# **DEVELOPMENT**POLICY CENTRE

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# Aid law: what is it good for?

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#### SUMMARY

The Australian Labor Party pledged in 2015 to introduce aid legislation with certain features if elected. Twelve of the main donor countries get by with no significant aid legislation. The United Kingdom's aid volume legislation has real bite but risks a backlash. In eight other countries, legislation exists but has little practical effect. Nevertheless, there is a case—regardless of the 2016 election outcome—for Australian legislation in two apolitical, fundamental areas: aid monitoring and evaluation, and aid transparency.

#### KEY POINTS

- Australian aid legislation should require that all activities above some threshold size be reviewed at or before the mid-point of their lives, and that larger and experimental activities also be evaluated on completion.
- It should further require that specific, current information about aid-funded activities and partnerships be made publicly available within a short, fixed period of time after its production.
- The Australian National Audit Office should be required, by means of a provision in the legislation, regularly to assess the extent to which relevant government agencies have complied with the two requirements outlined above.

The Development Policy Centre is part of Crawford School of Public Policy at The Australian National University. We undertake analysis and promote discussion on Australian aid, Papua New Guinea and the Pacific and global development policy.

# Aid law: what is it good for?

#### INTRODUCTION

The Australian Labor Party has said that, if elected in July 2016, it will introduce legislation to specify the objectives of Australian aid, provide for rigour in its evaluation and ensure transparency in its reporting. Notwithstanding the reference to objectives, it appears the legislation's principal purpose would be to facilitate parliamentary and public scrutiny of Australia's aid program—in other words, to promote what is often described by the stock phrase, 'aid transparency and accountability'.

The concept of 'transparency and accountability' is slightly nebulous and also casts a wide net.<sup>1</sup> When examined closely, as when scanning relevant legislation, it tends to decompose into one or more of three narrower and clearer notions, related to each other yet quite different:

- a) demonstrating that aid has achieved its intended results and delivered good value for money, by means of monitoring, evaluation and structured reporting processes;
- b) ensuring that defined categories of information are freely available in line with domestic and international transparency commitments; and
- c) actively disseminating selected information in order to strengthen public understanding of and support for aid (sometimes referred to as 'awareness-raising').

Labor's mooted legislation could be expected to have something in common with the various bills for a Foreign Aid Accountability and Transparency Act that have recently been presented to, but so far failed to emerge from, the US Congress. It might also borrow from the aid transparency and accountability legislation that has previously been enacted by several donor countries, or from relevant sections of other countries' umbrella aid legislation.

1 Demonstrating that 'accountability' is an attractive but sometimes meaningless hook, one current US bill, introduced by Republican Congresswoman Renee Ellmers in January 2015, is titled 'The Accountability in Foreign Aid Act' even though its content has nothing to do with accountability in any sense of the term. The bill would do nothing more than redirect a portion of US aid to 'reimburse [US] states for funds spent on illegal immigrants', including for 'incarceration and detention'. The Ellmers bill is not to be confused with the bipartisan bill for a Foreign Aid Accountability and Transparency Act which is summarised later in this brief.

This is not the first time that aid law of broadly this type has been proposed for Australia—the idea comes up from time to time, and appeals strongly to the Australian Greens. They pursued broad, UK-style legislation in 2013 and gender-related legislation in 2015, and their 2016 election platform includes a commitment to quite extensive legislation that would, among other things, establish an independent aid agency.

But is aid legislation needed at all? If so, for what in particular? If not, is it at least harmless? This policy brief examines precedents in Australian law and overseas, and argues that there is a case for legislation, provided it is tightly focused in certain ways and avoids inscribing aid allocation criteria and executive-branch administrative arrangements into law. Key areas for legislation should be transparency and monitoring and evaluation. However, no other donor to date has actually done a good job of translating sensible requirements in these areas into law.

## PEER CONTEXT: TURNING PAPER INTO ROCK

The main donor countries are divided, not quite equally, between those in which aid policy is controlled by the executive branch of government and those in which it is, to some significant degree, written into law and therefore at least theoretically constrained by the legislature. The most significant pieces of overseas legislation are collected here, and summarised in Annex 1.

This division among donors is plainly odd. Certainly there are differences between their legal systems and their conceptions of the purpose of legislation. In some countries, the distinction between policy and law is less sharp than in others, so that certain laws are no more than policy statements packaged as legislation. Nevertheless, we find donors with similar legal systems and generally similar views about the function of legislation on each side of the divide.

Among the four largest aid donors, the United States and the United Kingdom have plenty of aid law; <u>Japan</u> and <u>Germany</u> have none of any

consequence. Of the 21 main OECD donors, nine have enacted some significant piece of aid legislation.<sup>2</sup> Most recently, the governments of France and Italy both put in place overarching legislative frameworks for their aid efforts in 2014, and the UK government legislated its commitment to meet the UN's 0.7% target for Official Development Assistance (ODA) as a proportion of Gross National Income (GNI) from 2015.

