector (involving both GoPNG and the Australian Government in selection of each employee) should be applied to the other ECP sectors. This should be linked to a greater role for the receiving department in the induction process.

Capacity building and sustainability

Meetings with the national counterparts of employees suggest that, for at least two agencies, there is some reason for concern about the extent of skills transfer under ECP (at least from the perspective of the national counterparts). Now that PNG's fiscal

⁸ The Government's public sector reform program is laid out in the "A Strategic Plan for Public Sector Reform in Papua New Guinea 2003 – 2007", November 2003. GoPNG's 2007 Review of the PNG Public Sector Reform Program notes the lack of central leadership of the reform.

environment has improved so markedly, it is arguable that the balance of capacity supplementation and capacity building should alter in favour of the latter, at least in the economic area.

A draft Capacity Building Strategic Framework for ECP was prepared in February 2007. However, the framework does not focus directly on skills transfer between individual employees and their PNG counterparts. The most relevant recommendations in the draft framework are to make fuller use of existing bilateral aid program mechanisms to support capacity building and to strengthen human resource functions across and within GoPNG agencies. In the judgment of the review team, the draft capacity building strategy does not in its present form provide a clear strategy for ensuring sustainability of the benefits of ECP through direct skills transfer between employees and their national counterparts.

What form might a direct skills transfer strategy take? Key elements include (for each employee) a needs assessment of his/her PNG counterparts against the skill requirements of their positions (for example, in the case of the Department of Finance (DoF), extent of knowledge of the steps required to close the accounts at the end of the budget year), setting of capacity targets for key nationals, clarification of how the capacity building is to be achieved and monitoring of the counterparts' progress.

A successor to ECP should formalise the capacity building role of each employee to a greater extent and include regular feedback from employee counterparts about progress in building their capacity. This more formal arrangement could be supplemented by support to each employee from a specialist capacity building adviser position for ECP as a whole. The adviser could help identify capacity building needs in the employee's area, assist with preparation of strategies and documents, assist with preparing and running capacity building events and help monitor success.

Recommendation 4: Each deployment should be associated with a direct skills transfer strategy which is shared with the employee counterparts identified in the strategy. The proposed joint steering committee would be in a position to arrange periodic monitoring of progress in capacity building under the deployment, both through consultation with national counterparts and the deployee. This should be supplemented by making support available to each employee from a specialist capacity building adviser.

Recommendation 5: In order to guard against any risk of 'displacement' of local counterparts by employees the roles of each should be mutually agreed. This would normally be undertaken by agency senior management at the commencement of a deployment through a meeting between employees and their national level peer group (as part of an in-country induction process). However, the services of a professional external facilitator might be made available by ECP management to initiate and assist such meetings.

Monitoring and reporting

Lack of a shared monitoring and reporting system has also caused problems for ECP. There is much being accomplished by employees that may not be visible in PM&NEC due to the lack of a shared reporting system. Annex 2 provides information on the

considerable ECP achievements in the economic and public sector reform area. However, this was prepared on a one-off basis.

Monitoring and reporting information should also take account of the desirability of 'allocative flexibility' in the use of ECP employees. Employees should have clearly defined objectives, the achievement of which signals the need to reallocate the resource to other unmet objectives. ECP does have a set of overarching objectives, and a set of milestones should therefore be identified for achievement of the objectives which is capable of indicating when funding can be scaled back for a particular objective or sector, or new objectives should be introduced. Objectives should relate both to improvements in governance processes in the three ECP sectors *and* to capacity building.

The milestones should be capable in principle of indicating when an individual employee's work is completed.

Recommendation 6: Factual monitoring information relating to the activities and achievements of employees against their TOR, corporate plans and sector strategies should be shared between both Governments. In the spirit of the PNG Commitment on Aid Effectiveness, this should not require two separate monitoring systems. Monitoring information should in principle be capable of indicating when the tasks in a employee's TOR have been completed.

Integration of ECP with other Australian and GoPNG programs

Reflecting the environment in which it was developed, ECP operates somewhat separately from other Australian programs of assistance to PNG (including other streams of assistance to those GoPNG agencies which also receive ECP employees), as well as somewhat separately from GoPNG's own Public Sector Reform Program.

There is therefore a need to manage any successor to ECP so as to avoid disconnects with these other programs. In particular, it is desirable that there be a process for pulling the disparate elements of Australian assistance relating to a particular objective or sector together in the context of GoPNG's own reform agenda, reporting on progress and identifying gaps from a whole-of-aid perspective. AusAID is already taking steps in this direction, including a new strategic framework for economic and public sector governance (EPSG) activities with GoPNG.

Recommendation 7: Coordination of ECP with Australian assistance programs, as well as coordination with GoPNG reform agendas, could be assisted through the resourcing and tasking of adviser positions undertaking a cross cutting or coordinating role with regard to achievement of key reform objectives. The advisers would pull together the disparate elements of Australian assistance relating to a particular objective in the context of GoPNG's own reform agenda, reporting on progress and identifying gaps. These coordinating adviser roles could be filled either by ECP employees or advisers recruited under the conventional assistance program. In either case the coordination could be either a full or part time role, but would need to be specifically resourced. Consistent with the PNG Commitment on Aid Effectiveness, actions based on coordination reports would be jointly undertaken by GoPNG and AusAID as part of the overall management of the aid program.

Recommendation 8: Consideration be given to clearer linking of ECP performance information with program costs for the purpose of performance reporting and aid policy management.

Recommendation 9: The level and composition of resourcing of any successor to ECP should be decided in the light of GoPNG's response to the recommendations in the Kavanamur Report, and be particularly supportive of agencies with a track record of reform, or at least an operationally credible reform strategy.

Recommendation 10: Public sector reform should be a major focus and theme of any successor program to ECP.

The policing component

The suspension of the policing component of ECP following the 2004 Supreme Court decision has left the RPNGC in a desperate state. This is bad not just for the law and justice sector but for all sectors of government and society. It is important that a revised program of policing support between the AFP and the RPNGC (currently being developed outside ECP arrangements) be commenced as a matter of urgency.

Recommendation 11: That the Papua New Guinea and Australian Governments pay urgent attention to the importance of recommencing a program of policing assistance between the AFP and RPNGC, whether outside or inside any successor to ECP, as part of a strengthened effort across the law and justice sector.

Finally, there is a delicate balance between on the one hand maintaining the special attributes of ECP which persuade relatively large numbers of skilled Australian officials to spend a significant part of their professional lives in GoPNG rather than in their Australian agencies, and on the other implementing the stronger control environment associated with Australia's development budget programs which rely primarily on consultant inputs. Ultimately the decision whether to seek such a balance or revert entirely to more conventional approaches to aid lies with GoPNG, although there are also questions relating to the high administrative costs of ECP for Australian agencies and the depth of the pool of potential employees in Australian agencies. However, the review team believes that middle ground exists for a successor to ECP to continue providing a unique stream of government to government services, and agency to agency relationships, while simultaneously addressing the management concerns that are raised in this Report.

The full set of Recommendations is at Part 4 of this Report.

Section 1 ECP Strengths

How did ECP differ from the development budget program?

The Enhanced Cooperation Program (ECP) commenced in 2004 as a five-year package of assistance supporting strengthened economic management, improvement in law and order and stronger border and security systems in Papua New Guinea (PNG).⁹ The objective, as revised in May 2006, is "...for PNG and Australia to work effectively in partnership to strengthen PNG's financial and economic management, public sector reform, governance including a broad anti-corruption focus, law and order and border security."¹⁰

Sector objectives are presented in the Joint Statement of the Fifteenth Australia-Papua New Guinea Ministerial Forum¹¹ and are outlined in Annex 1.

A central reason for introducing ECP was a feeling that, with PNG again facing a fiscal crisis in 2003, Australia's substantial program of assistance was failing to deliver sufficient support in the key area of fiscal and economic management. A 'circuit breaker' was needed.¹² At the July 2003 High Level Consultations (HLC) Australia and PNG discussed changes in the approach of the aid program in order to improve aid impact and effectiveness.

ECP was intended to be a "strengthened partnership" working outside the existing development budget program. Since all but the policing funds were taken from existing aid mechanisms, the 'enhancement' refers primarily to the organisation of (rather than financing of) the new round of assistance.

There are two key features which distinguish ECP from conventional aid budget programs and which might be seen as 'circuit breakers'.

1. Drawing directly on large numbers of senior Australian public servants

ECP provides direct government to government assistance rather than relying on contracted aid program consultants or twinning arrangements which characterise the development budget program. This began as an attempt to 'mainline' high-level, hands-on technical assistance to key areas of need in GoPNG rather than relying on the traditional but much slower process of building the capacity of existing PNG officials in the areas. The large-scale recruitment of employees from senior and middle levels of the Australian public sector tapped a source of technical assistance unavailable through contracted aid program consultants. This has resulted in large numbers of very high-quality employees with whole-of-government (WoG) experience in public sector management, as well as in-depth technical knowledge of their particular sectors. In contrast to many consultant advisers, employees continue to be employed by the

⁹ The ECP was formalised in the Joint Agreement of Enhanced Cooperation between Papua New Guinea and Australia signed on June 30 2004 and the ECP Act of 27 July 2004. Historical background is in Annex 1.

¹⁰ Letter from Chief Secretary to High Commissioner, 31 May 2006.

¹¹ Mt. Lofty House, South Australia, 11 December 2003.

¹² "There are no quick fixes to the problems now facing PNG. At their source is a persistent decline in the quality of governance and this is reflected in the serious breakdown in fiscal discipline and the disastrous outcome of the 2002 budget. Poor governance is systemic in the PNG system; turning this around will take a long time." AusAID, Framework: Australia's Aid Program to Papua New Guinea, 21 October 2002, page 2. ECP was effectively an attempt at a "quicker fix" than the long task of building capacity.

Australian Public Service and are willing to commit to in-country work for long periods of time, resulting in a greater durability of inputs.

Linked to this was a further innovation: the direct engagement of some 13 Australian government agencies with PNG counterpart agencies. This provides GoPNG agencies with unique access to a technical resource base of sector information and sector management experience in another country, which, as a by-product, has encouraged the development of twinning as an effective mode of further support.

While there may be differences of opinion about whether individual Australian government agencies should individually ‘conduct their own international aid program’, ECP is clearly an effective mode of direct technical assistance to individual GoPNG agencies experiencing shortages of skilled and experienced staff. Annex 2 presents a more detailed overview of the achievements of the program on a sector by sector basis.

2. ECP promotes a ‘joined-up’ approach to Australian technical assistance

ECP is sector as well as agency based. It comprises an integrated program of placements *across* PNG agencies in each of three sectors - economic, law and justice and border security. TORs of employees are interlocking and management meetings draw together advisers to different agencies in each sector.

This contrasts with a development assistance approach based on responding to the needs and requests of individual agencies. Although there is no strategy document providing reasons for the particular pattern of ECP deployments across agencies in each of the three sectors, it appears that it was driven by a push for ‘joined up government’ rather than simply responding to requests from PNG agencies. For example, in the border protection area it enabled coordination of security across a number of agencies covering intelligence, maritime security, airports and wharfs.¹³

While sector-wide approaches now characterise development budget programs as well as ECP, the whole-of-sector focus of ECP was something of an innovation at the time.¹⁴ It encouraged ‘joined-up government’ in these sectors and focused on the cross-agency implications of themes such as good governance, rule of law and improved service delivery. The ‘joined-up government’ (networked) approach to the provision of technical assistance across PNG agencies addresses an identified weakness of PNG public sector reform¹⁵ and is a key achievement of the ECP.¹⁶

¹³ This coordination role of ECP contributed to the inception of the Border Security Project.

¹⁴ ‘Joining up’ was pioneered in the law and justice sector in the late 1990s.

¹⁵ The weakness is identified in Kavanamur, D, and Robins, G, Review of the PNG Public Sector Reform Program, June 2007.

¹⁶ Achievements for individual sectors are discussed in Annex 2.

Section 2 ECP Weaknesses

GoPNG concerns about ECP

In ‘mainlining’ government-to-government assistance to areas of need in key GoPNG agencies, ECP took on the status of a ‘political’ program managed in country by the Australian High Commission and the Department of Prime Minister and National Executive Council (PM&NEC). As a direct government-to-government initiative it evolved in a way which omitted several elements of conventional aid program management, particularly joint management of the program with the recipient government (for example, through joint steering committee arrangements), clear definition of objectives, and half yearly or annual monitoring of progress in achieving these objectives. This has contributed in PNG to negative views about ECP which are normally not associated with Australia’s development budget programs.

The existence of such views is a matter of concern. ECP offers to GoPNG the full-time services of highly experienced Australian government officials for extended periods. However, these officials are also high cost, and any successor to ECP should proactively realise the *full* potential of this very direct approach to development assistance. This will require strengthened management by both governments.

Box 2 below summarises feedback from consultations with stakeholders.

Political nature of ECP

GoPNG concerns about ECP are focused around two issues in particular. The first is the absence of information at the central coordinating level of GoPNG about what employees are doing and, linked to this, concern about infringement by the program on PNG sovereignty. With regard to the latter there has been a feeling of ECP being externally driven according to an Australian agenda rather than involving a relationship of equal partnership. This is linked to a feeling of “being dictated to” with regard to placements, and extensions of the placements, of existing employees, particularly where GoPNG is not involved in the selection process (the economic and public sector reform and border sectors). While these issues might have been ignored when PNG needed ECP to address urgent economic and fiscal challenges, they loom larger in PNG’s current strong fiscal environment. The resulting negativity leads to a risk of Australian proposals for deployments or extensions of deployments being rejected due to the process by which they are brought forward, and a resulting sense of unequal partnership, rather than doubts about the value of the employee’s potential contribution to the GoPNG agency.

