



PACER-Plus Development Assistance Analysis:
No new money but still with strings attached

Pacific Network on Globalisation

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Introduction

Despite excluding over 85% of the Pacific Islands economies, PACER-Plus continues to be promoted as a development agreement supporting regionalism. With four countries having completed ratification it is more important than ever to look through the rhetoric and see that even the supposed 'benefit' chapters of PACER-Plus for the Pacific offers little of value.

Proponents frequently refer to PACER-Plus as a trade and development agreement, the inclusion of the Development and Economic Cooperation Arrangement was seen as a large part of the 'development' plus rhetoric. However, what the Arrangement results in, is aid money, tightly controlled by Australia and New Zealand to flow to areas that will make Forum Island Countries (FICs) uphold their commitments on market access, ultimately benefiting the two metropolitan Parties. As Australia's then Minister for International Development stated in regards to its Aid programs “we owe it to the taxpayers to ensure that we are spending our aid money in a way that provides a direct benefit to them”.¹

Non-binding with a veto after five years

A critical feature of the Development and Economic Cooperation Arrangement is the fact that it is an “Arrangement” like the one on Labour Mobility and as such is in no way legally binding. The funding promises for the Work Programme and other developmental aid are in no way enforceable and can be withdrawn if and when Australia and New Zealand see fit.

The ongoing nature of the Arrangement is dealt with in Paragraph 12 which states:

This Arrangement and accompanying Work Programme will commence on the date that PACER Plus enters into force. The Arrangement and accompanying Work Programme will operate for a period of five years, at which point they will be reviewed by the Joint Committee and may be renewed for a further five years. Any further renewal of the Arrangement and accompanying Work Programme will be subject to the mutual consent of the Participants.

It is important to note that the funding for the Arrangement and Work Programme exists for only five years and then will be up for review by the Joint Committee. The need for “mutual consent” for any further renewal provides all Parties an effective veto – however a veto is, in reality, of interest only for Australia and New Zealand as they control the money. The review and veto power for Australia and New Zealand also offer them additional leverage for ongoing discussions within PACER-Plus regarding additional liberalisation commitments, effectively handing the donor governments the power to insist on greater market access commitments in periodic reviews of other areas of PACER-Plus (like services or investment) if the FICs want a favourable outcome of the evaluation. Again, Australia and New Zealand have managed to achieve an outcome that retains their control over the processes attached to PACER-Plus.

Underscoring how little a 'win' the Arrangement is for FICs is the push from New Zealand to ensure that the funding promises come from existing aid budgets. As New Zealand stated, that “Officials will seek to manage the resource implications within current allocations including through ODA-funded state sector activities in the Pacific.”² Australia has indicated that the funding will come from future allocations for aid to the region, stating “The funding attached to PACER Plus would come out of the part of the [aid] allocation that's not programmed in the future years, so it's not coming explicitly out of a program.”³ Whilst it may not be being taken from a programme it is taken

1 'Aid is not charity': minister rebuffs request from Papua New Guinea, Sydney Morning Herald, 28 March 2017, <http://pina.com.fj/index.php?p=pacnews&m=read&o=149730221358daccdc758fbb2b8272>

2 New Zealand Ministry of Foreign Affairs and Trade, 2017, Pacific Agreement on Closer Economic Relations (PACER) Plus National Interest Assessment, <https://www.mfat.govt.nz/assets/FTA-Publications/PACER-Plus/PACER-Plus-National-Interest-Analysis.pdf>

3 Comments attributed to Ms Cawte, from DFAT during the Australian Parliament Joint Standing Committee on

away from future aid projects with its diversion to PACER-Plus. This lack of additional funding being provided as part of the Work Programme means that all that is being accomplished is a re-organisation of existing aid programs and potentially future aid budgets, diverting funds away from other areas and into the activities that ensure the FICs comply with their commitments (and market access obligations) for Australia and New Zealand. So poor is this offer of development assistance that the Australian Parliamentary Joint Standing Committee on Treaties noted:

“that the development assistance identified in PACER Plus is coming from the existing aid budget, and so would likely have been expended as aid to Pacific Island countries anyway. It is not clear how tying this expenditure to PACER Plus implementation is likely to provide a greater benefit to Pacific Island countries than it otherwise would”⁴.