A review of other donor countries' aid legislation shows that in the majority of cases it simply chisels aid policy into law. Typically, such legislation sets out broad objectives and operating principles, gives some indication of geographic, sectoral and thematic priorities and says something about processes, particularly those relating to accountability and reporting. Sometimes, it is surprisingly specific. For example, Belgium's legislation specifies that voluntary contributions will be made to no more than 20 multilateral organisations. More often, though, aid legislation is very general.

No matter that it might be written in stone, it is rare for overarching aid legislation to have any more bite than white papers or other policy and strategy documents. Where it is not general or indeed vague, it is typically equipped with escape hatches. The UK's 2015 Official Development Assistance (ODA) target legislation does have substantial bite, as it creates a 'duty' on the part of the Secretary of State for International Development to meet the 0.7% ODA/GNI target. The UK's 2002 <u>umbrella legislation</u> has some bite too, but rather less. While it is often said that this legislation makes it 'illegal' to use British aid for purposes other than poverty reduction, the law says only that the Secretary of State must be 'satisfied that the provision of the assistance is likely to contribute to a reduction in poverty'. (Canada's 2008 aid legislation contains similar language.3) Moreover, the law only applies to aid administered by the UK Department for International Development (about 80 per cent of total UK aid).

### TRANSPARENCY AND ACCOUNTABILITY IN LAW

It might be expected that even if much aid legislation just has the character of policy-inlaw, legislative provisions specifically related to transparency and accountability would have some bite. After all, this is an area that lends itself to the creation of sharply defined processes, criteria and reporting requirements. Such provisions are certainly common in existing aid legislation but they are for the most part very limited in their scope and effect, operating principally to establish general reporting requirements and, less often, to mandate the conduct of awareness-raising activities. This is sometimes the case even where acts have phrases like 'transparency and accountability' or 'reporting and transparency' in their titles, as in the cases of Canada and the UK.

Almost all existing laws (Austria is the only exception) contain some kind of requirement for the relevant minister or agency to provide aid-related reports to parliaments on a regular basis. Belgium's legislation requires the Minister responsible for development cooperation to report to Parliament on a yearly basis the results of Belgian development efforts (relative to the objectives and principles set out earlier in the law) and recommendations on policy coherence for development. The much more concise Canadian act mentioned above requires the Minister to table in Parliament a report on spending, activity summaries, and Canada's engagement with the Bretton Woods Institutions within six months of the end of each financial year. It also requires the annual publication of a statistical report on Canada's ODA disbursements—effectively an equivalent to Australia's Green Book. The 2014 Italian law on development cooperation requires the preparation of annual report on development activities supported during the previous fiscal year, which is submitted to the parliament as an annex to a forward-looking 'three-year programming and policy document'. This is meant, among other things, to 'highlight results obtained' but looks to be an undifferentiated telephone book of factual information (almost literally—it even includes 'the number and title of Italian officers' employed by multilateral organisations).

<sup>2</sup> Among the 21 donors in question, the nine with significant aid legislation are Austria, Belgium, Canada, France, Italy, Korea, Luxembourg, the United Kingdom and the United States. Seven very small donors, who have only recently joined the OECD Development Assistance Committee, are not considered here.

<sup>3</sup> Canada's legislation says, 'Official development assistance may be provided only if the competent minister is of the opinion that it (a) contributes to poverty reduction; (b) takes into account the perspectives of the poor; and (c) is consistent with international human rights standards.'

# The US Foreign Aid Transparency and Accountability Bill

A bill for a Foreign Aid Transparency and Accountability Act appeared in the US Congress for the third time in 2015. Previous incarnations of it were introduced in earlier Congressional sessions, in 2012 and 2013; both failed to reach the floor before the end of those sessions. The new bill has bipartisan support and passed the House of Representatives in December 2015. A companion version received the unanimous support of the Senate Foreign Relations Committee in November 2015 and now awaits a vote of the full



Senate. All bills not enacted by the time the current (114th) Congressional session adjourns, most probably in December 2016, will die. (On one estimate, the bill has roughly a 20% chance of being enacted.)

The bill as it stands has two primary functions. The first is to cause the President to establish 'guidelines' whose effect would be to create rigorous standards and processes for the monitoring and evaluation of foreign development and economic assistance provided by 20-odd US federal agencies and departments. This involves as a prior step the establishment of 'measurable goals' and 'performance metrics' for all such assistance.

To determine what programs would be subject to evaluation, the bill specifies that 'all programs whose dollar value equals or exceeds the median program size for the relevant office or bureau' will be evaluated 'at least once in their lifetime'. It even dictates the table of contents for these evaluations (they must include an executive summary, methodology, key findings, appropriate context and data when available, and recommendations) and requires that they be made publicly available within 90 days of completion. It further calls for the active distribution of evaluation reports within the government and the development of a 'clearinghouse capacity' to collect and disseminate learning and thereby improve the effectiveness of future programs.