The political character of ECP has also placed heavy demands on high-level officials, including at High Commissioner and Chief Secretary level, which under a conventional aid program would have been less ‘political’ and handled at a much lower level. ECP has also been exposed to fluctuations in political relationships to a greater extent than development budget programs. Arguably this might have been less if there had been a more conventional program management structure which removed program management issues (including those involving extensions of individual employees) from the high-level policy arenas of the High Commission and PM&NEC to a sector based joint steering committee chaired by the lead sector department.

Box 2: Feedback from Stakeholders

The initial **objectives and focus** areas of the ECP are **still seen as appropriate, but much has changed** since 2003:

- Papua New Guinea's situation has much improved, particularly in terms of the economy
- the approach to development cooperation has shifted considerably – e.g. the Paris Declaration, the Papua New Guinea/ Australia Development Cooperation Strategy and the MTDS
- some important lessons have been learned in the first four years of the ECP

Policing was a major component of the original ECP concept. The RPNGC and AFP are now considering a restart of policing support, possibly outside the ECP. This is an important issue, not just for the law and justice sector. It is important that it be addressed urgently and in a true spirit of partnership.

The ECP has produced **some important benefits** in the non-policing area. Its contribution is perhaps most evident in the EPSR sector. Some solid results can also be seen in the border security/transport sector. Results are more uneven in the law and justice sector.

The team found:

- a high level of interest and commitment among participating (“sending”) Australian agencies and their Papua New Guinea counterparts (“host” agencies)
- Australia’s coordinating agencies (AusAID and DFAT) want to see the program continued but see a need for improvement
- Papua New Guinea’s coordinating agencies recognise the contribution the ECP can make but want some significant changes made.

The ECP has evident strengths:

- it took an innovative, experimental and in some respects ground-breaking approach to persistent and difficult problems
- it brought a sectoral focus to its work
- it gave Papua New Guinea access to the professional skills and experience of senior public servants with a whole of government perspective
- it stimulated and reinforced “twinning” arrangements
- it has produced a build-up in Australian departments of interest, experience and understanding of Papua New Guinea.

But it has suffered from serious weaknesses:

- it lacks an appropriate management structure, monitoring and evaluation systems and reporting guidelines
- there is an absence of clear and jointly agreed objectives for employees
- the Joint Steering Committee intended to provide strategic oversight was never established
- it is out of line with current development cooperation best practice
 - it has suffered from time to time from downturns in the political relationship (which is unhelpful in a development cooperation program)
 - it is not sufficiently coordinated and integrated with other sectoral activity involving development funding
 - a stronger emphasis is required on capacity building and sustainability.

Capacity substitution and ‘hollowing out’

The second PNG concern about ECP is linked to possible displacement of GoPNG officials by employees and “hollowing out” of local capacity due to the insertion of Australian officials in key agency positions. This is closely linked to the balance of capacity substitution versus capacity building in the design of ECP. In the early stages of the program the focus was on injecting experienced Australian officials in response to urgent needs for additional capacity in key agencies rather than the (more orthodox approach of) building the capacity of existing PNG officials over a longer period of time. While capacity building was seen as an important aspect of ECP (and was emphasized by GoPNG press releases at the program’s commencement) it has largely been left to individual employees to strike a balance between capacity supplementation and capacity building in their agency.

Meetings between the review team and the national counterparts of ECP employees suggested that some counterparts are concerned about ‘hollowing out’ and limited capacity building. Annex 2 contains a ‘submission’ provided by the staff of the PNG Department of Finance which lists some concerns in this context, including the comment that “Staff feel that they are not utilized or given the opportunity to learn from the employees.”

Section 3 Issues in designing any successor to ECP

Recommendations for any successor to ECP

In the review team's view there have been shortcomings in the way in which both the PNG and Australian governments have managed the program, particularly in regard to proactively introducing joint management arrangements, joint monitoring, and a capacity building strategy focused on PNG counterparts. It would be unfortunate for a program 'mainlining' the services of high-cost and highly qualified Australian government officials directly into PNG agencies to be regarded negatively by the recipient due to shortcomings in its management architecture rather than its development effectiveness.

The central message of this Report is that the design of any successor to ECP should retain a separate program identity within Australia's assistance to PNG, but based on a program design which adopts the best of:

- the core *management practices* of conventional aid budget programs (i.e. sharing of management with the recipient, formalised monitoring and evaluation, and an explicit skills transfer strategy); and
- the core *program architecture* of ECP (direct government to government placement of senior Australian officials from a range of Australian agencies, and a whole of sector approach to designing these deployments).

The former would be essential to ensure consistency with Australia signing the Joint Commitment of Principles for Aid Effectiveness in Papua New Guinea, and to remedy shortcomings in the current ECP design which lead to a sense of unequal partnership. The latter would ensure continuation of the unique benefits for PNG agencies of access to long-term inputs from highly skilled senior government officials with sector experience in another country, and support international policy dialogues between the respective agencies.

Recommendation 1: Any successor to ECP should retain its core features of direct assistance to key PNG agencies by highly skilled and experienced Australian public servants, operating within a sector wide focus, but be managed in a way which is consistent with Australia's signing of the Joint Commitment of Principles for Aid Effectiveness in Papua New Guinea (the Kavieng Declaration).

How might a successor to ECP be configured? Consistent with ECP's own sector wide approach, it should be better integrated into sector based planning, management,

monitoring and capacity building. The PNG law and justice (L&J) sector provides an example of how this could occur.

There are six agencies in the law and justice sector, each performing functions the success of which is dependent on the activities of the remaining L&J agencies. This has led to the evolution of an agency wide coordination mechanism supported by a secretariat (see Box 3).

This mechanism incorporates reporting by ECP employees against the framework of sector objectives and is a model for integrating ECP in the other two sectors in a manner which conforms to the Joint Commitment of Principles for Aid Effectiveness in Papua New Guinea.

Box 3: Law and Justice Sector Coordination Mechanisms

The law and justice sector in PNG provides a model for coordinating the activities of separate agencies in a single sector against a sector wide strategic framework, and reporting on the combined effect of agency activities on the achievement of sector objectives. The effectiveness of Australian assistance programs – the Law and Justice Sector Program (LJSP), the Justice Advisory Group and the ECP deployment to the sector, are monitored within the *same* sector wide performance framework.

A Working Group of L&J agencies was formed in 1997 leading to creation of an L&J policy framework in 2001.

In 2003 a National Consultative Mechanism (NCM) was formed, chaired by the Department of Planning. The NCM decides budget requests in the light of common objectives and in 2006 prepared a sector strategic framework which guides AusAID support through the Law and Justice Sector Program (LJSP). This is now supported by a secretariat.

This sector management framework produces M&E reports for the sector by aggregating the reports of the individual agencies and endeavoring to align reporting with the sector strategy.

While ECP employees report to their agencies the agency reports are collated into a sector report, so that ECP reporting is incorporated into sector reporting.

LJSP has monthly meetings of advisers which discuss such issues as capacity building. This also involves performance assessment of advisers on technical skills and capacity building, including assessment by national counterparts. However, these meetings do not at present include ECP employees. Twice yearly there are supplementary meetings to NCM with AusAID to review program support issues.

A similar sector coordination mechanism exists in the transport sector, where the Transport Sector Coordination, Monitoring and Implementation Committee (TSCMIC) comprises the heads of all transport sector agencies. Sector wide coordination arrangements are also under preparation for the economic and public sector reform area.

1. A joint steering committee (JSC) structure 'in country'

The current management structure for ECP *in country* is very 'flat' - without a joint government steering committee - and relies on 'management by correspondence' between the High Commission and PM&NEC. This correspondence occurs as management issues arise (such as extensions of deployments, visa processing, M&E arrangements and capacity building) and tends more often to be initiated by the High Commission. This contributes to a perception at senior levels of the PNG Government of lack of a role in managing the program ('unequal partnership').

Consistent with the PNG Commitment on Aid Effectiveness, a successor to ECP should be to a greater extent *jointly* managed by the Australian and PNG governments in country. This could be through a formally structured management arrangement such as a joint steering committee (JSC) for each ECP sector chaired by the secretary of the lead sector agency. A JSC arrangement should tap into existing PNG processes to the extent possible, as well as those of AusAID, rather than creating new ones (relatively easy to achieve for the law and justice sector but also consistent with new sector coordination arrangements being jointly developed for EPSR). A JSC arrangement for each sector would have several advantages:

- the absence of a joint management structure by the two governments has probably contributed to a perception of unequal partnership in managing ECP and a negativity toward the program at senior GoPNG levels (although not at Secretary level of receiving agencies). A JSC structure would reduce the sense of unequal partnership and provide a mechanism for handling administrative issues such as proposals for employee extensions in a more sector focused context;
- there is a tendency for some management proposals raised in correspondence (such as those relating to monitoring and evaluation and capacity building) not to be responded to by the other party, only to be raised again at some later date. A JSC structure could address these issues more directly, reducing the chance of management hiatus, and speeding the creation of M&E and capacity building processes;
- comprehensive codes of conduct are in place for all ECP employees, but, given the lack of a joint management structure, the formal arrangements for employees raising issues of professional concern are unclear. The proposed JSC should be used to resolve, at sectoral level, any allegations of misconduct by an ECP employee or counterpart/supervisor that can not be resolved, at agency level, by discussion and mediation among the parties directly involved. If the issue

cannot be resolved at agency or sectoral level, it should be raised to PM&NEC/AHC level¹⁷;

- a JSC could define the circumstances in which a successor to ECP is used to meet an assistance need rather than other assistance modalities (as long term institutional relationships between Australian and GoPNG agencies develop, the balance of ECP type inputs and twinning inputs may change); and
- *joint management will help to engage the PNG Government in resolving impediments to achieving sector goals.* For example, the apparent turf battle between the Department of Finance and Department of Personnel Management over management of the payroll system seems to have precluded results being achieved by ECP in this key area, even though it is explicitly identified as a priority for ECP in the December 2003 Joint Statement.

Strategic oversight of the ECP as a whole should continue to be provided by the HLC mechanism and the senior officials' meetings supporting this annual consultation, and the Ministerial Forum. This could involve a standard agenda item for the ECP in each of these fora, covering progress and issues arising from the implementation of ECP, and including information from strengthened performance monitoring arrangements. Normal interaction between the PM&NEC and AHC will also include discussion about the program, its progress and problems. The combination of sector JSCs, ongoing interaction between PM&NEC and the AHC, the HLC mechanism and the annual Ministerial Forum should obviate the need for any further overarching committee structure for joint ECP management.

The Central Agencies Coordinating Committee (CACC), chaired by the Chief Secretary to Government, has formal oversight of PNG's public sector reforms. The review team was also informed that a new Administrative and Social Sector Committee has been established in the National Executive Council (NEC) but it is not yet clear what role it would play in the area of economic and public sector reform.

Recommendation 2: Any successor to ECP should be to a greater extent jointly managed by the Australian and PNG governments in country. This could be through a formally structured management arrangement such as a joint steering committee (JSC) for each sector. This should be chaired by the secretary of the lead agency in the sector. Consistent with Australia's signing of the PNG Commitment on Aid Effectiveness, a JSC arrangement should tap into existing and developing PNG

¹⁷ Where there are corruption related issues, including non-observance of the Public Financial Management Act, an appropriate course would be for the employee to document the occurrence in a note to his/her supervisor and/or request it be placed on the agenda for the next meeting of the proposed joint steering committee.

Repeated occurrences should be raised at the PM&NEC/AHC level, and consideration given to placing the issue on the agenda of the next HLC. Where a deployee acts in a manner which is unacceptable to GoPNG a similar set of options would be available, with the level of review depending on the seriousness of the action.

processes to the greatest extent possible rather than creating new ones, as well using existing and developing PNG and AusAID coordination processes.

Improved procedures for recruitment of employees were suggested by a number of persons consulted. In particular, it was suggested that the joint recruitment practiced for the law and justice sector (involving both GoPNG and the Australian government in selection of each employee) should be applied to the other ECP sectors. This will ensure a greater sense of ownership of employees by the receiving agency, provide a mechanism for ensuring that receiving as well as sending agencies meet their obligations under the program and increase the likelihood that extensions of productive deployments will be agreed by GoPNG.

The review team also supports the current move toward a greater part of the induction process for employees occurring in PNG. Induction procedures in receiving agencies should provide an opportunity for national counterparts of employees to understand the role of the employees more clearly and to work out a mutually agreed set of expectations of the roles of each of the parties.

Recommendation 3: The joint recruitment arrangements practiced for the law and justice sector (involving both GoPNG and the Australian government in selection of each employee) should be applied to the other ECP sectors. This should be linked to a greater role for the receiving department in the induction process.

A JSC structure might have also provided a connection (not achieved by ECP) to GoPNG's own public sector reform program.¹⁸ GoPNG's 2007 Review of the PNG Public Sector Reform Program notes the lack of central leadership of the reform. "Placing the onus for implementation of the [Public Sector Reform] Plan in the hands of individual agencies, with the unspecified support of central agencies was a flawed concept; this support needed to be enforced through the statement of explicit priorities, activities, expected outcomes and responsibilities....When combined with the confusion that appears to have existed in respect of the role of individual monitoring and reporting agencies (PSRMU, PMU, DNPM) and the inadequate specificity of detail, it can be seen that the reform process became progressively more unguided and undisciplined."¹⁹

Representation of PNG agency heads on a sector JSC may also create a new channel for technical assistance with the reform process *per se* – a benefit that is over and above the

¹⁸ The Government's public sector reform program is laid out in the "A Strategic Plan for Public Sector Reform in Papua New Guinea 2003 – 2007", November 2003.

