Don't keep the change: an update on the asylum-seeker levy on Australia's aid program

Author : Robin Davies

Date : June 5, 2013

For a while there, it looked like the Australian aid program wasn't financing onshore asylum-seeker costs on any principled basis. It appeared the aid program was effectively paying an arbitrarily-determined levy, now applied twice at an annual rate of $375 million, back to consolidated revenue in order to offset spiralling costs borne by the immigration portfolio. There was no indication that anybody was actually assessing the expenditure of these funds for eligibility to be reported as Official Development Assistance (ODA), though eligibility was asserted. Nor was there any indication that funds not required for the advertised purpose—the care and sustenance of asylum seekers living in the community and waiting to have their protection claims heard—might be returned to the aid program. More recently, however, the situation might have taken a turn for the better.

Since I last wrote in February 2013 on the use of aid funds for onshore asylum-seeker costs, here and here, there have been several significant developments. First, in early May, the OECD Development Assistance Committee's (DAC) 2013 review of Australia's aid program criticised the manner in which the first $375 million was "shaved" from existing commitments in the middle of the 2012-13 financial year. The review said that this undermined the predictability of Australia's aid commitments and put programs at risk. It called, as the Development Policy Centre had previously, for transparency about what costs will be counted as ODA in the coming years and how they will be calculated (p. 52).

Second, the Government announced on May 13 that while funding would again be allocated in the 2013-14 aid budget for onshore asylum-seeker costs, it would be "capped" at the 2012-13 level of $375 million. The policy was described as follows in budget documentation. "To ensure predictable planning and management of the ODA budget, the Government will cap expenditure from the existing ODA funding envelope in any one year at $375 million. Any expenditure over this cap will be in addition to the ODA budget target for that year." (Blue Book, p. 146)

The introduction of the cap and also the inclusion of the phrase "in any one year" (that is, not just in 2013-14) was a good thing, though of course the commitment to a cap at any particular level is not strongly binding on this government nor even weakly binding on the alternative government. However, notably absent was any contemplation of the possibility of under-spending against this figure such that unspent funds might either be returned to the aid program, if time were to allow it, or else returned to consolidated revenue and deducted retrospectively from reported ODA (which, depending on the amount, could cause a shortfall against the relevant ODA/GNI target in any given year). Thus the cap appeared in reality to be a fixed levy on the aid program, the level of which had no evident basis in policy.

Then, in the third and most interesting development, on May 27 and 28 the Department of Immigration and Citizenship (DIAC) was questioned by the Senate Legal and Constitutional Affairs Committee, in a Senate

Budget Estimates hearing, on how ODA will be used for onshore asylum-seeker costs. Thankfully, DIAC's Secretary, Martin Bowles (pictured), contradicted his February 11 testimony that "it will … include the held detention network". (Hansard [pdf], February 11, pp. 33-34). Having apparently twigged that spending overseas aid on forcible detention is unsporting, his answer on this occasion was as follows. "The money here, identified as ODA within the asylum seekers area of my department, relates to people who are in the community either on a bridging visa or under a residence determination during their first twelve months. … If they spend time in detention, that time in detention does not go to the ODA component." (Hansard [pdf], May 28, pp. 19-20)

This broadly restores consistency with the terms in which the 2012-13 reallocation was announced by Mr Carr last December—though DIAC includes not only people on bridging visas but also people in community detention (Hansard [pdf], May 28, p. 22), which policy is also reflected in AusAID's 2013-14 Blue Book (p. 128). Essentially, therefore, ODA is being used to offset costs associated with the provision of accommodation, food, shelter, English-language training and other basic necessities for all asylum seekers outside institutional detention, for up to twelve months after their arrival.

The explicit exclusion of costs associated with institutional detention, like the cap on the level of funding to be drawn from the aid program, is, to put it mildly, a good thing. However, it begs a question that the Development Policy Centre has asked previously. Given that there are still relatively few asylum-seekers in the community—DIAC estimates 10,000 on bridging visas and 2,700 in community detention (Hansard [pdf], May 28, p. 22)—and given that $375 million per annum is a considerable sum, how can one be sure all this scarce aid funding is actually needed? At a cost per asylum seeker of almost $30,000 per annum, Australia would be spending well over twice as much as the average DAC donor that reports such costs.