The bill's second function is to require federal government agencies to make available to the public, including through online publication, 'comprehensive and accessible' information on foreign assistance programs. As a prior step, all federal departments and agencies administering assistance must provide comprehensive quarterly reports on their programs to the State Department.

More specifically, the bill requires within 90 days of its enactment, and quarterly thereafter, an update of the State Department's ForeignAssistance.gov web site so as to make available 'comprehensive, timely and comparable' information on foreign assistance. To quell any doubts about what this might mean, the bill specifies that the information to be made available should include '(i) links to all regional, country, and sector assistance strategies, annual budget documents, congressional budget justifications, evaluations and summaries of evaluations ...; (ii) basic descriptive summaries for United States foreign development and economic assistance programs and awards under such programs'; and, on an award-by-award basis, '(iii) obligations and expenditures under such programs'.

The bill makes no mention of compliance with the International Aid Transparency Initiative (IATI) reporting standard, a point on which it has been previously criticised. This is curious given that US authorities established an IATI implementation schedule in 2012 and that the ForeignAssistance.gov website claims to hold data in IATI-compatible format. The bill also does not require the publication of project-related documents, other than evaluations.

The bill not only calls on the President to establish guidelines as above and report to Congress within 18 months with a detailed description of them, but also asks the Government Accountability Office (GAO)—the supreme audit institution of the US federal government—to report a year later with an analysis of the guidelines and 'a side-by-side comparison of the President's budget request for that fiscal year of every operational unit that carries out United States foreign development and economic assistance and the performance of such units during the prior fiscal year'. The GAO is not asked to monitor implementation of the transparency requirements of the bill.

The flurry of monitoring and evaluation activity entailed by the bill, were it enacted, would not come cheaply. The bill's 2012 and 2013 versions would have authorised departments and agencies to use up to 5% of their foreign development and economic assistance funds to fulfil these requirements. However, this provision was dropped in the 2015 version.

The UK's International Development (Reporting and Transparency) Act 2006 might appear to be more demanding than the examples just mentioned. It outlines in some detail what should be contained in annual reports that the Secretary of State is required to submit to Parliament. Much of this is expenditure information disaggregated in various ways—information that is already routinely reported to the OECD in annual statistical returns, and therefore readily accessible to anybody via the OECD's aid database. In addition, the Secretary of State is subject to some now dated requirements to report on progress toward the 0.7% ODA/GNI target, progress toward the Millennium Development Goals (MDGs) in developing countries, and the effectiveness of multilateral organisations and of British bilateral aid in pursuing the MDGs.

The UK legislation also requires the Secretary of State—it is tempting to say 'invites'—to include 'such general or specific observations as he [sic] thinks appropriate on the effects of policies and programmes pursued by Government departments on (a) the promotion of sustainable development in countries outside the United Kingdom, [and] (b) the reduction of poverty in such countries'. In the same vein, the Secretary of State is required to include 'such observations as he thinks appropriate about the contribution by Government departments to the promotion of transparency in (a) the provision of aid, and (b) the use made of aid provided'.

Prescriptive as the UK Act is about the annual report's table of contents, the Secretary of State is allowed a great deal of latitude to decide what is reported in relation to transparency (also policy coherence for development), and is required to report only in general terms on the self-assessed effectiveness of British bilateral aid. In short, the report called for by legislation is, aside from the 0.7% and MDG reference points, much the same as any departmental annual report. (In Australia's case, the requirement to produce such reports is contained in the *Public Service Act 1999*.)

In the United States, various versions of a bill for a US Foreign Aid Transparency and Accountability Act have, unlike their Canadian and UK counterparts, been quite detailed and demanding about demonstrating results and value for money, and about making aid-related information freely available. The box on Page 4 provides an account of the 2015 bill. However, this legislation has not been given high legislative priority despite bipartisan support, and has only a slim chance of being passed before it expires with the current Congress at the end of 2016. The reporting requirements contained in the US's mind-boggling umbrella legislation, the *Foreign Assistance Act of 1961*, are numerous but related to quite specific things.

It is noteworthy that in all the existing aid-related legislation, there are few provisions intended to ensure the impartiality of effectiveness judgements contained in mandated reports. (Here the US case would be exceptional if the currently proposed legislation were enacted: the supreme audit institution would on at least one occasion analyse the effectiveness judgements made by all US government agencies about foreign assistance.) The same point can be made even more strongly in connection with judgements about compliance with transparency commitments.