¹⁹ Page 27. The 2007 Report concludes "Past and current attempts by government to establish public sector reform planning, management, coordination and monitoring mechanisms have failed due to poor leadership, the fragmentation of central coordinating functions, competition between agencies and a lack of clear responsibility." Report page 16, and "The commitment of resources to the objectives of the Strategic Plan and public sector reform appears to be heavily influenced by the attitude of agency heads towards public sector reform and their capacity to design and implement a reform strategy." Report page 16.

activities of the individual employees and addresses the lack of reform leadership in GoPNG identified by GoPNG's June 2007 Report.²⁰

A JSC should be structured so that different administrative issues are dealt with at appropriate levels of seniority. This might help de-politicise more procedural management issues such as the decision whether to extend an advisor's placement and approval of the visa application. Thus a proposal from the GoPNG receiving department to extend a deployment would be reviewed by the JSC in country against the needs of the reform program, performance of the employee and the case proposed by the receiving agency. The proposal, if approved, would then be submitted to the Australian Government rather than (as at present) appearing from a PM&NEC perspective to originate from the Australian Government.²¹

Strategic or policy issues related to the management of an ECP successor would be handled (as at present) through the High Level Consultations, Ministerial Forum and supporting interaction between senior officials.

2. Capacity building and sustainability

Currently the duration of ECP deployments is defined in terms of calendar time rather than results to be achieved. This reflects the role of employees in providing capacity supplementation (rather than capacity building) and streams of services and advice. However, there is a risk of a sense of dependency on Australian employees developing within individual GoPNG agencies, particularly where the presence of employees lessens the pressure on agency heads to fill longstanding vacancies (such vacancies are a problem for the Department of Finance), or where capacity building is not given a high priority in the employee's duties.

Initial GoPNG press releases emphasise the capacity building role of ECP. While capacity supplementation was urgent in the early years of ECP, some four years of deployments have occurred without a strategy for capacity building and sustainability being established.²²

The review team notes that a draft Capacity Building Strategic Framework for ECP was prepared in February 2007. This recommends *inter alia* that ECP management and coordination mechanisms should be strengthened, employees should be jointly recruited, capacity building priorities should be jointly developed, leadership, management and core

²⁰ The Report notes "A broad cross section of public officers lamented the lack of political and public sector leadership and genuine commitment to public sector reform." Page 14.

²¹ Currently proposals appear to be submitted by the High Commission with little contextual justification in terms of employee achievements and proposed contribution of the extension.

²² GoPNG indicated that it wishes to postpone development of a capacity building strategy until after the present Review.

public service values should be strengthened and future change managers should be identified and supported.

The review team supports these recommendations. However, the framework does not focus on direct skills transfer between individual employees and their PNG counterparts. The most relevant recommendations are to make fuller use of existing bilateral aid program mechanisms to support capacity building, and to strengthen human resource functions across and within GoPNG agencies, and in the judgment of the review team the draft capacity building strategy does not in its present form provide a clear strategy for ensuring sustainability through direct skills transfer to national counterparts. Meetings with the national counterparts suggest that for at least two agencies there is some reason for concern about the extent of direct skills transfer (at least from the perspective of the national counterparts). Table 1 in Annex 2 indicates the views of the national staff of the Department of Finance in this regard. Nationals should ideally have an expectation of the knowledge and skills they might gain from the deployment and the employee an understanding of what might be expected from him/her in this regard.

What form might a direct skills transfer strategy take? Key elements include (for each employee) a needs assessment of his/her PNG counterparts against the skill requirements of their positions (for example, in the case of DoF, the extent of knowledge of the steps required to close the accounts at the end of the budget year), setting of capacity targets for key individuals, clarification of how the capacity building is to be achieved, and monitoring of the counterparts' progress. One approach being applied elsewhere by AusAID is the Staged Capacity Building Model. "The tool is used by advisers and counterparts to *assess* and agree current capacity of the work group in relation to the functions and tasks they perform, jointly *plan* approaches and activities to build capacity and jointly *monitor* the results. The tool supports analysis and helps 'quantify' changes in capacity, and promotes a sense of local ownership".²³

While paperwork should be minimised, it is important that the capacity building role of each employee should be structured, proactive and transparent, with accountability on the part of the employee for results achieved.

The joint steering committee proposed by the review team (Recommendation 2) would be in a position to arrange periodic monitoring of progress in capacity building under each deployment, both through consultation with national counterparts and the employee. Receiving and sending agencies would also be in a better position to plan for medium-term sustainability.

This more formal arrangement could be strengthened by making support available to each employee from a specialist capacity building adviser (see below). The support could embrace identifying capacity building needs in the employee's area, assistance with

²³ AusAID, Public Sector Capacity Development in Papua New Guinea and the Pacific, An Australian Whole of Government Approach, page 20 (italics in the original). The paper was developed by AusAID in collaboration with twelve other Australian agencies which have an assistance role in PNG and the Pacific.

preparation of strategies and documents, assistance with preparing and running capacity building events and monitoring of success. Some useful material relevant to capacity building in PNG has recently been produced, including the February 2007 report 'Capacity Building Strategic Framework', the August 2007 Report by Patricia Lyon 'Approaches to Capacity Building in the Law and Justice Sector', and the January 2008 AusAID report 'Approaches to Capacity Building'.

Recommendation 4: Each deployment should be associated with a direct skills transfer strategy which is shared with the employee counterparts identified in the strategy. The proposed joint steering committee would be in a position to arrange periodic monitoring of progress in capacity building under the deployment, both through consultation with national counterparts and the employee. This should be supplemented by making support available to each employee from a specialist capacity building adviser.

3. Capacity substitution and 'hollowing out'

There have been various reports of ECP deployments creating concerns among their PNG counterparts. This includes 'hollowing out' the roles of nationals through employees taking over their work, employees working in isolation from national staff or modifying existing agency work programs without talking this through with existing staff. Some nationals commented that they did not understand the role of employees arriving in their area, and that employees were not building their capacity to undertake agency work.²⁴

The review team met extensively with the counterparts working with employees. Comments received were generally favourable (often very favourable) and suggest that problems between employees and nationals are the exception rather than the rule.

However, it emerged in discussions with two GoPNG agencies that some counterparts do feel a sense of displacement by employees which has apparently not been addressed by any ECP or other management process, and which might diminish the longer term benefits of ECP. The concerns raised related particularly to the lack of clarity of the role of the employee vis-à-vis local staff and could be easily be addressed by nationals and employees sitting together to discuss their respective roles and contributions and how the expectations of local staff might be met. It is suggested that a professional external facilitator might be made available by ECP management to initiate and assist such meetings. A useful approach could be to begin any new deployments with a facilitated meeting between employees and their national peer group (as part of an in-country induction process suggested in Recommendation 3) to ensure that both groups understand their roles and to clarify expectations of each other's level of interaction.

²⁴ See the 2007 Review of the PNG Public Sector Reform Program page 56 for a fairly negative summary of such views.

Recommendation 5: In order to guard against any risk of ‘displacement’ of local counterparts by employees the roles of each should be mutually agreed. This would normally be undertaken by agency senior management at the commencement of a deployment through a meeting between employees and their national level peer group (as part of an in-country induction process). However the services of a professional external facilitator might be made available by ECP management to initiate and assist such meetings.

4. Monitoring and reporting

GoPNG’s 2007 Review of its Public Sector Reform Program notes that what it sees as the poor reform record of GoPNG agencies partly reflects “...the lack of inbuilt monitoring, measurement, evaluation and reporting mechanisms.”²⁵ The Review notes that “Government’s oversight framework was to most, regarded as confused and ambiguous...As the activities each unit assumed were being carried out by another remained unattended, the absence of information, performance data and analysis slowly starved the reform process of its capacity to implement and effect change. This undermined the potential of the reform package.”²⁶

Lack of a shared reporting system has also caused problems for ECP. There is much being accomplished by employees that may not be visible in PM&NEC due to the lack of a shared reporting system. Initially the Central Agencies Coordinating Committee (CACC) did receive six-monthly reports based on returns from employees in each receiving agency. However, after two report cycles apparently PM&NEC stopped requesting the reports in mid 2005.

While a joint Australia/GoPNG government monitoring system for ECP has been proposed several times by each government, progress in this direction has been limited. One effect of the Wenge decision²⁷ was to halt work on a joint monitoring system. Since there was considerable uncertainty about whether ECP would continue, the intention that sector reports be collated from reports by individual employees and presented to CACC fell by the wayside.

Given the nature of ECP it is recognised that each government may have a need for its own internal reporting arrangements for the Program. However it is arguable that any factual information on achievements – or impediments to achieving mutually agreed program objectives – which is collected by one government should be shared with the other. This would have addressed the current GoPNG concern about employee activities being a “black

²⁵ Review, page 29.

²⁶ Review, page 42.

²⁷ The PNG Supreme Court ruling of 13 May 2005 (the Wenge decision) that immunities granted for ECP police and other personnel under PNG’s domestic legislation to enable the ECP Treaty were in conflict with the PNG Constitution. See this report, page 39.

box”, contributing to a greater sense of equal partnership, and making it more likely that the GoPNG will accept employee extensions and improvements to the program based on the monitoring information.

Monitoring and reporting information should also take account of the desirability of ‘allocative flexibility’ in the use of ECP employees. Employees should have clearly defined objectives, the achievement of which would signal the need to reallocate the resource to other unmet objectives. ECP does have a set of overarching objectives, and a set of milestones should therefore be identified which is capable of indicating when funding can be scaled back for a particular objective or sector or when new objectives should be introduced. Objectives should relate to both improvements in governance processes in the three ECP sectors and capacity building.

The milestones should be capable in principle of indicating when an individual employee’s work is completed. This will increase the transparency of the results of ECP to both Governments and indicate the need for action to be taken to surmount obstacles. Where all milestones are attained before the end of the deployment the employee should be reassigned or new milestones identified. Where they are not attained this should be taken into account in considering any extension of the deployment proposed by the GoPNG agency.

Recommendation 6: Factual monitoring information relating to the activities and achievements of employees against their TOR, corporate plans and sector strategies should be shared between both Governments. In the spirit of the PNG Commitment on Aid Effectiveness, this should not require two separate monitoring systems. Monitoring information should also be capable of indicating when the tasks in a employee’s TOR have been completed.

5. Integration of ECP with other Australian and GoPNG programs

Reflecting the environment in which it was developed, ECP operates somewhat separately from other Australian programs of assistance to PNG (including other streams of assistance to agencies receiving ECP employees), as well as somewhat separately from GoPNG’s own public sector reform program.

In the review team’s assessment there is a need to manage any successor to ECP so as to avoid disconnects with these other programs.

The minutes of the March 2007 HLC affirm Australia’s commitment to ‘one aid program’ and there has been work in AusAID to elaborate the links between ECP, development budget programs and PNG’s own public sector priorities. Effective integration arrangements have already been established in the law and justice sector.

With regard to integration of ECP with development budget programs, the updating of a 'mud map' of ECP and aid program support in November 2007 is a valuable step to joining up the various assistance programs. AusAID's recent move to create an aid coordination network in Port Moresby, together with sector based aid coordination meetings, will also improve coordination between ECP and other Australian programs, although this process does not include GoPNG representation.

However, coordination of ECP with GoPNG's own public sector reform program is difficult to discern. There is probably a limit to which sustainable reform can be externally assisted by ECP in circumstances in which (as the Kavanamur Report indicates) reform cannot easily be driven internally, and Australian assistance should reinforce GoPNG's own reform processes rather than creating a parallel one.²⁸

Coordination between Australian assistance programs (including ECP) as well as coordination with GoPNG reform agendas would be assisted by the emulation of law and justice type sector-wide management structures in the other two ECP sectors. It could also be assisted by creation of a small number of adviser positions to undertake a cross-cutting or coordinating role in regard to achievement of key objectives. The key point is that someone should be formally tasked with pulling the disparate elements of Australian assistance relating to a particular objective together in the context of GoPNG's own reform agenda, reporting on progress and identifying gaps. For example, 'three-way coordinator positions' (between ECP and other Australian programs and between Australian programs and the GoPNG reform program) could be created in the following areas:

- **Capacity building:** the three way coordinator would oversee the design of capacity building of all assistance (ECP and conventional aid programs), monitor its effectiveness and ensure the key gaps in GoPNG capacities are addressed. The adviser would assist ECP and conventional aid program placements to develop capacity building strategies, implement the strategies and control the results for quality and sustainability. Given the importance of this coordination role to the sustainability of overall Australian assistance, consideration should be given to making this a new full-time position.
- **Payroll reform:** the lead ECP employee in Treasury or Finance, or the Economic Adviser currently being advertised by AusAID, could also fill the role of coordinator of payroll reform.
- **Governance and rule of law:** this coordinator could assist with governance and rule of law issues encountered by individual employees, including in relation to implementation of the Public Financial Management Act and finance regulations.

²⁸ See Kavanamur, D and Robins, G, Review of the Public Sector Reform Program, June 2007. The Review notes "NEC failed to specify a process whereby agency level priorities and activities were to be identified and submitted for either approval or integration into the monitoring and reporting structure of one of its [ie NECs] support units. Under the prevailing arrangements, Government had no way of knowing what plans, activities or actions were being implemented throughout the sector, hence, no capacity to monitor or assess performance. Page 27.

These coordinating adviser roles could be filled by either ECP employees or advisers recruited under the conventional assistance program, i.e. new advisers need not necessarily be recruited but the coordination role could be included in the TOR of existing placements (either ECP or conventional aid program). The coordination could be either a full- or part-time role and would need to be specifically resourced. Consistent with the PNG Commitment on Aid Effectiveness, actions based on coordination reports would be jointly undertaken by GoPNG and AusAID as part of the overall management of the aid program.

The review team was encouraged that AusAID has already taken steps in this direction.