This time, senators Cash and Rhiannon asked Mr Bowles how much of DIAC's 2012-13 ODA allocation for onshore costs had been spent. Interestingly, he said, "the early indications are that we do not think we will actually spend the entire $375 million this particular year". (Hansard [pdf], May 27, p. 34) In response to further questioning the following day he said, even more helpfully, "It is not a matter of saying, 'We are going to see 15,000 people and divide that by $375 million', because in fact if we spend $300 million that is what is marked as ODA". (Hansard [pdf], May 28, p. 22) His response was consistent with the following statement in AusAID's 2013-14 Blue Book. "Actual expenditure on ODA-eligible asylum seekers costs will vary depending on the number of arrivals and their length of stay in the community." (p. 146)

From DIAC's Senate Estimates testimony, therefore, we can reasonably conclude three things:

1. that AusAID, and the beneficiaries of its programs, quite probably experienced more pain than they needed to in 2012-13,
2. that the aid budget will quite probably be underspent and, other things being equal, the ODA/GNI target of 0.35 per cent will be missed in 2012-13, and
3. that there is in fact a specific, if undisclosed, policy basis in place for determining what onshore DIAC expenditure can be offset from the $375 million ODA allocation.

So now the impost on the aid program starts to look less like a fixed levy, and more like an upper estimate of likely requirements, with the actual requirements determined retrospectively on a specific policy basis and with the ODA outcome adjusted to take account of any shortfall against the upper estimate. This is all encouraging, at least relative to the picture painted in my opening paragraph.

But, even if one accepts the OECD consensus that some onshore asylum-seeker costs are a legitimate call on aid budgets, there's some unfinished business. For one thing, as noted above, the basis on which DIAC is determining the ODA-eligibility of expenditure remains undisclosed. DIAC's Senate Estimates testimony gave little cause for optimism that it will be disclosed anytime soon. It should be: the OECD rules are extremely vague and give wide latitude for interpretation, except in relation to the twelve-month limitation. A breakdown of actual 2012-13 costs should also be released once it becomes possible to prepare this. The DAC won't wait until its next review of Australia's aid program in four years' time to follow up on its recommendation for transparency and precision on this point. Any continuing lack of transparency, paradoxically, just might help reignite a debate within the DAC about the propriety of reporting any costs of this kind. As was remarked in the 2013 DAC review of Australia, "There are wide discrepancies in DAC members' interpretations of the rules for reporting on in-donor refugee costs. DAC members could work together to bring more clarity to these rules." (p. 52)

A second point is that the adoption of a principled basis for reporting relevant costs as ODA, while desirable, creates expenditure risk for the aid program. The risk of over-expenditure has been eliminated by the introduction of the cap. The risk of under-expenditure remains and, if DIAC is right, is likely to be realised in 2012-13. As noted above, this means programs were cut unnecessarily in the current financial year and that the 2012-13 ODA/GNI target might not be met. For 2013-14, there is less risk of precipitate cuts, as AusAID has this time been able to plan for the loss of another $375 million, but there is no less risk of an overall expenditure shortfall against what is this year a 0.37 per cent ODA/GNI target. As DIAC becomes better able to track costs in real time, consideration should be given to returning funds to AusAID's programs half-way through the financial year if it appears the full $375 million allocation will not be spent. There are always plenty of under-funded humanitarian operations to which any such windfalls might be directed in the latter stages of a financial year.

Overall, a hastily-devised policy might now be looking a little more respectable. At the same time, it is looking increasingly unlikely to be perpetuated by the Coalition should it win government in September. Shadow foreign minister Julie Bishop has recently criticised the use of aid for onshore processing as "outrageous" and "inappropriate" and the shadow parliamentary secretary for aid, Teresa Gambaro, is now beginning to develop an interest in some of the questions raised above, including how the $375 million figure was arrived at and what might happen to any unspent funds (Hansard [pdf], June 3, p. 160). The various developments since February almost certainly reflect the impact of effective public and parliamentary scrutiny, as there was every indication until recently that the $375 million annual impost would simply operate as a levy on the aid program, and would be reported in full as ODA, regardless of how it was actually spent.

Robin Davies is Associate Director of the Development Policy Centre.