As for the impartiality of evaluation processes, there is lip service but little substance, at least in legislation. France's 2014 legislation does call for 'independent evaluation ... in accordance with the principle of transparent management' but does not specify what constitutes independence. The UK's International Development (Official Development Assistance Target) Act 2015 is slightly more fulsome, requiring the Secretary of State to 'make arrangements for the independent evaluation of the extent to which ODA provided by the United Kingdom represents value for money in relation to the purposes for which it is provided'. Again, though, 'independent evaluation' goes undefined. It does not mean, as might be assumed, 'evaluation conducted by a statutorily independent agency'—the UK's Independent Commission for Aid Impact has no legislative basis.4

Finally, some existing legislation mandates engagement with the public on development challenges and the donor country's actions in response to them. Belgium's legislation, for

<sup>4</sup> After consideration of the various ways in which its Independent Commission on Aid Impact might be set up, the UK government decided not to give the Commission statutory independence but rather to make it an 'Advisory Non-Departmental Public Body'—a quasi-autonomous non-governmental organization. It has functional independence but is essentially an advisory board with a direct reporting line to parliament.

example, refers to a need to ensure awareness among Belgian citizens of the problems of developing countries and the objectives of development cooperation, though it does not specify how this should be achieved. Italy's law provides for a degree of public participation, including through a triennial public conference, chaired by the minister, 'to foster the participation of citizens in the definition of development cooperation policies'. Luxembourg's law goes a step further by specifically permitting the minister to provide grants to NGOs in support of projects that promote development cooperation and raise public awareness (Article 16). <sup>5</sup>

Newer entrants to the ranks of donor countries tend to be more interested in legislating for awareness-raising, in part because they usually channel more of their aid through their own NGOs. For example, Article 15 of the Korean law refers to the importance of public relations and awareness, 'so as to secure a stable and growing base of public support for the necessity of international development cooperation and increase citizens' participation'. Related to this is the legislation's requirement to 'build and operate' a system to provide comprehensive project-related information (Article 15.3)—the only case in which, proposed US legislation aside, legislation requires the dissemination of information in a form other than annual reports to parliaments.

#### AUSTRALIAN AID LAW

We have seen that nine of the 21 main donors have some form of general aid law, and we have briefly surveyed what is in that body of law, which is not so very much. So, if the other 12 donors in this group get by well enough without such law, and it is not doing a great deal of work where it does exist, what is it—or might it be—good for in the Australian context?

In Australia, and in fact in most countries at most times, legislation can usually be described as having one of two main functions. Either it relinquishes a morsel of executive power, for example by passing it to an independent agency of some kind or submitting to the obligations

5 Many donors do this in varying degrees without need of legislation. It is a hazardous business, with or without legislation, as was demonstrated by the case of Australia's controversial (<u>Community Call to Action</u>' pilot program, established in late 2009. Critics accused Australia's aid agency, AusAID, of funding NGOs to lobby for an increase in its own budget allocation.

associated with international agreements, or else it defines certain actions or omissions as illegal such that they attract specified sanctions.<sup>6</sup>

Australia does not use legislation to create or dismember ordinary government departments and agencies—just as well given that machinery-of-government changes are frequent and extensive. No change in legislation was required to abolish the Australian Agency for International Development (AusAID), which at that point was an Executive Agency, in October 2013; it was done by executive order. However, legislation is used to establish certain organisations—statutory authorities—where they are thought to operate most effectively at arm's length from the executive branch of government, either because they play a specialised or else a potentially judgemental role.

Australian governments have enacted aid-related legislation from time to time for specific purposes (leaving aside routine budget legislation). Most notably, legislation was passed in 1982 to establish the Australian Centre for International Agricultural Research, a statutory authority within the Foreign Affairs and Trade portfolio. Legislation was also passed in 2011 to <u>create the Australian Civilian</u> Corps. And legislation has been passed as needed to formalise Australia's membership of international organisations, such as the World Bank's <u>International Development</u> <u>Association</u> (1960) and, most recently, the <u>Asian</u> Infrastructure Investment Bank (2015).7 Special appropriations acts were once used to formalise Australia's contributions to replenishments of the concessional arms of the multilateral development banks, but this practice was deemed unnecessary and discontinued long ago.

In short, Australia presently uses developmentrelated legislation to confer authority on a single statutory agency, and to formalise Australia's obligations to international organisations. The case of the Australian Civilian Corps legislation

6 Of the nine donor countries with significant aid legislation, two have used it mainly to create new administrative structures. Austria legislated in 2002 to create the Austrian Development Agency as a non-profit company. Italy's 2014 legislation is quite broad in coverage but its main effect is to create the autonomous Italian Agency for Development Cooperation.

7 One might expect such legislation to be repealed when Australia cancels membership of an international organisation, as happened in the case of the International Fund for Agricultural Development. Australia announced its decision to withdraw from the organisation in 2004 and the decision took effect in 2007. However, the 1977 legislation formalising Australia's membership remains in force.

is a clear exception. However, it is highly questionable whether legislation was actually needed to permit the operation of what is quite an ordinary aid mechanism—Kevin Rudd's vision for a 'deployable public service' had originally, in the period following the Australia 2020 Summit, been much grander and more complicated, and might well have required legislation.

For what, exactly, would the Labor Party legislate? Tanya Plibersek, Shadow Minister for Foreign Affairs and International Development, said the following in October 2015 (emphases added):

[T]oday I am announcing that a Shorten Labor Government will legislate for transparency and accountability to improve aid effectiveness.