Recommendation 7: Coordination of ECP with Australian assistance programs, as well as coordination with GoPNG reform agendas, could be assisted through the resourcing and tasking of adviser positions undertaking a cross cutting or coordinating role in regard to achievement of key reform objectives. The advisers would pull together the disparate elements of Australian assistance relating to a particular objective in the context of GoPNG's own reform agenda, reporting on progress and identifying gaps. These coordinating adviser roles could be filled either by ECP employees or advisers recruited under the conventional assistance program. In either case the coordination could be either a full or part time role, but would need to be specifically resourced. Consistent with the PNG Commitment on Aid Effectiveness, actions based on coordination reports would be jointly undertaken by GoPNG and AusAID as part of the overall management of the aid program.

6. Australian concerns about ECP

From the Australian perspective there are several issues relating to the 'special' nature of ECP. One is a logistical issue – the high administrative burdens placed on deploying agencies in selecting employees, backfilling the vacant position, inducting them and eventually re-absorbing them into a vacant position. The recent practice of short-term periods in country has also created problems in recruiting employees, in continuity and in forward planning. The recruitment burden is likely to grow over time if the pool of potential employees in the agency is exhausted at a faster rate than it is refreshed – an issue on which agency views varied. In this regard further widening of the 'catchment area' to the state public services may be necessary in some instances.

There is also a governance issue associated with the management of ECP in Australia. Although there is a comprehensive management framework based on inter-departmental committees (IDCs), no single Commonwealth agency is responsible for monitoring the collective performance of the ECP against its objectives and its budget. While DFAT has overall leadership of the program, funding is through an AusAID appropriation, breaking the usual nexus between control of program financing and responsibility for its

performance.²⁹ Further, the performance of individual employees is the responsibility of the sending agency, and there seems to be considerable variation between deploying agencies in the extent of monitoring of the results of their deployments.

While performance information on individual deployments is collected by the Australian Treasury, this is regarded as an internal Australian government system and was not available to the joint review team. The review team also sees value in developing regular costing information for Australian management purposes.

The point was made to the review team that the success of the capacity building dimension of the ECP also requires receiving agencies in PNG to put effort into the transfer of skills and experience, to support training and mentoring programs and to allocate good counterpart staff to work alongside employees.

Recommendation 8: Consideration be given to clearer linking of ECP performance information with program costs for the purpose of performance reporting and aid policy management.

7. A stronger ‘view from the top’ focus

In the last resort the effectiveness of aid is dependent on the recipient’s efforts and ability to capitalise on the potential benefits. However, while the aid may be intended to help improve weak governance and bureaucratic processes, these governance shortcomings may themselves prevent the recipient from capitalising on the full potential benefits of the assistance, resulting in loss of traction of the whole technical assistance process.

The ECP approach to ‘mainlining’ highly skilled government officials from another country directly into the agencies of the recipient does potentially ease this dilemma. However, as the issue of payroll reform attests, for ECP to achieve its full potential in resolving difficult reform issues those issues may have to be placed on the ‘radar’ of the top bureaucrats and politicians and solutions would need to be pursued in a proactive and collaborative manner.

GoPNG’s 2007 Review of the PNG Public Sector Reform Program notes that “The most commonly expressed view among the public servants interviewed was that, at the highest national level, the reforms had very limited political support, they had no genuine political leadership, advocacy or commitment....Importantly, senior officials were also roundly criticised within and outside their agencies for their lack of agency level initiative, leadership and vision.”³⁰ With regard to senior officials the report notes “The commitment of resources to the objectives of the Strategic Plan and public sector reform appears to be

²⁹ Some problems were encountered in obtaining detailed information on actual ECP outlays.

³⁰ Report page 45. The Report also notes that “Politicians and senior public servants were often criticised for their disregard of the rule of law and non-compliance with legislation and government directives. The politicization of and interference in the appointments of Permanent Secretaries/CEOs and senior executives is a major danger and fetter on sound organizational development and stability. There is a general skepticism and disillusionment with the pursuit and execution of reform initiatives.” Page 45.

heavily influenced by the attitude of agency heads towards public sector reform and their capacity to design and implement a reform strategy.”³¹

It appears to the review team that proactive, reform-focused leadership does exist in some of the agencies in which there are ECP employees. However, the critique in the Kavanamur Report does seem applicable to others. Additional ECP deployments are not necessarily the solution to the problem of weak reform commitment at the top level of an agency³² and it is therefore recommended that the level of resourcing of any successor to ECP should be decided in the light of GoPNG’s response to the recommendations in the Kavanamur Report,³³ and be particularly supportive of agencies with a track record of reform or at least an operationally credible reform strategy. Such a strategy should take account of reports such as the 2004 PERR, 2007 Report on Public Sector Reform and 2007 PEFA diagnostic report. These independent analyses play a vital role in increasing awareness at top political and bureaucratic levels of gaps between the status quo and international good practice.

Recommendation 9: The level and composition of resourcing of any successor to ECP should be decided in the light of GoPNG’s response to the recommendations in the Kavanamur Report, and be particularly supportive of agencies with a track record of reform, or at least an operationally credible reform strategy.

8. Possible theme for any successor to ECP

The major component of the original ECP related to policing, both in terms of numbers of employees and additional funding. It appears that public perceptions of ECP at the time (both in PNG and Australia) were heavily influenced by the ‘visibility’ of the policing component.

It is likely (on the basis of our discussions with the Australian Federal Police (AFP)) that the proposed *recommencement* of AFP support for the Royal Papua New Guinea Constabulary (RPNGC) would take place outside the ECP framework (at PNG’s request). This does not preclude further consideration of whether policing could return as a core component of a successor to ECP. However, on the assumption that it does not, the question arises whether there is a different theme that could be used to characterise and

³¹ Report page 16.

³² Where there is ineffective leadership from the top ECP will not of itself change this fundamental obstacle to reform. Indeed, ECP may have negative effects

- if it has the effect of relieving GoPNG’s political and bureaucratic leaders of the responsibility for themselves filling the vacuum in centralised reform leadership, or
- if it is identified with an externally imposed reform program, with much needed reforms being resisted *because* they are seen as externally imposed.

³³ The Review indicates that “Findings of the Review are to be applied to the development of a platform of public sector reform strategies, which will be central to the next phase of the government’s public sector reform programme.” Page 7.

launch a distinctively recognizable successor to ECP which has the same strengths in terms of a ‘special’ government to government initiative, providing direct support from highly capable government officials. A successor program would desirably have its own development theme and continue the strong senior-level government-to-government focus and planned networking of employees across sectors, but also taking on the strengths of the development program approach relating to shared management with GoPNG, clearer tracking of achievements against sector objectives and a more explicit capacity building strategy.

One possible theme for an ECP successor relates to support for the public sector reform process of GoPNG. Given the signing of the PNG Commitment on Aid Effectiveness, there is a need for any ECP successor to be implemented through GoPNG’s own systems to a greater extent than in the case of the original ECP (paragraph B15 of the Joint Commitment refers). There is also a focus in the Joint Commitment on the importance to the success of the Development Partnership of GoPNG undertaking public sector reform (paragraph B12).

At this point in time the GoPNG public sector reform strategy for 2003 – 2007 has run its course and has been subject to a GoPNG review (the Kavanamur Report). This report concludes that public sector reform over the five years to 2007 was limited (with certain clear exceptions) and that this reflected the responsibility for reform being left with individual GoPNG agencies rather than the reform process being centrally propelled and coordinated.

A successor to ECP which is ‘badged’ as a program of assistance for the next stage of PNG public sector reform may not imply any major changes to the current pattern of deployments in the EPSR area. These deployments already help strengthen the inter-agency links, the absence of which were seen by the Kavanamur Report as an impediment to reform between 2003 and 2007. However, it would capitalise on the particular strength of the ECP model in providing assistance from senior officials who have a whole-of-government perspective and experience in supporting public sector change processes and who are networked across key agencies.

There is, of course, no overriding reason why a successor to ECP should remain focused on the central agencies and restricted to its current sectoral priorities. As PNG needs change, so must development cooperation programs. Service delivery, for example, is a growing priority for GoPNG. If a successor program works well, consideration might be given to extending its application to, say, district level administrations or new sectors such as health and education. This, however, is a matter for the two partner governments to work out through agreed consultative processes.

Recommendation 10: Public sector reform should be a major focus and theme of any successor program to ECP.

Section 4 Summary of Recommendations

The review team believes that there is a strong case for continuing a program which has the core features of ECP (government to government placement of highly skilled officials in a sector wide coordination environment), but that the weaknesses identified in this report should be remedied in a way that encourages both governments to renew their commitment to such a program and provide it with the necessary support. The following recommendations would help to achieve this.

Recommendation 1: Any successor to ECP should retain its core features of direct assistance to key PNG agencies by highly skilled and experienced Australian public servants, operating within a sector wide focus, but be managed in a way which is consistent with Australia's signing of the PNG Commitment on Aid Effectiveness.

Recommendation 2: Any successor to ECP should be to a greater extent jointly managed by the Australian and PNG Governments in country. This could be through a formally structured management arrangement such as a joint steering committee (JSC) for each sector. This should be chaired by the secretary of the lead agency in the sector. Consistent with Australia's signing of the PNG Commitment on Aid Effectiveness, a JSC arrangement should tap into existing and developing PNG processes to the greatest extent possible rather than creating new ones, as well using existing and developing PNG and AusAID coordination processes.

Recommendation 3: The joint recruitment arrangements practiced for the law and justice sector (involving both GoPNG and the Australian government in selection of each employee) should be applied to the other ECP sectors. This should be linked to a greater role for the receiving department in the induction process.

Recommendation 4: Each deployment should be associated with a direct skills transfer strategy which is shared with the employee counterparts identified in the strategy. The proposed joint steering committee would be in a position to arrange periodic monitoring of progress in capacity building under the deployment, both through consultation with national counterparts and the employee. This should be supplemented by making support available to each employee from a specialist capacity building adviser.

Recommendation 5: In order to guard against any risk of 'displacement' of local counterparts by employees the roles of each should be mutually agreed. This would normally be undertaken by agency senior management at the commencement of a deployment through a meeting between employees and their national level peer group (as part of an in-country induction process). However the services of a professional external facilitator might be made available by ECP management to initiate and assist such meetings.

Recommendation 6: Factual monitoring information relating to the activities and achievements of employees against their TOR, corporate plans and sector strategies should be shared between both Governments. In the spirit of the PNG Commitment on Aid

Effectiveness, this should not require two separate monitoring systems. Monitoring information should also be capable of indicating when the tasks in a employee's TOR have been completed.

Recommendation 7: Coordination of ECP with Australian assistance programs, as well as coordination with GoPNG reform agendas, could be assisted through the resourcing and tasking of adviser positions undertaking a cross cutting or coordinating role in regard to achievement of key reform objectives. The advisers would pull together the disparate elements of Australian assistance relating to a particular objective in the context of GoPNG's own reform agenda, reporting on progress and identifying gaps. These coordinating adviser roles could be filled either by ECP employees or advisers recruited under the conventional assistance program. In either case the coordination could be either a full or part time role, but would need to be specifically resourced. Consistent with the PNG Commitment on Aid Effectiveness, actions based on coordination reports would be jointly undertaken by GoPNG and AusAID as part of the overall management of the aid program.

Recommendation 8: Consideration be given to clearer linking of ECP performance information with program costs for the purpose of performance reporting and aid policy management.

Recommendation 9: The level and composition of resourcing of any successor to ECP should be decided in the light of GoPNG's response to the recommendations in the Kavanamur Report, and be particularly supportive of agencies with a track record of reform, or at least an operationally credible reform strategy.

Recommendation 10: Public sector reform should be a major focus and theme of any successor program to ECP.

Recommendation 11: Public sector reform could be a major focus and theme of any successor program. That the Papua New Guinea and Australian governments pay urgent attention to the importance of recommencing a program of policing assistance between the AFP and RPNGC, whether outside or inside any successor to ECP, as part of a strengthened effort across the law and justice sector.

ANNEX 1 BACKGROUND TO THE ECP, INCLUDING SECTOR OBJECTIVES

General

The Enhanced Cooperation Program was established by the governments of Papua New Guinea and Australia in late 2003. At that time Papua New Guinea was facing severe economic, social and law and order problems. The previous decade had seen a decline in fiscal stability, with public debt rising from 44% of GDP in 1992 to 74% in 2002. Between 1992 and 2002 the Kina depreciated, and interest rates rose sharply in 2002 – 03. A World Bank Public Expenditure Review pointed to structural problems in budget processes that could not be fixed by short term solutions such as ad hoc spending cuts.

A questioning of the effectiveness with which traditional forms of support from Australia were addressing the key weaknesses in economic management and governance led to a decision by the two governments on a new program of assistance. The main objectives of the Enhanced Cooperation Program were to: strengthen Papua New Guinea's economic performance and financial management; support its efforts to improve public sector governance and clamp down on corruption; improve the law and order situation; strengthen the justice sector; and reinforce border security.

In mid-2006 the high-level objectives of the ECP were reformulated as: “ ... for Papua New Guinea and Australia to work effectively in partnership to strengthen Papua New Guinea's financial and economic management, public sector reform, governance including a broad anti-corruption focus, law and order and border security.”

The support for the Royal Papua New Guinea Constabulary (RPNGC) was to take the form of both personnel and equipment. The essence of the non-policing component of the program was to place a number of experienced Australian public servants in senior positions in key PNG agencies, both to raise performance levels and improve service delivery and to build capacity for the future. The officials would remain attached to their Australian agency but would work to and for their Papua New Guinea agency and be answerable to the heads of those agencies for their performance.

According to the December 2003 announcement, the program would run for an initial period of five years. Up to 230 Australian police would be attached to the RPNGC, while some 65 civilian Australian advisers would be deployed in the economic, law and justice and border protection sectors.