The same Committee was so worried about the potential impacts of PACER Plus that it recommended:

“part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the Agreement, and where necessary, provide funds to Pacific Island countries to assist relevant development outcomes”.⁵

It is a reflection on how low the outcome is for the FICs that an Australian Parliamentary Committee recommends that money be set aside to monitor the impacts of a so-called development agreement. This only doubles down on the negatives as any money being used to monitor the impacts of PACER-Plus ends up taking money away from the current aid allocations meaning that FICs would not only end up with the burden of the commitments of PACER-Plus but that some of the existing aid budgets would be lost as it was diverted to assessing the impacts of this trade deal!

Ironically, the development that will come from this Arrangement will in fact be of benefit for exporters from Australia and New Zealand as PACER-Plus, and the development assistance that is spent, ensures that the commitments of FIC Parties are implemented.

Access to funds impacts PACER-Plus ratification

In October 2018, the Cook Islands government announced its intention to put its ratification on hold over access to the Development Assistance package. The Cook Islands' status as a developing country under the OECD's Official Development Assistance (ODA) criteria is under review with it potentially graduating to developed country status. According to the press release from the Cook Islands Government, it has placed its ratification of PACER-Plus on hold following discussions amongst PACER-Plus officials where “it became evident it was unclear whether the Cook Islands would still be eligible for the PACER Plus ODA implementation package, should it graduate from developing to developed status under OECD's ODA criteria.”⁶

The press release also went on to add:

“The obligations on parties to PACER Plus are costly to implement, binding and endure as long as the Agreement is in force” said Deputy Prime Minister Brown. “To expect a country like the Cook Islands, with very little in the way of exports to take on those implementation costs without assistance through the PACER Plus ODA implementation package is

Treaties hearings on PACER-Plus, report available at

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/NuclearFuel-France/Report_179/section?id=committees%2freportjnt%2f024162%2f25858#footnote51target

4 Parliament of Australia, Joint Standing Committee on Treaties, *PACER Plus Agreement*, available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/NuclearFuel-France/Report_179/section?id=committees%2freportjnt%2f024162%2f25858#footnote51target

5 Parliament of Australia, Joint Standing Committee on Treaties, *PACER Plus Agreement*, available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/NuclearFuel-France/Report_179/section?

6 Government of the Cook Islands, 31 October 2018, *Cook Islands ratification of PACER Plus Agreement on Hold*, press release, available at: <http://www.pina.com.fj/?p=pacnews&m=read&o=14483931075bda6137343914c9dcfb>

untenable. Government has therefore put our ratification of PACER Plus on hold whilst we review the implications of ODA graduation on our obligations and entitlements under PACER Plus.”⁷

Under Chapter 10, the definition of the Work Programme established under the Arrangement make it clear that it is for “developing countries”, stating:

Work Programme means the programme of development and economic cooperation activities mutually prioritised and determined by the Parties taking into account the needs identified by the developing country Parties, under the relevant components.

Throughout Chapter 10 the terms “developing country Parties” and “Forum Island Countries” are used, seemingly interchangeably at times whilst in the Arrangement there is no use of the former term, only the latter (including in using it when discussing the broader trade and investment related assistance).

The Cook Islands already have existing market access to Australia and New Zealand and an already significantly liberalised economy and as such “the development package and Aid for Trade commitment from Australia and New Zealand was a significant consideration in Government’s decision to sign PACER Plus.”⁸ With the development component of PACER-Plus equalling approximately AUD\$555,000 per country per year (for five years) it is an stinging indictment on the agreement that there are so few benefits that it isn't worth pursuing for just over half a million dollars. The issue of accessing the existing aid allocated to the region but under PACER-Plus mechanisms appears to have been resolved with the Cook Islands now progressing with ratification and expecting “immediate benefits”.⁹

The Development and Economic Cooperation Work Programme

The Work Programme aims to assist in the implementation of PACER-Plus and is comprised of six components (with flexibility for emerging issues).