In consultation with our partners we'll develop legislation that will set out our objectives for the aid program, and our requirements for the measurement and reporting of outcomes - including the production of the 'Blue Book'.

And among other things, we will set out our commitment to poverty eradication and reduction, gender equality, responsible environmental outcomes, institutional strengthening and anti-corruption.

Legislation will also set out our arrangements for the independent evaluation of the effectiveness of the aid program.

In short, Labor is offering about the same menu of items that one finds in aid legislation in most of the nine other countries that have it: objectives, themes, processes relating to transparency and accountability, and evaluation arrangements. Labor's menu even includes one of those strangely specific stipulations, in this case regarding the production of a Blue Book.

That the emphasis in Plibersek's opening line was on transparency and accountability, rather than objectives and themes, might or might not be significant. If something akin to the relevant Canadian or UK legislation is intended, then it is not very significant. If something closer to the proposed US legislation is intended, then it is significant. Whatever the details, any umbrella

legislation along the lines outlines by Plibersek would be a first for Australia's aid program.

#### PERILS AND PITFALLS

Given that Labor's proposed legislation runs on familiar rails, it faces familiar pitfalls. There are two main problems with manufacturing overarching aid legislation.

One is that once you start, you can't be sure where you will stop. Lael Brainard spoke in 2006 of a 'spaghetti bowl' of US foreign assistance legislation, objectives and organisations<sup>8</sup>—but already in 1953 a Cornell law professor had warned that American aid legislation was getting well out of hand. He argued that:

... the entire present hodgepodge of foreign aid legislation, the product of political expediency and compromise, could be supplanted by a short and simple act.

He went as far as drafting proposed replacement legislation that basically said 'leave it to the president', thus effecting a 'restoration of the balance of powers'.

The US experience shows also, because rather than in spite of the proliferation of legislation, that aid legislation is unnecessary for most purposes—even for the purpose of wresting control of aid policy from the executive branch. Despite the formation of numerous intentions to 'reform and rewrite' the 'antiquated and desperately overburdened' *Foreign Assistance Act of 1961* (these quotes are from the chair of the House Committee on Foreign Affairs in 2008) the US Congress has primarily influenced the allocation of US aid via the imposition of countless 'earmarks' negotiated in the course of battles about line items in appropriation bills.

A second and perhaps more insidious problem with aid legislation is that, where it makes stronger demands on aid agencies than on other agencies of government, it tends to embody a particular distrust not only of the executive, present or future, but of the very notion of aid. In the domain of accountability and transparency, in particular, it might reasonably be argued that citizens and their parliamentary representatives

8 She was at that time Vice President and Director, Global Economy and Development Program, at the Brookings Institution.

should expect equally high standards across all areas of government policy and spending.

Given these problems, it is tempting to conclude that aid law should be confined to specific purposes—formalising international agreements, and occasionally creating development-related institutions with statutory independence (it is conceivable, for example, that future governments might wish to create an Australian Overseas Private Investment Corporation, or an Australian Independent Commission for Aid Impact.)

The contrary view is that aid is special—both unusually important if considered in terms of potential impact per dollar spent, and unusually vulnerable to the vagaries of political change and fiscal fortune. In a democracy, according to this argument, it is perfectly legitimate to deploy legislation as a tool with which right-thinking present governments can tie the hands, in the nicest possible way, of wrong-thinking future ones. (In non-Westminster systems of government, it can be deployed by right-thinking legislatures to constrain wrong-thinking executive branches.) This concept of lashing governments to the mast is presumably what underlay the act of legislating 0.7% in the UK.

Whether and how far aid law does tie the hands of governments depends on the structure and composition of the parliaments concerned. And when the ties do come off, sooner or later, there is a clear risk that all that <a href="chaffing">chaffing</a> gives rise to a disproportionate force in the opposite direction. Already we might have seen something like this in Australia in connection with the conferring of Executive Agency status on AusAID in 2010, which was not even a legislative act. The integration, or indeed disintegration, of AusAID into DFAT three years later can be read as an over-correction in response to perceived over-reach.

The converse risk, admittedly a lesser one in terms of consequences, is that fear of backlash or the difficulty of negotiating a bill through parliament leads to the enactment of a rosy, vague and pointless piece of legislation—something that nobody would wish to spend political capital in repealing or amending, but also something that has no practical effect.

#### WHAT'S AID LAW GOOD FOR?— FUNDAMENTAL, APOLITICAL THINGS

If Labor were to legislate in a way that created too many onerous or restrictive duties on future governments, repeal and possibly some degree of backlash could be expected. If Labor were to legislate along mild lines, a future Coalition government might let the legislation languish, amend it with different but equally general language or, less likely, repeal it as a symbolic reassertion of executive authority over this element of foreign policy. Either way, no harm done, but also no good.