\$A160 million per year of new funding was to be made available by the Australian government for the policing component of the package. \$60 million per year would be taken from the existing bilateral AusAID program to cover the non-policing component. In fact expenditure on the ECP has been significantly less than was originally envisaged.

According to cost estimates provided by AusAID the ECP has cost an average of just over \$20m p.a. since 2003-04. The EPSR component accounts for some 60% of the total cost, with the remainder split evenly between the law and justice and border security/transport sectors.

A formal Joint Agreement on Enhanced Cooperation was signed between Papua New Guinea and Australia in mid 2004, and the Enhanced Cooperation Between Papua New Guinea and Australia Act was passed into law in Papua New Guinea in August 2004. These two documents were intended, jointly, to provide the ECP with the necessary legal underpinning.

Sector objectives of ECP

Policing assistance

The policing component was a key element in the ‘joined up government’ approach. “The Forum agreed that Papua New Guinea’s law and order situation required immediate action so that all other potential gains would not be jeopardised as improving law and order is essential to laying the foundations of Papua New Guinea, including the re-establishment of investor confidence”.³⁴ Up to 230 Australian police were to be deployed, initially in Port Moresby and extended to Lae, Mt. Hagen, other areas on the Highlands Highway, with an offer to extend to Bougainville. “The RPNGC and the Australian Federal Police (AFP) will jointly address the law and order situation in PNG by enhancing the capacity and capability of the RPNGC to undertake successful, accountable and sustainable law enforcement operations.”³⁵

The AFP and RPNGC had more or less agreed by August 2004 on how ECP policing support was to be provided. The terms of the agreement were spelled out in a highly detailed “Implementation Agreement”, known as the Madang Agreement. But implementation was no sooner underway than in May 2005 a Supreme Court decision (“the Wenge decision”) effectively put an end to the policing component of the ECP Program by ruling that the immunity provisions of the ECP Act were inconsistent with Papua New Guinea’s Constitution. Once it became clear that the Papua New Guinea government was not in a position to amend the Constitution, all Australian ECP support for the RPNGC was withdrawn.

Although high level talks were held in the months following the Supreme Court decision on the possibility of a revised policing component of the ECP, the impasse persisted. In July 2006 agreement was reached at Ministerial level on the deployment of a “revised” policing

³⁴ Joint Statement, Fifteenth Australia-Papua New Guinea Ministerial Forum, Mt. Lofty House, South Australia, 11 December 2003.

³⁵ RPNGC-AFP ECP Policing Assistance Component: Implementation Agreement August 2004 (Madang Agreement) Attachment A.

component comprising 10 AFP advisers, but this never eventuated. A subsequent proposal from Australia involving the deployment of 10 AFP advisers to Bougainville also appeared to die on the files.

A major review of the RPNGC conducted in September 2004 confirmed the seriousness of its situation. The review team was told that a recommencement of Australian policing support is now under active consideration between the AFP and the RPNGC.

Non-policing Law and Justice

Am important aspect of the ‘joined up government’ approach was the provision of assistance to the broader law and justice sector. A whole of sector approach would, for example, ensure that strengthening of the police, together with assistance to DoF for internal audit, would not be undermined by the absence of prosecutors to progress the additional caseload associated with improved law and order and anti-corruption efforts. There were to be up to eighteen specialists in non-policing law and justice agencies, including the position of Solicitor-General and three litigation lawyers in the Solicitor-General’s office, five prosecutors in the Prosecutor’s Office, two correctional service managers, four expatriate judges appointed to the National and Supreme Court, one lawyer for the Department of Justice, one lawyer for law reform together with other specialists in relevant agencies.

GoPNG has prepared a PNG Law and Justice Sector Strategy by which departmental heads will be held accountable. It might be inferred that under pre-ECP arrangements investigations tended not to be followed up. With an anticipated increase in their number due to the strengthened policing and anti-corruption by other employees the intention was to ensure that this higher level of activity was carried through to the prosecution stage.

Economic Management and Public Sector Reform Assistance

The 2003 Mt. Lofty Forum endorsed the placement of up to 36 Australian officials in key central agencies. The Forum agreed that the key priorities were:

- establishment of fiscal sustainability and transparency
- restoration of the integrity of budget institutions and systems
- elimination of weaknesses in civil service payroll
- provision of economic policy advice
- improvements in provincial budget management
- stronger public sector performance and outcomes.³⁶

³⁶ Joint Statement, Fifteenth Australia-Papua New Guinea Ministerial Forum, Mt. Lofty House, South Australia, 11 December 2003.

Information from Australian Treasury indicates that the overall goal for Australia's EPSR assistance is to:

Enhance public sector performance and accountability through implementing programs for effective performance management and public sector reform.

The medium-term objectives of the EPSR component of the ECP (as outlined in the EPSR strategy) are:

- a) Support PNG's economic and public sector reform program
- b) Ensure affordable Government finances
- c) Minimise corruption and waste
- d) Improve revenue collection
- e) Progress structural reform
- f) Support line agencies and provincial government
- g) Build capacity

Payroll

As in the Public Expenditure Review and Rationalization Report (in which AusAID participated) the failure to stop public sector salaries overrunning the budget appropriation was seen as a core symptom of an ineffective budget system which not only lacked the ability to respond to externally imposed fiscal stress (for example, resulting from periodic declines in commodity prices) but actually created fiscal stress itself through failure to control the growth of public sector salaries. The Mt. Lofty Declaration was explicit about the need to control the growth of public sector salaries, stating that "The Forum agreed that an important objective of the enhanced cooperation package would be to ensure that essential reforms, including an overhaul of the human resources payroll system, were implemented as a priority."

This objective has been met only to a limited degree. It was a clear achievement of ECP to provide technical assistance to the Department of Personnel Management (DPM), which has been a weak link in the chain of budget control over salaries. While the aid program had been moving toward assistance to DPM the whole-of-government approach seemed to overcome impediments within DPM. Beyond this, however, ECP does not seem to have assisted progress in subordinating salary growth to the budget appropriation. ECP deployment to DPM is focusing on decentralizing the management of personnel

establishment to pilot agencies, legislative and industrial relations issues. The establishment and payroll modules of the Alesco HRM system have not been connected (originally intended for 2004) and the hard links between salary appropriations, establishment and payroll, which are fundamental to the integrity of budget control, remain elusive.

Lack of engagement by ECP with reform of payroll control apparently reflects a judgment that the turf battle between DPM and Finance over responsibility for managing the payroll would prevent productive engagement by employees to DPM. Since the management of payroll appears to require intervention at CACC level (if not above) it is possible that the establishment of a joint steering committee for ECP would have provided a mechanism for the turf issues to be addressed.

Border Management and Transport Security Assistance

No sector objectives exist, but to advance PNG's capacity for effective border and migration management employees will enhance PNG capabilities in the areas of:

- effective border and migration management (four officials)
- international transport security obligations (two officials)
- air safety management and governance (a Deputy CEO in the PNG Civil Aviation Authority), and
- revenue collection (Customs) (one official on the revenue side and three on trade security and border integrity).³⁷

The December 2003 Joint Statement notes that skills transfer and capacity building will be key features of this assistance.

2005 Supreme Court (Wenge) decision

"The ECP is governed by the ECP Treaty (*Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea*), which came into force on 13 August 2004. The ECP's profile was affected by the PNG Supreme Court ruling of 13 May 2005 (the Wenge decision) that immunities granted for ECP police and other personnel under PNG's domestic legislation to enable the ECP Treaty were in conflict with the PNG Constitution.

In response to the Wenge decision, Australia withdrew AFP police personnel and converted most other ECP positions from in-line strategic and technical positions to strategic advisory roles."³⁸

³⁷ Joint Statement 11 December 2003.

Following the Wenge decision, ECP stalled for almost 12 months. Progress resumed when the National Executive Council approved the full implementation of the non-policing component of the ECP Law and Justice Sector and agreed that the recruitment process for the Solicitor-General should re-commence (notified in letter of 10 April 2006 from PNG Minister of Justice Kimisopa).

³⁸ Document provided by DFAT. The document continues “At present, ECP prosecutors perform an in-line technical role. Some employees, particularly in the Border Management and Transport Security sector, have at times complemented their strategic advisory responsibilities with some in-line work.”

Box 4 DFAT Comments on Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea 2004 (ECP Treaty)

- “The ECP Treaty remains extant in international law, imposing agreed rights and obligations on Australia and PNG.
- ECP employees are able, at the request of their PNG agencies, to undertake duties requiring additional protections, which would not be provided under the provisions of the bilateral Development Cooperation Treaty (DCT).
- Unlike the ECP Treaty (Article 5), the DCT would not allow ECP employees to exercise the relevant powers and duties of their appointed position or office if asked to do so by the relevant PNG authorities
 - In particular, while the ECP Act deems legal employees to have satisfied the necessary professional and admission requirements to enable them to fulfil their respective functions (thereby reducing a number of additional administrative requirements), the DCT does not contain equivalent provisions.
- Without these provisions, the effectiveness of employees, particularly those in the law and justice sector, could be significantly diminished. (At present, because of staff turnover and delays in the granting of visas for replacement employees, only two prosecutors are in place. In the past, however, three have been working in PNG courts. As agreed between Australia and PNG, the number of prosecutors deployed is to be increased to five in the course of 2008).
- At present, we are not aware of any plans by the relevant PNG agencies to use these provisions in relation to the work of employees in other sectors. However, retaining the ECP Treaty keeps the option open for PNG agencies should they wish to do so in the future.
- Although not contemplated in present circumstances, it is also the case that retaining the ECP Treaty may provide the capacity to return in-line police to PNG at a future time, after full consultation and where there was support from both Governments and subject to necessary constitutional change in PNG.”

Wenge affected different components in different ways. The issue of immunity was critical to deployment of the police component, and the judgment stalled this component. However, for other components it appears that it did not significantly alter the modus operandi of ECP. Employees who continued to perform in an in-line capacity by issuing instructions to PNG staff would, however, lose the protection of indemnity by the PNG government if an action were to be brought against them. For example, a employee in the Auditor General's Office (AGO) continued to hold delegations from the Auditor General after the Wenge decision, but did not exercise them.

The net effect was probably a reduction in capacity substitution by employees. There may also have been a diminution in the contribution of ECP to role-modelling of good supervisory practices.

The Supreme Court decision was a setback for the Program, but the two governments developed a revised program which was acceptable to each and met the requirements of the PNG Constitution.

The revised ECP developed by Ministers Downer and Namaliu: maintained Australian civilian personnel deployed in PNG government departments and agencies; introduced a new range of measures for police cooperation, excluding in-line police as envisaged in the ECP Treaty; and introduced a focused strategy to attack what both governments see as the problem of corruption. This involves both employees and support for a range of PNG anti-corruption institutions.

ANNEX 2 HOW WELL HAS ECP WORKED?

LAW AND JUSTICE SECTOR

Papua New Guinea's law and justice sector benefits from comparatively well-developed and effective coordinating mechanisms. Its work is given high priority by the Papua New Guinea government and receives a significant level of support from AusAID. This was not however a good time to take the sector's pulse on ECP assistance. Policing support, which was the stand-out feature of the original ECP "package" (over \$A500 million new funding appropriated over five years and the planned deployment of 230 AFP personnel) was suspended in the first few months of the program following the Waigani Supreme Court decision. Despite occasional attempts by both sides to break the resultant impasse, agreement on a revised program has proven elusive. The problems experienced over the appointment of a Solicitor-General and four judges have also persisted.

Policing support

To deal first with policing, the review team found that the needs of the RPNGC remain acute (as explained in the 2004 report of the Administrative Review committee) and that there is a high level of interest on the PNG side in recommencing a bilateral program of assistance. Sporadic attempts made since the Wenge judgement to develop a revised program of policing assistance have not borne fruit. Discussions are however now underway between the two governments on the first stages of a new AusAID/ AFP/ RPNGC program – probably outside the ECP – that should see a start on building back the RPNGC/ AFP relationship and progressively raising levels of assistance to the RPNGC. It is important, particularly given the difficulties that have arisen in this area in the past, that this new program be developed jointly in a spirit of equal partnership between the AFP and the RPNGC and that it be closely coordinated with other law and justice sectoral priorities and activities. We were encouraged to hear from the AFP that they are following this approach.

Non-policing support

As for the remainder of the law and justice sector, the prevailing attitude of participating agencies on the Papua New Guinea side is that such support as had been provided by the ECP in this sector has been useful. However, gaps in the program, coupled with its "stop/ start" nature, have seriously reduced its value – particularly in terms of sustainability and capacity building.

From the limited discussions we were able to have with ECP employees in the Justice Department, this seems to be a shared view. Although capacity building lacks a strong focus, the employees felt valued and useful. We were told that good practical use is made of their professional skills and experience in a variety of ways. Although employees did not receive detailed guidance on their roles and responsibilities, they seem to have worked out ways of aligning their activities with departmental priorities and integrating their work with that of other advisers in the sector.

The “twinning” dimension of ECP is not uniformly strong in the law and justice sector. It tends to be rather ad hoc and to vary from time to time and agency to agency. This is a spin-off of the ECP program that could be developed further to the mutual advantage of the agencies themselves and the sectoral program.

The review team was told that a further eight ECP law and justice employees are now in the pipeline and will take up their positions in the coming months. This is welcome news. It is also encouraging that joint selection procedures are in place in this sector – and seem to work well. There is however an obvious need to develop tighter job specifications and agreed monitoring, reporting and evaluation processes for the new employees. The lack of continuity from one employee to another can be a problem in the absence of a clear and shared statement of goals and priorities.