Establishment of the PACER-Plus Implementation Unit

In order to implement PACER-Plus as well as the Work Programme a PACER-Plus Implementation Unit is being established “under the umbrella of the Pacific Islands Forum Secretariat (PIFS), to assist the Joint Committee and the participants to implement the Agreement”.¹⁰ A Budget subcommittee will also be established in the Unit and it will contain representatives from Australia (2); New Zealand (1), FICs (2) and Unit officials (2). Some of the functions the Unit will perform include:

- (i) provide information to the Joint Committee to assist in decision making and implementing decisions;
- (iv) coordinate the development of the Work Programme, including liaising with the subsidiary bodies and national focal points;
- (v) develop and maintain a Monitoring and Evaluation Framework for the Joint Committee’s approval;
- (ix) support Participants in the promotion of the Agreement to key stakeholders such as business and industry, including through the development of communications strategies,

7 Government of the Cook Islands, 31 October 2018, *Cook Islands ratification of PACER Plus Agreement on Hold*, press release, available at: <http://www.pina.com.fj/?p=pacnews&m=read&o=14483931075bda6137343914c9dcfb>

8 Government of the Cook Islands, 31 October 2018, *Cook Islands ratification of PACER Plus Agreement on Hold*, press release, available at: <http://www.pina.com.fj/?p=pacnews&m=read&o=14483931075bda6137343914c9dcfb>

9 Radio New Zealand International, *PACER Plus set to come on stream later this year – Cooks Deputy PM*, February 21 2020, <https://www.rnz.co.nz/international/pacific-news/410016/pacer-plus-set-to-come-on-stream-later-this-year-cooks-deputy-pm>

10 Implementing Arrangement for Development and Economic Cooperation Under the Pacific Agreement on Closer Economic Relations Plus, Attachment A: PACER Plus Development and Economic Cooperation Work Programme

tools and resources.¹¹

The Implementation Unit will prepare annual programmes that will be presented to the Joint Committee for approval; the Joint Committee will meet during the annual Forum Trade Officials Meeting – an annual meeting that has only met once in the past 3 years.

It is clear from the structure of the Implementation Unit that Australia and New Zealand will be keeping a close grip on how it proceeds. Firstly is the problematic location of the Unit within the PIFS, a secretariat long seen as doing the work of its main donors - Australia and New Zealand. Secondly the number of positions allocated to the metropolitan powers on the budget subcommittee will allow them to wield their influence significantly as well as maintain constant scrutiny on the progress of implementing the Agreement. Thirdly the reporting of the Joint Committee to the Forum Trade Officials Meeting offers yet another avenue for Australia and New Zealand to exert pressure of FIC officials as has been seen in that forum for many years.¹²

What's included?

The Arrangement states the Australian Government will provide AUD\$19 million to fund the management and delivery of the Work Programme whilst the Government of New Zealand will provide NZD\$7 million to fund the management and delivery of the Work Programme.¹³ This money will be allocated across 5 years and amongst all the FIC Parties. As of February 2020, this will translate to approximately AUD\$555,000 per FIC per year.¹⁴

It is worth stating again that whilst the 'understanding' is that Australia and New Zealand will provide such funding, this is a non-binding commitment and can be withdrawn whenever.

Components of the Work Programme

The Scope and Objective of the Work Programme is articulated in Chapter 10 Development and Economic Cooperation Article 2 (2):

The Parties agree to improve and complement their existing development and economic cooperative partnerships in trade and investment related areas, taking into account the needs that are identified by the developing country Parties; and mutually prioritised and determined by the participating Parties. In elaborating areas of partnership, the Parties shall take account of the different levels of development and capacities of the Parties.

Whilst the objective is “taking into account the needs” that are identified by the developing country Parties, that decisions are to be “mutually prioritised and determined by the participating Parties” brings back the power for Australia and New Zealand to be able to veto any decisions on the projects undertaken.