Labor, or indeed any prospective government, would do better to decide what it wants to do with the aid program before it decides whether legislation is needed, and what kind of legislation would be worth having. Probably, if elected, Labor is now bound to proceed with some kind of legislation, so it is the latter question that matters more. It is conceivable that a future Labor government might have need of some conventional pieces of aid legislation, for example if it were to resurrect the idea of joining the African Development Bank or if it were to create new special-purpose statutory authorities. However, policy priorities of that nature would be well down the track. If Labor wished to legislate quickly and usefully, and if it wanted the new legislation to be both durable and of enduring relevance, international experience suggests several 'don't's'.

First, don't legislate objectives, themes or geographic and sectoral priorities; leave those in the domain of white papers and other policy documents. (Very general guiding principles might be legislated, but will be of little use.) Second, don't legislate the details of mundane monitoring, reporting and evaluation processes; these things reliably happen anyway thanks to international norms and political defensiveness and some reporting already has a sufficient basis in other legislation. And third, don't legislate administrative arrangements except where statutory independence is an inherent requirement of an agency's mandate. In particular, don't legislate for independent evaluation unless the plan is, for better or worse, to create a statutorily independent aid evaluation agency.9 'Independent' is just too vague a term.

9 There are arguments for this but also arguments against, based in both logic and experience. Too much distance between an aid agency and its evaluator, it is often argued, degrades the quality of evaluation and the value of evaluation results.

8

But what about the 'do's'? Here, international experience is less useful as a guide—but the case of the proposed US legislation is instructive, even if that bill is in some respects very bureaucratic. Its practical core has three elements:

- a) the requirement that all activities above some threshold size be evaluated and the evaluations made publicly available within a fixed period of time;
- b) the requirement that specific, current information about aid-funded activities and partnerships administered by any government agency be made publicly available on at least a quarterly basis; and
- c) the requirement that the supreme audit institution play a role in assessing the extent to which performance information influences resource allocation.

The US bill certainly could have been better drafted. End-of-project evaluation is arguably less useful in general than mid-stream review, so the first of the above elements might be broadened in scope to require such reviews for most substantial projects, while relaxing the evaluation requirement to apply only to large or experimental programs. Transparency regimes are substantially weaker than they should be if they do not include a commitment to make available project-related documents, and this requirement is missing from the US bill, as is any reference to the now wellestablished IATI Standard. And a supreme audit institution might more profitably invest its time in assessing compliance with evaluation/review and transparency commitments than in trying to construct mechanistic models linking program performance to resource allocation.

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#### CONCLUSION

With the above defects of the US bill in mind, our 'do' list for any Australian government contemplating aid legislation (and that could as well be a re-elected Coalition government) would contain the following requirements, which double as our recommendations.

- a) All activities above some threshold size should be reviewed before the mid-point of their lives; larger and experimental activities should also be evaluated on completion;
- b) specific, current information about aidfunded activities and partnerships administered by any government agency, including activitylevel financial information, reviews, evaluations, designs and other project documents, should be made publicly available in accordance with the IATI Standard within a short, fixed period of time after its production; and
- c) the Australian National Audit Office should be required regularly to assess the extent to which relevant government agencies have complied with the requirements at (a) and (b).

Both monitoring and evaluation and transparency, unlike aid objectives, themes and allocation criteria, are essentially apolitical topics. Legislating clear requirements in these areas (and including a role for the Australian National Audit Office in assessing compliance) would be highly unlikely to lead to any backlash, and no government is likely to want to repeal or water down such legislation once it has been passed.

More importantly, legislating requirements in these two linked areas could be expected to have beneficial flow-on effects in other areas. Once it is possible for anybody to gain a clear and current view of what is happening down to activity level in the aid program, and also to see how effective activities and programs are assessed to be in expert reviews and evaluations, improvements can be expected to follow in areas such as priority-setting, resource allocation the management of poor activity performance and the alignment of programs with partner government priorities. If reviews or evaluations are tending to be whitewashes, this will quickly be perceived. Legislating for searching scrutiny is not the same thing as legislating for effective aid, but it might well be the best proxy.

### Annex 1: Existing aid legislation (as of June 2016)

#### Austria

<u>Federal Act on Development</u> <u>Cooperation (2002), including its</u> <u>Amendment (2003)</u>

- Supersedes the Development Aid Act of 1974.
- by promoting sustainable economic and social development; ensuring peace and human security; and preserving the environment and natural resources) and principles (which include respecting the aims of governments and populations; regard for cultural aspects and appropriate technology; gender equality; and responding to the special needs of children and people with disabilities).
- Specifies use of country systems.
- Allows for development cooperation projects to be contracted out.
- Forms the Austrian Development Agency as a limited non-profit company, and specifies its organisational structure (including the establishment of Supervisory and Advisory Boards) and financing arrangements.