A blockage remains over the deployment of judges under the ECP. This stems from a long-running disagreement over the appointment process and conditions of service. It was apparent to the review team that additional support in the form of qualified and experienced judges – and perhaps funding for premises and facilities - would be a worthwhile supplement to the assistance currently being provided by AusAID in areas such as case management and staff training. This is particularly so given heavy caseloads and the prospective increase in the number of judges (from 22 to around 32) in the next few years.

Although no breakthrough is in prospect on the appointment of a Solicitor-General under the ECP, this too is under discussion between the relevant agencies. The point was made to us both by agency representatives and by employees that every link in the law and justice chain – from policing through the Office of the Public Prosecutor, the Department of Justice and the Attorney General and Courts to Correctional Services – needs to be strengthened. It is encouraging that both the Papua New Guinea government and AusAID attach importance to taking a coordinated, sector-wide approach in this key area. Elsewhere in this report we recommend that sectoral oversight bodies be charged with ensuring that the ECP component of AusAID’s overall assistance is fully factored in when assessing objectives – and performance against the agreed objectives - across the sector as a whole.

The view was put to us that there is a need for more support from investigation officers and that this should not rely on the AFP, but draw on investigation officers in other Australian agencies such as the Tax Office and from the states. It was suggested that these could be coordinated through the Attorney General’s Office rather than the AFP.

The Correctional Services have had only one or two ECP employees working with them at any one time but obviously have found the program useful. Their needs are wide-ranging and acute, and they would welcome a stronger ECP presence if that could be arranged. While in-line placements are preferred, advisory positions are also valuable. Particular value is seen in the transferring of experience, the introduction of new concepts and approaches and the presence of staff who can serve as role models. No ECP employee was working with the Correctional Services at the time of this review and so we were not able to seek employee views in this instance. These placements have no associated twinning arrangement, though the Service would be keen to have one. We were told that the ECP employees have worked well with the one ASF adviser in this area. The Service considers that its views on its priority needs are given full consideration. It is consulted about employee selection.

The Chief Ombudsman told the review team that he had earlier sought ECP employees to help with capacity building and advisory work in the investigative area. For no apparent reason no help had eventuated. The Office is however very pleased with the support it receives from and through Australia's Commonwealth Ombudsman under a twinning arrangement. It also receives solid support from other AusAID programs and regional networks. AusAID assistance covers deployments, short term attachments in Port Moresby and training assignments in Australia.

The Ombudsman's Office has a major role to play in strengthening good governance and combating corruption through its responsibility for ensuring compliance with PNG's Leadership Code. It participates actively both in the Land and Justice NCM and in the National Anti-corruption Alliance (NACA). The Chief Ombudsman remains very interested in obtaining assistance from any successor program to ECP and the review team felt that his request warranted careful consideration as part of strengthened sector wide support.

BORDER SECURITY AND TRANSPORT

This sector is less cohesive than the other two involved in the ECP. While the agencies have a certain amount in common - and in some cases work closely together in areas of shared responsibility – they vary enormously in both type and needs. This makes it harder to maintain cross-sector linkages both in Papua New Guinea and among Australian agencies. We were however impressed by the efforts being made in Canberra to keep in touch and ensure that a consistent and coherent approach is taken where possible. Agencies like the Department of Immigration and Citizenship (DIAC) and the Department of Infrastructure and Transport provide particularly good examples of a thoughtful, structured and proactive approach to building a relationship with their counterpart agencies in Papua New Guinea. In addition to regular IDC meetings, this group of agencies in Canberra

meets as a sectoral grouping from time to time. The Secretary of Transport in Port Moresby chairs a Transport Sector Coordination, Monitoring and Implementation Committee (TSCMIC).

ECP staffing levels among these agencies have been closer to the initial targets – all eleven positions are currently filled – than in the other two sectors. The assignments tend to have a specialist focus and are run in a highly pragmatic way. Generally speaking the linkages between Papua New Guinea and Australian agencies seem to work well. There is less of a sectoral overview because of the distinctive nature of each agency and each assignment. Planning, monitoring and reporting requirements vary significantly from agency to agency and position to position, as does the nature of the work done by ECP employees. Positions tend to be less well structured in any formal sense – though we came across no suggestion that the assignments were not hitting the target so far as the receiving agencies are concerned.

The ECP employees in the Immigration and Citizenship Service have made a real and significant contribution to the work of an agency that is undergoing a fundamental restructuring at the present time. Its role and responsibilities have been expanded and its staffing establishment is about to more than double. The employees each work in specialist roles and receive a good level of support from their home agency. The linkages between the Papua New Guinea and Australian institutions are strong. Support is given to the Service's engagement with regional and international linkages, as well as across a range of its activities. DIAC has not been involved in the selection of employees – though it does prioritise its needs – but has been well satisfied with the calibre and approach of the employees. Putting and keeping counterparts in place remains a serious challenge. Here, as elsewhere in this sector, the immediate demands of raising service standards and responding to pressing legislative and other changes have meant that capacity building has had to take something of a back seat. As time and circumstances permit, this dimension of the ECP assignments should desirably be strengthened.

Papua New Guinea's Customs Service values the ECP program. It has linkages with its Australian counterpart that go beyond the scope of the ECP program. The two sets of arrangements are mutually reinforcing. Transfer of experience is the key. The employees are seen as being of sufficient seniority and calibre to carry the roles of advisers. Capacity building happens in a general fashion – role modelling, broadening minds, raising standards – more than through a single counterpart. However some concerns were expressed by national counterparts about the extent to which the two groups work as a team. Other aspects of the twinning arrangement that work well are tailored training courses and short term visits by specialists. Coordination between ECP employees and other development cooperation programs is evidently not a problem.

The Civil Aviation Department had two ECP employees originally. Much of the work was – and to some extent still is – of an in-line type. The deployments came at a time of far-reaching change in the civil aviation sector. There has been a reasonable measure of consultation about employee selection. Senior officers of the Australian and Papua New

Guinea agencies meet on a regular basis. The twinning dimension is progressively being further developed in such areas as training and study visits. ASF assistance to the Civil Aviation Department is also seen as helpful. Capacity building is not a strong feature of these ECP deployments, mainly because the first priority for the department has been to develop its systems and procedures and cope with a rapidly changing work environment. As circumstances permit attempts will be made to strengthen this aspect of the program. On the Australian side, the point was made to us that without the guarantee of secure funding that the ECP represents, it would have been difficult – if not impossible – for the department to contemplate putting so much effort into what is, after all, outside its core functions. This sector has available to it external performance measures – for example, assessments by the United States Coastguard Service and International Civil Aviation Organisation (ICAO) standards and recommended practices – that make it possible to measure progress against agreed objectives.

ECONOMIC AND PUBLIC SECTOR REFORM

Secretaries of Treasury, Department of Finance and Department of Personnel Management were strongly supportive of the technical inputs provided by ECP and spoke positively of the contribution made by employees. Key EPSR contributions include the following.³⁹

- “Transparency of the Government of PNG’s fiscal position has improved with the release, for the first time, of two key documents in 2007:
 - The 2007 Mid Year Economic and Fiscal Outlook (MYEFO), and
 - The Final Budget Outcome report for 2006.

Ensure affordable Government finances

- Employees have worked closely with PNG counterparts to document and enforce budget and financial management practices and arrangements.
 - Treasury and Finance employees have supported counterparts to deliver budgets consistent with the MTFS, MTDS and the Medium Term Debt Strategy.
 - Treasury employees assisted national colleagues in developing the *Fiscal Responsibility Act 2006*, which was passed unanimously by the PNG parliament in August 2006. This Act is an important step and commits the Government to apply a set of fiscal principles and to publish reports on its fiscal position three times per year.

³⁹ This list of achievements was provided by Australian Treasury based on its quarterly reporting system.

- The national financial statements are now up to date and the OAG employee has assisted counterparts to clear the backlog of audits.
- Work to strengthen National Executive Council (NEC) processes and departmental budget implementation continues.
- Employees are able to provide high level advice, including guidance on how to effectively use the K500 million previously set aside for state equity in the Gas Pipeline Project.

Minimise corruption and waste

- In a bid to reduce fraud and corruption, there has been a strong focus on developing and improving audit capacity amongst most agencies in PNG.
 - In mid-2006 the OAG commenced performance audits (the first since the early 1990's) and audits of provincial treasuries (the first since 2003).
 - The IRC has developed a National Audit Plan, which now links all tax audit areas, resulting in better coordination of joint activities.
 - Employees have supported the audit and investigations of provincial and district treasury operations to identify misuse of public monies.
- Investigation and rejection of questionable claims have also resulted in significant progress in countering corruption and waste.
 - Treasury and Finance employees assisted in the investigation of a claim for K128 million in 'outstanding' special support grants for the Southern Highlands Province. The investigation found the claim to be unwarranted and proposed follow up action to identify the use of the funds.
 - At the OAG, expenditure through the *Miscellaneous Expenditure Vote* and *Suspense Trust Account Number 2* was reviewed for 2004 and 2005 (expenditure from these sources totalled K580 million over this period, as against appropriations of K355 million).
 - Finance Employees provided advice leading to the closure of the *Suspense Trust Account Number 2*, which was the source of considerable unappropriated expenditure.
- Improvements in audit capacity.

- In the Department of Defence the Internal Audit Support Programme has been assisting in the crackdown of illegal trusts.
- In the Department of Finance work has continued on the establishment of Audit Committees and Internal Audit Units.
- Employees continue to assist in the public release of public accounts and audits in order to improve transparency.

Improve revenue collection

- Finance employees have supported their counterparts to put in place enhanced procedures for monitoring compliance with business processes for collecting revenue.
- IRC employees have assisted in clearing a backlog of over 12,000 unassessed tax returns (from a taxpayer base of only 30,000). A reduction of outstanding debt of up to K50 million has been achieved, after employees were instrumental in instituting priority reviews of aged and large debt cases in the Debt Management area of IRC.

Progress structural reform

- Limited progress has been made on structural reform. Treasury employees have assisted in promoting increased competition, notably in mobile phones and aviation. Proposals to change the oversight of statutory authorities (including the ICCC and the Bank of PNG) are also being scrutinised by Treasury employees.

Support line agencies and provincial governments

- Progress in budget implementation and in improving service delivery in key departments such as Health and Education has been limited. The employee in the Department of Defence has supported his colleagues in efforts to prioritise expenditure.
- Treasury and Finance employees have worked with their counterparts in line agencies to coordinate policy making, improve budget development and management, and strengthen financial and public service accountabilities.

Build capacity

- Employees have developed good relationships with their counterparts and have built the capacity of their counterparts in the work place. Capacity is largely being built through on the job training though formal training courses have been conducted on subjects like the code of conduct (Finance) and intelligence analysis (Customs).
- The Department of Finance has reported improvements in staff capacity in sections such as Trusts, Payroll, Internal Audit, Accounting and Reporting, particularly in technical skills. It will take time to further develop the capacity of public servants who are able themselves to mentor and develop other staff.

- Capacity development has been targeted at all levels within Treasury via individual and group coaching. For example, a course in professional skills was well attended by junior professional officers from all Treasury divisions. Work has also been undertaken through informal coaching, and participation in divisional and branch meetings.”

On the other hand, it appears that DPM is not undertaking key PERRIC projects to improve salary administration and to rationalise unattached staff (PERRIC Projects 3 and 4) for which it is joint leader with Treasury.⁴⁰ This is due to lack of capacity – a gap which ECP has been unable to fill, combined with a “turf war” with DoF over responsibility for managing public sector payroll. However, an indirect contribution to salary control is being achieved through ECP supported assistance in DPM for the decentralization of establishment and payroll control to a group of pilot agencies. This may increase the likelihood of a tighter linking of budget appropriation for salaries, approval of establishment, recruitment activity and payroll management, although this will be dependent on leadership by secretaries of the pilot departments.

The views of the counterparts of EPSR employees were mixed. Treasury counterparts were positive about interaction with employees, particularly assistance in understanding how to handle competition policy issues. They were also positive about capacity building. However the view was expressed that it was desirable to minimise occasions when the Secretary relied mainly on employees for the provision of urgent advice (by-passing middle management), while briefs prepared by employees for the Treasury Secretary should be passed through the division head.

Finance counterparts indicated that they would like employees to have more training in imparting their knowledge to the counterparts, and greater person to person contact. An initial expectation of working side by side with each employee has not been entirely fulfilled. They were also concerned about clarity of employee role. A submission by Finance counterparts is at Table 1 below.

Taxation counterparts noted that teamwork with employees was good and that they empower local staff. The corporate plan had been prepared with the assistance of employees and provides a framework for employee activities. Reflecting this, each employee has a work plan and employees fill the gap between senior management and technical staff.

⁴⁰ PERRIC or PERR Implementation Committee is the GoPNG committee charged with implementing the recommendations of the Public Expenditure Review and Rationalization report prepared by the World Bank, Asian Development Bank and AusAID in 2003.