The Work Programme is comprised of six components:

1. Rules of Origin and other Aspects of Implementation of Tariff Commitments
2. Customs
3. Sanitary and Phytosanitary Measures
4. Technical Regulations, Standards and Conformity Assessment Procedures
5. Trade in Services
6. Investment

11 Implementing Arrangement for Development and Economic Cooperation Under the Pacific Agreement on Closer Economic Relations Plus, Attachment A: PACER Plus Development and Economic Cooperation Work Programme

12 PANG's reports “Speaking Truth to Power” and “Big Brothers Behaving Badly” have documented the behaviour and power politics of PIF meetings of trade officials and ministers.

13 Paragraph 2 and 3 of Implementing Arrangement for Development and Economic Cooperation Under the Pacific Agreement on Closer Economic Relations Plus

14 This is an approximate based on exchange rate conversion.

A brief outline of the component, its objective and some indicative activities can be seen below:

Work Programme Components		
Component	Objective	Indicative Activities
Rules of Origin and other Aspects of Implementation of Tariff Commitments	...Rules of Origin and other Aspects of Implementation of Tariff Commitments	<p>4. Assist FIC governments to develop procedures to administer documentary evidence of origin provisions, including to undertake verification of origin;</p> <p>5. Assistance with the transposition of earlier HS Codes to later versions.</p>
Customs	...to promote cooperation among the Customs Administrations of the Participants and support customs cooperation activities	<p>1. Assistance for implementing an automated system or upgrading an existing automated system;</p> <p>2. Training of officials and private sector to acquire expertise in customs procedures including classification, valuation and risk management;</p>
Sanitary and Phytosanitary Measures	...to help build the capacity of agencies responsible for the implementation of SPS policies and procedures; build business awareness of the application of SPS measures consistent with the principles in the SPS chapter...	<p>1. Capacity building on developing and enforcing export certification systems;</p> <p>2. Technical assistance to improve industry compliance with export certification systems;</p> <p>3. Assistance to establish or strengthen capacity to manage sanitary and phytosanitary risks including food safety.</p>
Technical Regulations, Standards and Conformity Assessment Procedures	...to support joint efforts in the fields of technical regulations, standards and conformity assessment procedures; assist in promoting mutual understanding of each Participant's Technical Regulations, Standards and Conformity Assessment Procedures	<p>1. Assistance in the adoption and application of technical regulations, standards and conformity assessment procedures;</p> <p>2. Assistance to improve technical analysis, product testing and certification (including organic certification) of local products to ensure that they meet international standards</p>
Trade in Services	to facilitate increased cross-border flows of services among the Participants, by assisting them to adapt and improve regulations affecting services trade, building on the reductions in barriers to trade in services embodied in the Agreement.	<p>1. Assistance in developing and strengthening qualifications frameworks in consultation with relevant competent agencies;</p> <p>2. Assistance to explore possible recognition of qualifications in sectors of comparative advantage between national competent bodies in the</p>

		Participants; 3. Assistance with strengthening the capacity of the FICs to regulate services, according to international standards and benchmarks, particularly in the financial and telecommunication sectors;
Investment	...to facilitate the flow of investment across the participants, by deepening and broadening linkages and assisting them to address impediments to expanding investment	1. Assistance to enhance capacity of participants to facilitate investment flows including through the private sector; 2. Assistance to undertake legislative reforms that enhance the investment and business operating environment, including with regard to public enterprises; 3. Assistance to assess and improve the investment climate with the involvement of the private sector.

The Work Programme can be broken down into those of benefit to the FICs and those of benefit to Australia and New Zealand. Whilst none of the components of the Work Programme are clear cut the political and economic realities that they exist in impact the interests and benefits at play.

Benefit to the FICs: Rules of Origin and Technical Regulations, Standards and Conformity Assessment Procedures/Sanitary and Phytosanitary Measures

The Rules of Origin (ROO) component of the Work Programme has the best opportunity to be of benefit to the FICs.

