



Law Council
OF AUSTRALIA

24 March 2014

Senator Ursula Stephens
Chair
Foreign Affairs, Defence and Trade Committee
Department of The Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator,

Re: Review of Australia's Overseas Aid and Development Assistance Program

I am writing to provide you with the Law Council's views about to the Senate Foreign Affairs, Defence and Trade Committee's Review of Australia's overseas aid and development assistance (ODA) program (Review). I note that submissions were due to the Committee on 7 February 2014 and that the reporting date is 27 March 2014. Nevertheless, having regard to the importance of the Review, the Law Council wished to make known its views.

Having regard to the Terms of Reference of the Review, the Law Council makes the following observations:

- The integration of AusAID into the Department of Foreign Affairs and Trade (DFAT) and recent announcements about Australia's aid policy is likely to affect Australia's international relations with recipient countries of Australian aid.
- A comprehensive review of Australia's aid and development obligations may be required in order to effectively align Australia's aid program with the broad scope of its commitments in the medium to long-term.
- Australia's ODA program must formally recognise and support the development of the legal profession, its peak organisations and tertiary legal education providers as equally important players in the law and justice sector. Failure to do so to date has impeded the effectiveness of Australia's activities to promote and strengthen the rule of law, particularly in the South Pacific Region.
- The Federal Government, having committed to meeting Australia's target to increase spending on ODA to 0.5% of gross national income, should publish a timeframe for doing so as soon as possible.

Australia's ODA program is currently undergoing significant change. In September 2013, the Federal Government announced a \$4.5 billion cut to Australia's ODA budget and that AusAID would be absorbed into DFAT. On 9 December, 2013 the Senate made a referral to the Senate Foreign Affairs Defence and Trade Committee to review the impact of these developments on Australia's capacity to meet its aid policy objectives and international commitments.

Since the reference was made, there have been several developments which are relevant to the outcomes of the Review and which the Law Council believes the Committee should take into consideration in the preparation of its Final Report:

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- Federal government announcements on 18 January and 18 February 2014 regarding the regional focus of Australia's ODA program and changes to the underlying purpose of Australian ODA expenditure;
- Australia's submissions to the United Nations Open Working Group on Sustainable Development Meeting 4-7 February 2014, regarding the post 2015 development agenda;
- The release, on 7 February 2014, of the Office of Development Effectiveness' report entitled *Lessons from Australian Aid: 2013 report on independent evaluation and quality assurance.*'

The Law Council has taken these developments into consideration when submitting these views.

Meeting Australia's ODA funding target

Following the 2013 Federal elections, the Federal Government confirmed its commitment to increasing foreign aid to 0.5% of gross national income (GNI) – subject to 'annual determination'.¹ This increase in ODA is one of Australia's key objectives in supporting the Millennium Development Goals.² The Law Council is concerned that the Federal Government has not yet provided a timeframe for meeting this target and submits that a revised timeframe for meeting a target for increased spending on ODA should be published as soon as possible.

Source and scope of international commitments

The Terms of Reference of the Review ask for consideration of the effects of the changes to Australia's ODA program on Australia's ability to deliver against its international commitments. Australia's international commitments in relation to international aid and development arise from various sources. These include: treaties; membership of international organisations; and bilateral and multilateral agreements for trade, aid and development, security and law enforcement. Critically none of the reviews of Australia's aid effectiveness or government policy statements since 2006 have considered the full gamut of these commitments and whether they impact on the delivery of Australia's ODA. The Law Council submits that a comprehensive review of Australia's aid and development obligations should be undertaken to inform future ODA policy development.

Integration of AusAID into DFAT

The integration of AusAID into DFAT has the potential to impact negatively on Australia's relationships with ODA partners by directing Australia's ODA through the lens of Australia's national security, economic and strategic interests. It should be noted that these interests have always been relevant to Australia's ODA program and that many other countries administer ODA through their foreign affairs departments. Notwithstanding this, DFAT's budget papers published on 18 February 2014 show that Australia's national and international interests will now explicitly underpin the funding of Australia's ODA program. The Law Council considers that careful consideration of this issue will be important to the future delivery of Australian ODA.

Law and justice sector: aid effectiveness

Over the past two decades international legal assistance projects have become increasingly relevant as an appropriate and low cost means to assist in strengthening

¹ See for example *Address to ACFID Chairs and CEOs Dinner* by the Hon. Julie Bishop MP, Minister for Foreign Affairs, on 30 October 2013.

² Australian Government, *Aid Budget Statement 2012-13*, page 3, available at: http://www.budget.gov.au/2012-13/content/ministerial_statements/ausaid/html/index_ausaid.htm, (accessed 27 January 2014).

social and economic stability and creating a sustainable environment in which bilateral trade can flourish. On 18 February 2014, the Federal Government affirmed that its ODA program would seek to “*build the critical institutions and the policies [that partner governments] need to facilitate trade and promote functioning economies.*”³ It is well recognised that the rule of law and good governance is an enabler of sustainable development.⁴ Law is the language of trade. The promotion of the use of formal systems of justice as a framework for domestic and international trade has always been a key priority of Australia’s ODA program in promoting economic growth and regional stability.⁵

The Office of Development Effectiveness’ (ODE) recent Report entitled ‘*Lessons from Australian Aid*’⁶ notes that development effectiveness should be leveraged through engagement with the private sector and civil society. In the ODE’s 2012 Report entitled ‘*Building on Local Strengths: Evaluation of Australian Law and Justice Assistance*’ (Law and Justice Report), the ODE found that in a climate of reduced funding, effectiveness of ODA in the law and justice sector is best achieved when its institutions and organisations are developed contemporaneously. It noted that:

Improvements in the capacity of any one agency will not lead to improved services without corresponding improvements in the other agencies and in their ability to function as components of an integrated system.”⁷

Notwithstanding this statement, the ODE’s 54-page Law and Justice Report does not use the words “*legal profession*” once, nor does it consider how the effective regulation of the legal profession might form part of an ‘integrated law and justice system.’ None of the many reviews of Australia’s ODA program since 2006, and only one Australian government policy statement on ODA issued since 2006,⁸ includes a definition of the law and justice sector which includes either the legal profession or its peak organisations.