Table 1 ECP – Views of Staff of Department of Finance, GoPNG

ACHIEVEMENTS	EXPECTED	RECOMMENDED IMPROVEMENTS
• Enhanced staff performance	• Need to Involve more national staff participation	• Staff feel that they are not utilised or given opportunity to learn from the employees.
• Quality of performance improved	• Establish guidance rules for counterpart performance agreements	• Terms be developed for effective interaction and communicate by counterparts.
• Increase staff morale	• Devote ECP resources to more needed or technical areas	• Resources wasted in administrative matters could be used to solve technical issues
• Strengthen control mechanisms	• Regular meetings to provide feedbacks on performance of national counterpart	• Feedbacks required by staff regularly. Identify solutions during open discussions
• Promote cooperative governance, accountability and transparency	• Identify and expose key administrative and operational weaknesses appropriately to mitigate solutions	• Problems identified but are not communicated appropriately to mitigate required solutions
• Mentoring for disciplining staff	• respect the laws and value systems	• Greater understanding is required on value systems and cultural practices

Table 1 ECP – Views of Staff of Department of Finance, GoPNG

(continued)

<ul style="list-style-type: none"> • Improve office set ups and administration 	<ul style="list-style-type: none"> • Extension is preferred over replacement to maintain the continuity and performance level 	<ul style="list-style-type: none"> • Deploys loses time during orientation and nothing much achieved before the term ends.
<ul style="list-style-type: none"> • Training and skilling 	<ul style="list-style-type: none"> • Continual training and skilling activities through greater partnership 	<ul style="list-style-type: none"> • A Training Need Analysis is required for all National Officers so that specific training and skills be developed and transferred to him/her
<ul style="list-style-type: none"> ✓ Initial Projects to improve performance 	<ul style="list-style-type: none"> ✓ Identify steps to improve efficiency 	<ul style="list-style-type: none"> ✓ Encourage Counterparts to address issues and provide solutions ✓ Not necessary within the PNG but other case studies and other international experience

**Table 1 ECP – Views of Staff of Department of Finance, GoPNG
(continued)**

PROBLEMS

1. Currently there are no written guidelines, terms of reference, etc to define the duties, roles and responsibilities the ECP officer has, his/her rights, restrictions and limitations, etc.
2. The big gap between the ECP Officer's terms & conditions, salaries and benefits, etc and the National Officers to encourage continuity and sustainability.

WHY WE REQUIRE EXTENSION OF ECP DEPLOYS TERMS OR THE PROGRAM TO THE DEPARTMENT OF FINANCE

- Huge skills gap for internal auditors in the public service
- Established audit committees requires strengthening
- There is a greater need for enforcing and promoting compliance of public finance management and financial instruction requirements
- Continuous capacity building is required to be supported by experienced and committed team members
- A stronger force is required to promote corporate governance, transparency and accountability within government systems.

Training of new recruits to the Department and Division

ANNEX 3 STRATEGIC ISSUES FOR ECP RELATING TO THE LAW AND JUSTICE SECTOR

Modernization of National Security and Governance Systems, Process & Laws (legislation) in Papua New Guinea

During the consultation in Port Moresby and Canberra, it was acknowledged that the whole of government national systems, processes and laws began to “crack” in or about the 1980s. The cracks has exacerbated over the years to critical levels where the micro economic management systems, finance and budget expenditure systems, governance, law and order, service delivery mechanisms and finally the national security systems of the country including the ports, airports, borders and transportation sectors were unsafe, dysfunctional and fragile.

The institutional misalignments in the broader public sector were significant and almost universal amongst the key institutions identified jointly for assistance through ECP, whereby senior and able Australian public servants were sent up to PNG to “fix” things, re-align and modernise the PNG systems, processes and the laws (assisting conformity with modern laws and practices accepted globally). The modernization program is absolutely necessary for PNG to give full effect to its MTDS in terms of trade, commerce, investment confidence, security, rule of law and enjoy a comparative advantage in the region.

The modernization programs developed under the ECP program for the Internal Revenue (Customs), Immigration & Citizen, Civil Aviation Authority and the Department of Transport (Maritime Security & Surveillance for Ports – Port and Port Facility security Code (ISPS)) has received favourable assessments from the regulators and regional economic systems in the region, including Asia Pacific Economic Cooperation (APEC), European Union (EU) and the United States Coast Guard (USCG).

Whilst the national security systems and process have been significantly modernised, the legislative reform for the country, and the capacity building programs for the Papua New Guineans that are needed to complement the gains in those sectors, continue to be a critical challenge in the entire chain of reform and modernization process initiated jointly by Australia and PNG. There is still a lot of work needed by both Governments under the ECP program to bring those fundamentals to finality and jointly manage the implementation by continuously building efficiency programs around the fundamentals, with proper monitoring, evaluation and reporting structures and mechanisms, including PNG’s international arrangements and obligations.

At the agency level an inter-agency consultative group comprising heads of agencies responsible for taxation, customs, immigration, civil aviation and port security could be supported with adequate resources and secretariat support. The inter-agency consultative group would report to TSCMIC and in appropriate instances NCM.

The regulatory and enforcement efficiency programs should necessarily complement those modernised systems and processes at the institutional and agency levels with a whole of government approach. This should involve themes such as good governance, rule of law and service delivery mechanisms or models designed specifically by linking with the law enforcement mandated agencies and including sectoral consultative mechanisms such as the National Consultative Mechanism (“NCM”) under the law and justice sector.

National law and justice sector agencies are inter-linked in the quest to deliver a just, safe and secure environment for all in Papua New Guinea.

The law and justice sector consists of a number of departments and agencies including the following:

- a) The policing agencies that enforce the laws, including the RPNGC, the IRC (Revenue & Customs), National Fisheries Authority and various regulatory inspectors and personnel under various enabling legislation;
- b) The Courts who administer and interpret the laws, including the Supreme Court, National Court, the District Court and the Village Court. There are other quasi-judicial tribunals such Local & Provincial Land Courts, the National Lands Commission, the National Lands Titles Commission, the Leadership Tribunals, Commission of Inquiry, Warden Courts, etc;
- c) The Department of Justice and Attorney General which provide a range of legal services, including prosecution (Public Prosecutor), legal aid services (Public Solicitor), litigate matters for and against the State (Solicitor-General), provide legal advice & draft legal documents to the government (State Solicitor), manage probation and parole services, manage juvenile institutions, the Power of Mercy Committee, early release of prisoners on ministerial license, manage wills, probate and official trustee (Public Curator & Official Trustee), the jurisdiction of Village Courts and Land Mediators in PNG, etc;
- d) The Correctional Services is responsible for the custody and rehabilitation of persons convicted by the Courts and placed in their custody. The Department of Justice and Attorney General has a role in terms of rehabilitation and supervised early released under the parole, probation, release on ministerial license or under a recommendation by the Power of Mercy Committee.

An equally important part of the effective administration of a justice system in any jurisdiction is the commitment of the government, through its reform push in the law and justice institutions and agencies, to maintain “public confidence” in the administration of justice. The “wheels of justice” may be grinding slowly but they should invariably deliver justice to the people that seek it.

However any successor to ECP, or future development aid program support to the law and justice sector, should be designed and delivered in an integrated sectoral approach with adequate resourcing and support to all the sector agencies in the justice system chain. A shortcoming or a “bottleneck” in one part of the justice system will affect the effectiveness of other parts and, by extension, the entire operation of the justice system as a whole.

There are significant opportunities for a successor to ECP to provide high level strategic assistance in an integrated manner. This would be through joint mechanisms in Port Moresby and Canberra at both the agency and sectoral levels and with significant specialist and resource support to all the key institutions and agencies in the national justice system. The law and justice sectoral mechanisms provide an ideal framework for Australia and Papua New Guinea to jointly develop future assistance in an integrated manner with a whole of government focus under key agreed sectoral objectives or themes such as the rule of law, judicial independence, governance, corruption and human rights. This is the nature of assistance currently being provided to the sector through the aid program's LJSP. The team noted that, despite the significant resources and support provided to the sector under the LJSP, the original ECP agreed theme of combating corruption has yet to be effectively resourced to draw out strategies, programs and personnel in an integrated manner.

The White Paper on the Law and Justice in Papua New Guinea March 2007 is an excellent effort but the content is limited to sector institutions and agencies directly under the titles and responsibilities of the Minister for Justice and Attorney General. The roles of other key agencies such as Royal PNG Constabulary, Correctional Services, Ombudsman Commission, Auditor General, and so many other regulatory and enforcement agencies under various Ministries and Acts of Parliament including the IRC (Customs), Department of Finance, Department of Provincial & Local Government Affairs, Civil Aviation Safety and Security Regulator, Department of Transport, National Fisheries Authority, National Forestry Authority, Mining Authority, Department of Environment & Conservation and so forth, have been inadvertently left out of the White Paper.

Australian development assistance to the law and justice sector in PNG will be reviewed shortly. Whilst the review is welcomed, the high level ECP assistance to the law and justice sector must necessarily be designed around agreed joint themes or objectives with agreed joint implementation matrixes, monitoring, evaluation, reporting structures and mechanisms. The review would no doubt be subjected to a joint process and outcome, consistent with the Development Cooperation Treaty and the PNG Commitment on Aid Effectiveness.

The constitutional dimension of institutions such as the Courts (including the Judges and Magistrates), the Ombudsman Commission (Members & Officers), the Public Prosecutor (including the State Prosecutors), the Public Solicitor (including the lawyers in employ), the Auditor General (including Auditors in employ) and the Police Commissioner (including members of RPNGC) is that those institution and their respective officers are constitutionally independent from any influence or direction from any person or authority in the discharge of their respective duties and responsibilities under the Constitution.

AusAID has provided significant support over the years (back as far as 1997) to join up the agencies and institutions in the national justice systems.

Whilst the constitutional independence is absolutely foundational for those offices and institution, they have engaged and jointly collaborate on whole of government themes such as corruption through an administrative mechanism called National Anti-Corruption Alliance (NACA). All the heads of anti-corruption agencies signed a Memorandum of Understanding (MOU) to collaborate on joint investigations to expose and combat corruption in PNG without the risk of compromising their respective constitutional independence and functionalities. For instance, where there is evidence of criminality, the police will take the matter through the justice system, where there is evidence of leadership code misconduct, the Ombudsman Commission will independently take the matter through to the Leadership Tribunals and, in appropriate cases, the Solicitor-General in conjunction with the Attorney General could undertake civil recovery legal proceedings against persons and entities to secure and recover from their ill-gotten gains or proceeds of crime. The civil recovery legal actions can, over a period of time, generate substantial revenue for the State and at the same time act as an effective deterrent mechanism against other potential perpetrators. A joint civil recovery strategy could usefully be developed by the LJSP to support the Solicitor-General and NACA Secretariat, including an approach to use of part of the monies lawfully recovered to complement the NACA's annual budget.⁴¹

The normal development aid program may not be able to build upon and support the successes of such a unique structure that has evolved over the years as the anti-corruptions agencies seek ways to address the endemic instances of corruption in PNG. The establishment of NACA was a collaborative effort of the Civil Society Groups through Consultative Implementation Monitoring Council (CIMC) and supported by AusAID.

The legislative framework and the necessary constitutional Bills and Amendments for the proposed constitutionally Independent Commission Against Corruption (ICAC) were completed in 1997 and now await the Government of Papua New Guinea to take a policy decision on the matter. In the absence of an institutional catalyst dedicated to deal with broader corruption issues and challenges of PNG, the joint collaborative structure mentioned above (NACA) could be seriously considered for further support under a successor to ECP. There are organizational, capacity and sustainability issues for NACA, the anti-corruption agencies and their personnel that are worth exploring under the original ECP theme to combat corruption in PNG in the broader context of improved budget and financial management.

Joint Agreement of Enhanced Cooperation between Papua New Guinea and Australia (“ECP Treaty”) 2004 and the Enhanced Cooperation between Papua New Guinea and Australia Act 2004 (“the ECP Act”).

⁴¹ See AusAID , Tackling Corruption for Growth and Development: a Policy for Australia Development Assistance on Anti-corruption, March 2007.

The Enhanced Cooperation Program for Papua New Guinea is governed by the ECP Treaty (*Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea*) which came into force on 13 August 2004 after the passage of the *Enhanced Cooperation between Papua New Guinea and Australia Act 2004* (“the ECP Act”).

The Enhanced Cooperation Program’s profile was affected by the Supreme Court ruling of 13th May 2005 (referred to as the Wenge decision) that immunities granted for ECP police and other personnel under the Papua New Guinea domestic legislation to enable the ECP Treaty were in conflict with the PNG national *Constitution*.

In response to the Wenge decision, Australia withdrew Australian Federal Police (AFP) personnel and converted most other ECP positions from in-line strategic and technical positions to strategic advisory roles. At present, ECP prosecutors perform an in-line technical role. Some employees, particularly in the Border Management and Transport Security sector, have at times complemented their strategic advisory responsibilities with some in-line work.

Through long-term deployments to senior positions in Papua New Guinea agencies, ECP employees are able to build enduring relationships with Papua New Guinea counterparts, drawing on the resources and expertise of their home agencies, and complement and support other parts of the bilateral aid program, including twinning programs.

The existing ECP Act and ECP Treaty continue to provide a workable legal basis for the deployment of Australian personnel under Enhanced Cooperation Program. The ECP Treaty remains extant in international law, imposing agreed rights and obligations on Australia and Papua New Guinea. The Enhanced Cooperation Program employees are able, at the request of Papua New Guinea agencies, to undertake duties requiring additional protections, which would not be provided under the provisions of the bilateral Development Cooperation Treaty (DCT).

Unlike the ECP Treaty (Article 5), the Development Cooperation Treaty would not allow Enhanced Cooperation Program employees to exercise the relevant powers and duties of their appointed position or office if asked to do so by the relevant PNG authorities. In particular, while the ECP Act deems legal employees to have satisfied the necessary professional and admission requirements to enable them to fulfil their respective functions (thereby reducing a number of additional administrative requirements), the Development Cooperation Treaty does not contain equivalent provisions.

Without these provisions, the effectiveness of employees, particularly those in the law and justice sector, could be significantly diminished. The additional lawyers required by other law and justice sector agencies can be expeditiously arranged under the new joint structures and arrangements.

In regard to whether or not the ECP could be ‘re-badged’ to give a freshness to any successor to ECP should the two Governments wish to continue into the next phase, the surviving provisions of the ECP Act 2004 and the ECP Treaty provide adequate legal basis for the governments of Australia and Papua New Guinea to continue the ECP program.

There is, however, no serious legal impediment to the two governments agreeing jointly to a new program name without disturbing the current legal status quo.