The restrictive ROO associated with the SPARTECA agreement has long been something that FIC exporters have struggled to meet, undermining any ability to take advantage of the duty-free, quota-free market access to Australia and New Zealand that they had. Whilst the ROO flexibilities under PACER-Plus are some slight improvement on SPARTECA they are still problematic as has been elaborated in the Trade in Goods analysis. The ROO component of the Work Programme however can assist FICs and FIC businesses to comply with the ROO requirements opening up the potential opportunity for greater export opportunities for FICs.

The impact of the Work Programme relating to the Technical Regulations, Standards and Conformity Assessment Procedures and Sanitary and Phytosanitary Measures depends on how it is implemented.

The objective of the Technical regulations component aims to support joint efforts and mutual understanding of each Parties technical standards and regulations and strengthen information exchanges on such. Such activities may provide the FICs with a better understanding of the standards needed to comply with for FIC exporters to successfully export their products into Australian and New Zealand markets. Whilst the efforts to better understand regulations and promote harmonisation across Parties may be of benefit to FICs it's important that such exercises are not used to ensure that Australian and New Zealand regulations are pushed over those in the FICs for the benefit for A/NZ exporters – Australia has recently argued that influencing global

standards and seeking conformity can be of direct benefit for their producers.¹⁵

The assistance associated with the SPS component relate more to the application of the Chapter as well as ensuring strengthened cooperation between Parties on SPS matters. Like the restrictive ROO issues, the ability of FIC exporters to meet the high standards of Australian and New Zealand quarantine/SPS standards has proven a barrier to further FIC exports. Whilst this component may result in a better dialogue surrounding the barriers for FIC exports the benefits will truly only come with development assistance to help the FICs comply with the quarantine barriers in Australia and New Zealand, something that is yet to be determined. As the Work Programme currently stands assistance to ensure the application of the SPS Chapter is of little benefit especially considering Vanuatu, Solomon Islands, Samoa, and Tonga already apply the WTO requirements on SPS and the FICs who are not WTO members have lesser requirements to comply relevant to their capacities.

Beneficial to Australia and New Zealand: Custom, Trade in Services and Investment

For Australia and New Zealand, PACER-Plus will result in the FICs undertaking binding commitments on a range of issues relating to trade in goods, services and investment. The Work Programme offers the opportunity to ensure that those commitments are implemented as well as potentially further enhanced.

Whilst the FICs have made substantial commitments on market access for trade in goods, the next step to make Australian/New Zealand exports more competitive is to streamline their movement through FIC customs procedures. In this regard the aim of the Customs component of the Work Programme will be reflected in “efficient and economical Customs Administration and expeditious clearance of goods”, and “simplified and harmonised customs procedures”. Whilst some may argue that this will benefit the FICs by reducing the costs of imports there can be no denying that this is of clear benefit to Australian and New Zealand exporters and places them at a competitive advantage against other exporters as well as domestic producers.

The Trade in Services and Investment Components need to be viewed in the context of the existing trade (im)balance. Whilst some FICs may have a significant tourism industry to boost their exports, Australia and New Zealand are the main investors in the region, particularly in the service areas. As such the commitments undertaken in PACER-Plus that relate to services and investment are predominantly for Australian and New Zealand investors and service exporters and the Work Programme will further their interests. The aim of the Components to result in “improvements in the investment climate in participating countries” and “streamlined and harmonised regulatory arrangements which facilitate trade in services” are little more than ensuring that the regulations in the FICs prioritise being as 'pro-business' as possible for investors. Such work does little for ensuring that development is focused on the needs of the FICs and their people and instead puts the needs of foreign investors above the right of FICs to determine their own development.

Broader Trade and Investment Related Assistance

During the negotiations on PACER-Plus, there was an insistence that any development component must include assistance to support FICs to take advantage of any outcome. The Solomon Islands former Trade Negotiations Envoy, Robert Sisilo stated as such in 2013 that:

“for PACER Plus to live to its full potential, ANZ should provide FICs with new and additional resources to help address the supply-side and other trade-related constraints that prevent us from increasing and diversifying our trade. ANZ have indicated in general terms

15 Commonwealth of Australia, 2017, *2017 Foreign Policy White Paper*, accessed at <https://www.fpwhitepaper.gov.au/>

that they are prepared to consider our request, but have not been very forthcoming.”¹⁶

This has been reflected in the inclusion of “Broader Trade and Investment Related Assistance” in the Implementing Arrangement for Development and Economic Cooperation.