The Law Council considers that Australia’s ODA program has, to date, failed to recognise the role of the legal profession and its peak organisations in developing and maintaining the rule of law. Excellent work has been done through Australia’s ODA program in the Asia-Pacific region in strengthening the capacity of governments, courts and security forces. However, in not engaging with the legal profession, Australian ODA in the Asia-Pacific region has not been as effective as it could have been. For example, while improving legal profession regulation has been identified as a key issue for combatting corruption in Papua New Guinea, it is not evident that steps have been taken to address regulatory issues under the *Legal Practitioners’ Act 1987*.⁹

³ Australian Financial Review. *Poverty taken off aid agenda*, 18 February 2014.

⁴ United Nations. *Progress report of the Open Working Group of the General Assembly on Sustainable Development Goals*, 18 February 2014. Available at <http://www.un.org/ga/president/62/ThematicDebates/adn/A-63-L1.pdf> (accessed 24 February 2014).

⁵ Recently this commitment was affirmed in Australia’s written statement submitted to the most recent meeting of the Open Working Group of the General Assembly on sustainable development goals from 3-7 February 2014 in New York. Australia submitted that the post 2015 development framework “*should include goals and targets on governance and the rule of law, peace, stability and justice for all.*” See Troika Statement of Australia, Netherlands and the United Kingdom. *OWG 8 discussion on conflict prevention, post-conflict peacebuilding and the promotion of durable peace, rule of law and governance*. Available at <http://sustainabledevelopment.un.org/index.php?menu=1680> (accessed 17 February 2014).

⁶ Office of Development Effectiveness. *Lessons from Australian Aid: 2013 report on independent evaluation and quality assurance*, Canberra, January 2014.

⁷ Office of Development Effectiveness. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance*, Canberra, December 2012. At page xi.

⁸ Australian Government. *Australia’s Framework for Law and Justice Engagement with the Pacific*, June 2010, Canberra.

⁹ These issues stem from deficiencies in the legislative framework for legal profession regulation in Papua New Guinea. These legislative deficiencies, and the failure to address them, has meant that since 2006 over 50% of the Papua New Guinea Law Society’s annual budget has been committed to the prosecution of a single disciplinary matter – impeding its capacity to fulfil its statutory functions. Ineffective regulation enables corrupt practices to spread and become ‘normalised’ within the legal profession. This in turn carries the

A 2010 Report¹⁰ identifies that in Papua New Guinea there were approximately 1,100 incomplete complaint files against legal practitioners compared with less than 900 lawyers in the country.¹¹ By contrast, in 2010-11 the Victorian Legal Services Commission recorded 848 outstanding complaints¹² compared with approximately 13,000 lawyers in Victoria. The Law Council considers that insufficient support for regulation and representation of the legal profession has limited the effectiveness of Australian ODA in the law and justice sector in Papua New Guinea.

The Law Council submits that enhanced effectiveness of Australia's ODA delivery can be achieved through a greater emphasis in Australia's international law and justice sector development programs on improving the capacity of the legal profession and professional bodies to facilitate effective ongoing education, training and regulation of lawyers.

One way in which the Australian Government has contributed to improving the capacity of the legal profession by engaging with its peak bodies has been through its support of the Pacific Model Conduct Rules Project. The Law Council, in partnership with the South Pacific Lawyers' Association and with the endorsement of the Pacific Islands Law Officers Network (PILON), is currently conducting the Pacific Model Conduct Rules Project. Seed funding for the Project was provided by the Commonwealth Attorney-General's Department. The objectives of this Project are to analyse existing rules, legislation and regulations governing the legal profession in the South Pacific region and develop draft model rules, legislation and regulations which could be adopted with appropriate debate and modification by South Pacific countries. A report evaluating legal profession legislation in 16 Pacific countries will be released for public input and consultation in April 2014. The Law Council would welcome the opportunity to cooperate further with the Federal Government to achieve the objectives of this project.

Thank you for the opportunity to make these comments. The Law Council would be happy to expand upon them.

Yours sincerely,



MARTYN HAGAN
SECRETARY GENERAL

potential to affect the personal ethical framework of many of those who will comprise the future judges, members of parliament and statutory position holders in Papua New Guinea.

¹⁰ Prepared by Mr James Leach, General Manager, Professional Standards, Law Institute of Victoria. *Report to the Papua New Guinea Law Society and the Law Council of Australia re complaints processing difficulties encountered by the Papua New Guinea Law Society*, July 2010.

¹¹ As at 31 May 2011. Official figures taken from the South Pacific Lawyers' Association's *Needs Evaluation Survey for South Pacific Lawyer Associations*, Canberra, October 2011.

¹² With 1,984 new complaints received, and a total of 2,613 complaints resolved. Law Legal Services Commission. *Annual Report 2010-11*, Melbourne, 2011.