#### Belgium

Loi relative à la Coopération belge au Développement

19 March 2013

- Sets out primary objectives (which include sustainable human development and inclusive economic growth) and principles (including alignment with UN conventions and pursuit of the 0.7% ODA/GNI target).
- Sets out priority themes and sectors (including human rights; decent and sustainable work) and identifies gender and environmental protection as cross-cutting issues.
- Places limits on the number of partner countries (max. 18) and multilateral organisations (max. 20), and the number of sectors in each partner country (max. 3).
- Establishes procedure for partnering with NGOs, and defines humanitarian aid and conditions under which it may be given.
- Calls for development of a consistent and standardised evaluation system.
- Requires the responsible Minister to report to Parliament on results of development cooperation efforts and recommendations on development policy coherence by 15 May each year.
- Calls attention to importance of raising awareness among Belgian citizens of the problems of developing countries and the objectives of development cooperation.

#### Canada

Official Development Assistance Accountability Act / Loi sur la responsabilité en matière d'aide au développement officielle

(S.C. 2008, c. 17)

28 June 2008; amended 26 June 2013

- Specifies that aid may only be provided if the relevant Minister 'of the opinion' that it 'contributes to poverty reduction; takes into account the perspectives of the poor and is consistent with international human rights standards'. (Disaster relief and emergency humanitarian assistance are exempted from these criteria).
- Requires the Minister to consult with governments, international agencies, and Canadian CSOs at least once every two years.
- Requires the Minister to report to the parliament each year (within six months of the end of each fiscal year) on spending, with activity summaries, and on multilateral engagement. Also requires a statistical report on the disbursement of ODA to be published within one year after the end of each fiscal year.

#### France

Loi d'orientation et de programmation relative à la politique de développement et de solidarité international

(loi no. 2014-773)

7 July 2014

- Sets out primary objectives (promoting sustainable development; promotion of democratic values and the rule of law) and principles.
- Aims to ensure continuity between emergency, reconstruction, and development aid; defines humanitarian action as being within development and international solidarity policy.
- Creates a National Development Council (with a gender-balanced membership) to facilitate consultations on development policy with NGOs, private sector and other actors.
- Promotes geographical and sectoral concentration of aid (antifragmentation), noting particular attention to the political and economic cohesion of Francophone countries.
- Promotes 'transparent management' supported by 'independent evaluation'.
- Authorises the French Development Agency (AFD) to manage development cooperation funds.
- Requires an assessment report summarising spending, activities of the AFD, and activities of EU and multilateral partners to which France contributes.
- Annexes a detailed policy document, including a results framework.
- Specifies that this law establishes the goals and directions of French development policy for five years, after which it is to be reviewed.

#### Italy

General rules governing international development cooperation

(Law 125/2014)

11 Aug 2014

- Replaces Italian *Law 49/1987* on Cooperation for Development.
- Sets out primary objectives (including to eradicate poverty and reduce inequalities; protect human rights; and prevent conflicts and support peace and reconciliation).
- Sets out key principles (including compliance with international effectiveness, efficiency, and transparency principles).
- Prohibits development funding allocations from being used (directly or indirectly) for financing military activities.
- Changes name of Ministry of Foreign Affairs to 'Ministry of Foreign Affairs & International Cooperation' (MFAIC).
- Establishes procedures for bilateral aid relations and participation in multilateral and EU programs.
- Requires the submission to Parliament of a three-year programming and policy document by 31 March each year, and a report on activities carried out/results obtained in previous year.
- Establishes the Inter-ministerial Committee for Development Cooperation and a National Council for Development Cooperation, and specifies their organisational structures and policy remits.
- Promotes education, awareness raising and participation of Italian citizens and civil society organisations in international solidarity and development, including through a national public conference to be convened every three years 'to foster the participation of citizens in the definition of development cooperation policies'.
- Establishes the Italian Agency for Development Cooperation and gives it 'organisational, regulatory, administrative, property, accounting, and budget autonomy' (Article 18).
- Establishes a Joint Committee for Development Cooperation in the MFAIC, which will approve all initiatives over €2m.
- Authorises an existing company to act as a development finance institution.
- Establishes regulations related to staff employed abroad as part of international development cooperation initiatives.

#### Republic of Korea

# Framework Act on Development Cooperation

(Act No. 9938)

25 January 2010; amended 25 July 2011 and 16 July 2013

- Sets out 'basic ideology and objectives' (including reduction of poverty; promotion of 'friendly relations'; contribution to resolution of global problems) and principles (including respect for UN Charter; respect for partners; sharing of development experiences).
- Obligates the state to implement coordinated policies for international development cooperation.
- Establishes a Committee for International Development Cooperation (max. 25 members, chaired by the Prime Minister) to deliberate on development matters, oversee implementation of development policies and plans, and select 'priority cooperation partners'.
- Establishes processes relating to the development of 'basic draft sectoral plans' every five years, and annual implementation plans.
- Grants oversight over loans to the Minister of Strategy and Finance, and grants to the Minister of Foreign Affairs.
- Requires the Committee to prepare guidelines on evaluation and dissemination of outcomes, and requires implementing agencies to report by 30 June each year.
- Requires implementing agencies to submit annual statistics on the status of development projects.
- Requires the state to devise public relations and national awareness campaigns about development cooperation efforts and outcomes, and to develop and maintain a system for disseminating this information.
- Calls on the state to 'endeavour to train' specialised human resources for development cooperation.