The mutually reached understandings that include the *Broader Trade and Investment Related Assistance* aims “[t]o maximise the benefits from the expected liberalisation of the trade and investment environment that will flow from PACER Plus”.¹⁷ It's worth noting the language that simply states that the benefits “will flow”, it is presented as a certainty, a fact that warrants no further critique.

The assistance provided under this banner will “include funding for PACER Plus related projects, will complement and be additional” to the Work Programme.¹⁸ “Taking into account” the individual priorities of the FICs, the assistance will meet the definition of Aid for Trade as determined by the OECD and include¹⁹:

1. Trade policy and regulations;
2. Economic infrastructure;
3. Building productive capacity; and
4. Trade-related adjustment.

Under the Arrangement, Australia and New Zealand state that they “will approve an Aid for Trade funding target” of 20% of their foreign aid budgets.²⁰

Whilst it may sound like the FICs demands for additional assistance to ensure that they can take advantage of any outcome under the Arrangement has been achieved, there are few guarantees. The language here emphasises the flexibility for Australia and New Zealand to not fulfil their promises – the Arrangement is already non-binding and contains merely a 'target' to be aimed for, something that would be 'achieved' if they set the target and did nothing further. The projects funded under this assistance will be the “needs identified by the FICs and be mutually prioritised and determined” by Australia/New Zealand and the individual FIC.²¹ The key phrase here being “mutually prioritised and determined”, again Australia and New Zealand retain the final say in any project and will ensure that it meets the requirements of their foreign aid budgets, including the need for projects to “promote Australia's national interest”.²²

The lack of guaranteed control of the decisions of this support undermines the ability of FICs to determine for themselves just what development assistance they need. Instead they are being offered aid projects that may be of benefit to them but will also come with benefits for the donors. Ultimately this Arrangement may offer some development benefits for the FICs but this cannot mean that the benefits that will flow to Australia and New Zealand should be ignored.

16 “Time for Australia and New Zealand to give concessions in PACER Plus”, 16 December 2013, Solomon Star, accessed on 10/10/2017 at <http://www.voiceofmelanesia.com/2013/12/16/smol-melanesian-na-pasifik-nius-digest-909/>

17 Paragraph 4 of the Implementing Arrangement for Development and Economic Cooperation Under the Pacific Agreement on Closer Economic Relations Plus.

18 Paragraph 5 of the Implementing Arrangement for Development and Economic Cooperation Under the Pacific Agreement on Closer Economic Relations Plus.

19 Paragraph 6 of the Implementing Arrangement for Development and Economic Cooperation Under the Pacific Agreement on Closer Economic Relations Plus.

20 Paragraph 8 and 9 of the Implementing Arrangement for Development and Economic Cooperation Under the Pacific Agreement on Closer Economic Relations Plus.

21 Paragraph 7 of the Implementing Arrangement for Development and Economic Cooperation Under the Pacific Agreement on Closer Economic Relations Plus.

22 Department of Foreign Affairs and Trade, 2017, “Australia's Aid Program”, Commonwealth of Australia, <http://dfat.gov.au/aid/Pages/australias-aid-program.aspx>

Conclusion

The Development and Economic Cooperation Arrangement offers little to the FICs whilst conferring advantages to Australia and New Zealand. Despite the FICs wanting development cooperation as a key outcome of any PACER-Plus deal the final result has seen the FICs with nothing more than redirected aid monies from existing budgets that are controlled by Australia and New Zealand. The failure to secure additional aid money combined with the failure to have such commitments legally binding again demonstrates the uneven burden of commitments within PACER-Plus and lays bare the rouse that this deal was ever about development of the FICs.