ANNEX 4 LIST OF PEOPLE INTERVIEWED

(A) PAPUA NEW GUINEA

Agency	Name
PM&NEC	A/g DG, CACC Secretariat, Mr Henry Leia
	Rex Hoy
AHC	HE High Commissioner Chris Moraitis, Deputy High Commissioner Ann Harrap,
AusAID	AusAID Minister Counsellor Margaret Thomas, Mark Baillie, Joanne Choe, Keith Joyce, Warren Turner, Shaska Martin
Finance	Gabriel Yer
	Doriga Henry, Tomala Asemeko, Anton Semeko and peers
	Dominic Staun, Donna Stewart, Simon Murray, Michael Petrides, Ano Mailei, Suzanne Hinchcliffe, Tim Drown
Treasury	Simon Tosali & Supervisors
	Peers
	John Eyers, Colin Johnston, Russell Agnew, Amanda Robbins, Jason Harris, David Weiss, Cassandra Lees, Nicholas Hunt, Anne Martin, Michael Flynn
AGO	Pona MacRawa, Peter Sipirou, Ari Kopi, Thomas Hollan
	Craig Deane, Marina Cvetanovska
DNP&M	Mosilayola Kwayaila
IRC (Tax)	Michael Daimo, Lalau Stephen, Mary Aisa, Kessy Sawang, Michael Koimo, Samuel Loi
	Trevor Schloss, Noel Smith, Grant Goodwin, Larry Helm
IRC (Customs)	Commissioner Gary Juffa
	Paul Iramu, Caroline Korus, Jerry Kaon, Josette Kakaraya
	Chris Wall, Coral Osborne, Jill Peterson

Defence	A/g Secretary Mr Frederick Punangi & Supervisors
	Peers
	Randolph Albrecht
Department of Labour & Industrial Relations	Rona Nadile
Immigration & Citizenship	Joseph Nobetau
	Dominic Ampao,
	Peter Holmes, Vern Feeney, Mandy Sinclair, Catherine Cerfai
Transport	Henry Parakai
	Phil Price, Les Holland
Civil Aviation	Joseph Kintau
	Clement Kapapal
	Col Kuchel
DJ&AG	David Manoka, Ravu Auka
	Chris Meaney, Teresa Berrigan, Stephen Fox
National Judiciary	A/g Chief Justice Salamo Injia
	Ron Silovo, Christine Daingo, Humphrey Johns, Sam Mulina
Correctional Services	Giru Mohiau
	Chris Waienge
Ombudsman	Ila Geno
RPNGC	Gari Baki
	Jeffery Vaki, Joseph Kulunga, Jim Wann
DPM	John Kali, Robert Yass
	Luke Freeman, Ravu Vagi
	Lindsay Kranz, Paul Blaylock, Louise Fairley
Other	Felecia Dobunaba

	David Kavanumur
	Peter Deacon (by phone)

(B) AUSTRALIA

Department	Name
PNG High Commission	HE Charles Lepani, HC, Mataio Rabura, Barbara Age,
DFAT	Michael Potts, Richard Rowe, Geoff Tooth, Stephen Henningham, Guy Humphrey
AusAID	Bruce Davis, Margaret Callan, Scott Dawson, Jennifer Noble, Geoff Tooth, Patricia Lyon, Peter Versegi, Megan Anderson, Cate Rogers, Jennifer Lean, Susan Hyde, Sharon Newcombe, Nick Smith, Kavitha Kasynathan
The Treasury	David Parker, Neil Motteram, John Gallagher, Karen Moorcroft, Stuart Kinsella
Finance	Lembit Suur, Karen Whitam, Mick Danaher, Greg Moores
Attorney General's Office	Steve Marshall, Nick Morgan, Suzanne Boag
Defence	Linda McCann, Paige Wirtanen
ANAO	Steve Chapman, Michelle Hocking
APSC	Georgia Tarjan, Robyn Clark
DIAC	Rachel Vines, Patricia Vaughan
Customs	Michael Crawford, Paola Cerrato-D'Amicco
Infrastructure	Andrew Tongue, Louise Brooks, Anita Kulessa, Carrie-Anne Henderson, Monica Olyslagers, Kai Everist
DIMA	Ondrae Campbell
ATO	Mark Smith
AFP	Allen Mortensen, Mark Setter, Abby McLeod, Rachel Vines

ANNEX 5 KEY REFERENCE DOCUMENTS

18 September 2003 joint press statement (following Ministerial Forum meeting) on need for new package of assistance to address Papua New Guinea's social and economic challenges

11 December 2003 joint press statement on broad objectives of ECP

Enhanced Cooperation Programme Act 2004

Enhanced Cooperation Programme Treaty 2004

Records of annual High Level Consultation (HLC) meetings 2004-07

Papua New Guinea/ Australia Development Cooperation Strategy 2006

Report on Advisory Support Facility II (ASF) 2006

Draft ECP Capacity Building Strategy report 2007

June 2007 Review of Papua New Guinea's Public Sector Reform Programme

November 2007 List of ECP Employees in Papua New Guinea

Draft Department of National Planning statement on localising Paris Declaration on Aid Effectiveness 2007

ANNEX 6 TERMS OF REFERENCE

JOINT REVIEW OF THE ENHANCED COOPERATION PROGRAM TO PAPUA NEW GUINEA

TERMS OF REFERENCE⁴²

Background

A Review of the Enhanced Cooperation Program (ECP) was agreed to in an exchange of letters in June and July 2007 between Papua New Guinea's Chief Secretary to Government and Australia's High Commissioner to Papua New Guinea.

The review is in keeping with both governments' international and national commitments to strengthening aid effectiveness, and in particular the shared desire to move towards a stronger evidence-based approach to aid programs.

The ECP is a joint program in its fourth year of implementation. It was formalised through the signing of the Joint Agreement of Enhanced Cooperation between Papua New Guinea and Australia on 30 June 2004 and the passage of the ECP Act on 27 July 2004. The original design included a police component which was covered by the PNG Police Act 1998 and the RPNGC-AFP Policing Assistance Component: Implementation Agreement August 2004.

The ECP was intended to operate as a five-year package of assistance estimated at around A\$800 million in new funding to PNG over the program period. The program was designed to re-establish investor confidence and provide an enabling environment for broad-based development supporting immediate action to promote sound economic management and growth in PNG, help improve the law and order situation, and ensure the integrity of national security systems.

Delivery of the ECP has occurred largely through the placement of selected Australian public servants and other officials into PNG government departments and agencies. The original design anticipated a total of 64 non police and 210 police. The policing component was withdrawn as a result of a Supreme Court decision in May 2005 on the special reference on the constitutional validity of the ECP Act. The non-police employees also switched from in-line to advisory duties. The maximum number of employees in country

⁴² The TOR of the individual members of the review team were based on this TOR.

over the past 3 years has been 44 non-police and 50 police. At September 2007 there are 42 non-police employees present in Papua New Guinea.

While remaining attached to their 'home' employers, the Australian officials work within the organisational structures of the agencies where they are placed and are answerable to Papua New Guinean agency heads. ECP Officials have on-the-job training and capacity building responsibilities appropriate to their employment level, in addition to fulfilling technical roles. Some in-line specialists work alongside contracted aid project consultants.

While some high-level objectives and priorities areas were agreed at the 2003 Ministerial Forum in Mt Lofty, a performance monitoring framework outlining specific objectives and performance indicators to assist in the evaluation of progress and achievements is still under discussion.

Objectives and Scope

In line with both Governments' commitments to strengthened aid effectiveness, and in light of the ECP being a new and high-cost approach to development assistance in Papua New Guinea, the review will be broad in its scope.

The overall objective of the review is to assess what has been achieved to date by the ECP, including the quality of the management and coordination structures and processes and, to draw on these findings and identify lessons learned to make recommendations about future support of this nature should Government choose to proceed to another phase of ECP.

The review will take account of recent ECP developments within and between the two countries which could have impacted on the arrangements, progress and effectiveness of the program.

Terms of Reference

The review team will examine the ECP's achievements to date including constraining and enabling factors and lessons learnt.

The review team will pay attention to the following key themes:

- the relevance of the program in terms of the appropriateness of the original design and objectives
- the effectiveness of the program to date in meeting the stated objectives
- early indications of the impact that the program might be having, and
- sustainability issues

The review will specifically examine key aspects of the ECP including:

- the focus of assistance (sectors and central / line / provincial)
 - including existing (non-ECP) forms of support for Police
- the nature of assistance (advisory / technical advice / capacity building)
- the balance, in terms of numbers, of ECP officers in relation to national counterparts
- the management of ECP officials – at the individual level (selection, tasking – terms of reference, nature of working relationships, performance management, and reporting)

- consideration of existing practices and processes (or the need for them) for employees in dealing with issues of concern which they might encounter in their work or the work place
- the broader coordination and management structures and processes [eg CACC Plus], and the coordination with the broader aid program, and
- the existing and proposed monitoring and evaluation framework
 - Including existing monitoring and evaluation mechanisms for Australian Government assistance to the Law and Justice; Economic and Public Sector; and Border Management and Security sectors, including assistance provided under ECP

In examining the nature of ECP assistance the review team will draw on the issues raised, lessons learned, and proposed future directions in the following key reports on capacity development in Papua New Guinea:

- Review of the Public Sector Reform Program June 2007
- Draft ECP Capacity Building Strategy
- Department of National Planning and Monitoring Working Paper on Technical Assistance based on the Paris Declaration on Aid Effectiveness Principles
- PNG Advisory Support Facility II: Evaluation findings and recommendations (including Annex 2: What Makes the PNG Advisory Support Facility successful?)

A comparison of achievements against the broad objectives of the program will be undertaken. Based on the above findings an assessment will be made on ECP's effectiveness. However this assessment may be limited by the lack of a monitoring and evaluation framework which details more specific expected outcomes and outputs.

Review Report

The final report prepared by the review team will include key findings on achievements to date and lessons learned with reference to issues of relevance, effectiveness, impact, and sustainability. The report will also include recommendations for addressing weaknesses and gaps and strengthening the effectiveness of the program, and coordination with the broader aid program.

It is expected that in addition to the report informing any future phase of ECP that it will also be a key report for future high level meetings between the two countries, such as Ministerial Forums.

Approach

The review will be a joint exercise carried out by a small team of jointly agreed suitably qualified individuals who have evaluation expertise and a deep understanding of Papua New Guinea and the public sector. The review team will be supported by a small joint secretariat to assist with logistics including documentation management and appointments.

The work of the review team will be overseen by Joint ECP Review Steering Committee who have been responsible for the development of the Terms of Reference, and will

undertake arrangements to contract team members, approve the review team's work program and final methodology, and review and comment on draft reports.

The review team will immediately develop a draft work program and proposed methodology for how they will carry out the assignment, including key evaluation questions for consideration and approval of the Joint ECP Review Steering Committee.

The review team will provide a draft report to the Governments of Papua New Guinea and Australia within 4 – 6 weeks of commencing the assignment. Following an agreed period for consideration and submission of comments on the draft by the Joint ECP Review Steering Committee the review team will provide the final report within 10 working days.

It is expected that the review will be completed prior to the next Ministerial Forum where the findings and recommendations will be presented as the basis for a discussion on the future of the ECP.

Methodology

The review process will include examination of key documents and a series of structured interviews and discussions with relevant stakeholders. An agreed list of relevant stakeholders will be provided to the Review Team including but not limited to

- Senior Papua New Guinean and Australian government officials involved in the management and oversight of the ECP Program (Chief Secretary, Secretaries Foreign Affairs , DNPM, DPM, AG, Transport, Defence, CAA, IRC, CS, Public Prosecutor, Papua New Guinea and Australian Head and Deputy Head's of missions in Papua New Guinea and Canberra, Minister Counsellor AusAID, ECP sending agencies, and DFAT and AusAID in Canberra)
- Senior Papua New Guinean officers who have ECP officials as members of their teams
 - Including a specific focus on agencies who have experience with different models of technical assistance and capacity building (including ECP)
- Papua New Guinea officers who are counterparts working closely with ECP officials
- A representative selection of ECP officers both current and past from a range of agencies and functions
- Other agencies that are currently not recipients of ECP employees
- Other relevant persons

Key Reference Documents

1. ECP Act
2. List of ECP Officials (as of November 2007)
3. Meeting Record (29th November 2004) CACC Plus meeting with Australia to coordinate ECP
4. ECP Implementation Matrix (February 2004) – summarizing actions as agreed in Joint Statement December 2003

5. Joint Statement from Australia – PNG Ministerial Forum in Mt Lofty (11th December 2003) – focus on proposed detail of ECP include broad objectives
6. Joint Statement between Australia and PNG Foreign Ministers (18th September 2003) on agreement to work towards a new package of assistance to assist PNG address social and economic challenges
7. Records of High Level Consultations: 2003 Cairns, 2006 Alotau, and 2007 Kimbe
8. Joint Papua New Guinea – Australia Development Cooperation Strategy (2006-2010)
9. Review of the Public Sector Reform Program June 2007
10. Draft ECP Capacity Building Strategy
11. Draft Joint Statement on Aid Effectiveness (Localising the Paris Declaration) including attachment Working Paper on Technical Assistance
12. PNG Advisory Support Facility II: Evaluation findings and recommendations (including Annex 2: What Makes the PNG Advisory Support Facility successful?)
13. List of relevant correspondence (attached) and including:
 - Letter (21st June 2007) Chief Secretary to Australian High Commissioner requesting review of ECP
 - Letter (19th July 2007) Australian High Commissioner to Chief Secretary agreeing to review of ECP
 - Letter (3rd August 2007) Chief Secretary to Australian High Commissioner providing details of government representatives to be involved in ECP review