#### Luxembourg

#### Loi relative à la cooperation au développement et l'action humanitaire

6 January 1996; amended 9 May 2012

- Supersedes the 1982 <u>loi relative à la cooperation au développement.</u>
- Sets out primary objectives (including reduction and elimination of poverty through support of sustainable development).
- Creates a development cooperation fund, and specifies sectors of interest and cross-cutting emphases (including human rights and good governance).
- Requires the Minister to submit an annual report on the operation, revenue and expenditures of the fund.
- Establishes regulations related to NGO partnership, including accreditation and funding arrangements. Also permits the Minister to fund NGOs to carry out activities related to the promotion of development cooperation and general public awareness.
- Establishes extensive regulations related to the granting of 'development cooperation leave' for public servants.
- Establishes an Inter-ministerial Committee for Development Cooperation to advise on major directions and coherence of development policy.

United Kingdom		
International Development Act 2002  17 June 2002	<ul> <li>Repeals some provisions of the Overseas Development and Co-operation Act 1980.</li> <li>Authorises the Secretary of State to 'provide any person or body with development assistance if he [sic] is satisfied that the provision of the assistance is likely to contribute to a reduction in poverty' and 'assistance for the purpose of alleviating the effects of a natural or man-made disaster or other emergency' outside the UK.</li> <li>Defines forms of financial assistance that may be made available and their terms.</li> <li>Specifies conditions under which payments may be made to multilateral development banks and other international financial institutions.</li> <li>Establishes functions of and regulations related to the Commonwealth Scholarship Commission.</li> </ul>	
International Development (Reporting and Transparency) Act 2006  25 July 2006	<ul> <li>Requires the Secretary of State to submit a report to Parliament annually, including:</li> <li>Information on funding allocations (statistical information to be included is specified in a Schedule appended to the Act);</li> <li>An assessment of the year in which the 0.7% of GNI target is expected to be met;</li> <li>Progress made towards the achievement of the Millennium Development Goals (MDGs), and the effectiveness of the UK's multilateral and bilateral aid in pursuing the MDGs;</li> <li>Progress towards promoting untied aid;</li> <li>Observations on the effects of UK policies and programs on promoting sustainable development and reducing poverty, including specifically in relation to MDG8;</li> <li>Observations about the government's promotion of transparency in the provision of aid and the use made of aid, in relation to specifying future allocations; ensuring that aid supports clearly identified development objectives; promoting better aid management and reducing the risk of corruption; and improvements in monitoring.</li> </ul>	
International Development (Official Development Assistance Target) Act 2015  1 June 2015	<ul> <li>Creates a duty to meet the 0.7% of GNI target from 2015 on. Repeals relevant provisions of the International Development (Reporting and Transparency) Act 2006.</li> <li>In the event that the target is not met, requires the Secretary of State to give Parliament a statement explaining why the target has not been met and detailing any corrective measures taken.</li> <li>Requires the Secretary of State to make arrangements for the independent evaluation of ODA.</li> </ul>	

United States	
Foreign Assistance Act of 1961  (P.L. 87-195)  4 September 1961; many amendments	<ul> <li>Supersedes the Foreign Assistance Act of 1948 (also known as the Economic Cooperation Act of 1948).</li> <li>Sets out underlying ideology (e.g., foreign assistance as a necessity and responsibility of the US) and principles (including focus on addressing 'basic human needs' and long-term, equitable economic development).</li> <li>Amalgamates various existing aid efforts under a single coordinating agency (USAID; see Executive Order 10973).</li> <li>Sets out regulations around appropriations to specific sectors, organisations and funds.</li> <li>Restricts US assistance on the basis of violation of certain principles (e.g., pattern of gross human rights violations; child exploitation and conscription).</li> </ul>
Agricultural Trade Development and Assistance Act 1954  (P.L. 480)  10 July 1954	<ul> <li>Authorizes the President to negotiate the sale of surplus agricultural commodities to 'friendly' (non-Communist) nations in exchange for foreign currencies, instead of US dollars.</li> <li>Makes surplus agricultural commodities available in order to meet famine or other urgent relief requirements.</li> <li>Establishes the Office of Food for Peace, the primary US overseas food assistance program.</li> <li>Food for Peace program subsequently restructured by the Food for Peace Act of 1966 (P.L. 89-808); P.L. 480 formally replaced by the Food for Peace Act in 2008.</li> </ul>
Other legislation and congressional authorisations	Various separate permanent authorisations exist for some specific foreign aid initiatives and organisations such as the Peace Corps and the Millennium Challenge Corporation. Congress has also sometimes authorised major foreign assistance initiatives for specific regions, countries, or aid sectors in standalone legislation or within an appropriation bill (for example, the Freedom Support Act of 1992 and the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003).