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Senator Alex Gallacher
Chair, Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: fadt.sen@aph.gov.au

Dear Mr Gallacher,

INTERNATIONAL AID (PROMOTING GENDER EQUALITY) BILL 2015

Introduction

The LIV welcomes the opportunity to make this submission to the Foreign Affairs Defence and Trade Legislation Committee (Committee) in relation to the International Aid (Promoting Gender Equality) Bill 2015 (Cth) (the Bill).

The Law Institute of Victoria (LIV) is Victoria's peak body for lawyers and those who work with them in the legal sector, representing 18,000 members. The LIV advocates on behalf of our profession and the wider community; leads the debate on law reform and policy; lobbies and engages with government; and provides informed and expert commentary. This submission is informed by contributions from the LIV's Young Lawyers Section Law Reform Committee.

The LIV strongly supports the Bill's aims to:

- require Commonwealth aid officials to consider the impact of assistance on gender equality when making decisions about providing development and humanitarian assistance; and
- require the Minister for Foreign Affairs (Minister) to report to Parliament each financial year on how the Commonwealth has used international aid to promote gender equality.

The LIV recommends that the Committee gives further consideration to:

- requiring Commonwealth aid officials to consider the impact of assistance on other important development goals, consistent with the approach taken in the United Kingdom; and
- providing guidance on the content of the obligation to consider gender equality and requiring evidence that the obligation has been fulfilled in each case.

Gender equality is internationally recognised as an important step towards world development

Gender equality is vital to fulfilling world developmental goals. This is recognised at an international level by:

- Goal 3 of the proposed Sustainable Development Goals, which is to “[p]romote gender equality and empower women”;¹ and
- Goal 5 of the proposed Sustainable Development Goals, which is to “[a]chieve gender equality and empower all women and girls”.²

It is recognised by the Australian Government in Australia’s current aid policy – Australian *aid: promoting prosperity, reducing poverty, enhancing stability* (Australia’s Aid Policy)³ and performance framework – *Making Performance Count: enhancing the accountability and effectiveness of Australian aid*.⁴ Australia’s approach to promoting gender equality has been to appoint an Ambassador for Women and Girls to advocate on these issues, to set a target of 80% of investments that will effectively address gender issues in their implementation,⁵ and to invest strongly where there are persistent challenges and slow progress towards equality.⁶

These initiatives are commendable but do not go far enough towards addressing what is internationally recognised as one of the most important issues for world development.

The Bill goes further by introducing a duty to have regard to gender equality and a reporting obligation

A duty on decision makers to “have regard to” gender equality strengthens Australia’s commitment to gender equality

Section 4(1) of the Bill will require a Commonwealth aid official who proposes to make a decision relating to the provision of official development assistance to have regard to how the provision will contribute to reducing gender inequality when making the decision.

¹ The full list of goals and further information in relation to the goals is available at:
<http://www.un.org/millenniumgoals/bkgd.shtml>.

² As proposed by the UN General Assembly’s Open Working Group on Sustainable Development Goals. The full list of proposed goals and further information in relation to the goals is available at:
<http://www.un.org/en/development/desa/news/sustainable/owg-proposes-sdgs.html>.

³ Department of Foreign Affairs and Trade, *Australian Aid: promoting prosperity, reducing poverty, enhancing stability*, June 2014, available at <http://dfat.gov.au/about-us/publications/Pages/australian-aid-promoting-prosperity-reducing-poverty-enhancing-stability.aspx> (Australia’s Aid Policy).

⁴ Department of Foreign Affairs and Trade, *Making Performance Count: enhancing the accountability and effectiveness of Australian aid*, June 2014, available at <http://dfat.gov.au/about-us/publications/Pages/making-performance-count-enhancing-the-accountability-and-effectiveness-of-australian-aid.aspx>.

⁵ This is also a key target of Australia’s performance framework for the Australian aid program, *Making Performance Count: enhancing the accountability and effectiveness of Australian aid*.

⁶ See page 25 of Australia’s Aid Policy.

Section 4(2) of the Bill will require a Commonwealth aid official who proposes to make a decision relating to the provision of humanitarian assistance to have regard to any gender-related differences in the needs of those affected by the disaster or emergency so that those with specific needs can be accommodated.

While the content of these obligations is not entirely clear the requirement to “have regard to” gender equality means that gender equality should be considered each time a decision is made to provide development and humanitarian assistance.

A reporting obligation increases transparency and accountability

Section 5(1) of the Bill proposes to introduce a requirement that the Minister report annually on how the Commonwealth used international aid to promote gender equality in recipient countries. Section 5(2) of the Bill outlines that the report is to be submitted to both Houses of Parliament within 15 days of the end of the financial year.

This reporting requirement promotes transparency and accountability. It also provides a mechanism by which Parliament can measure the effectiveness of the duty to “have regard to” gender equality.

The Bill is consistent with efforts being made by foreign governments

The Bill is based on the *International Development (Gender Equality) Act 2014* (UK) (the UK Act).⁷ The UK Act received overwhelming support across the political and non-governmental spectrum in the United Kingdom.

Like the Bill, the UK Act requires the responsible minister (in the UK, the Secretary of State for International Development) to consider gender equality before providing any development assistance.⁸ The UK Act also requires the Secretary to present an annual report to Parliament outlining the steps they have taken to promote gender equality.⁹

The primary issues raised during Parliamentary debates focussed on:

- whether the proposal would impose too great a regulatory burden upon the Secretary of State for International Development;¹⁰ and
- why legislation was necessary, given that the principle of gender equality is simply "common sense" which should already be followed as a matter of routine.¹¹

⁷ UNA-UK, 'Update: Parliament debates gender equality in international development', (online) at <http://www.una.org.uk/news/14/01/update-parliament-debates-gender-equality-international-development>, 9 January 2014.

⁸ *International Development (Gender Equality) Act 2014* (UK) s 4.

⁹ *Ibid*, s 5.

¹⁰ United Kingdom, *Parliamentary Debates*, House of Commons, 17 January 2014, c1121 (Edward Leigh).

¹¹ United Kingdom, *Parliamentary Debates*, House of Commons, 17 January 2014, c1121 (Edward Leigh).

Both of these issues were readily overcome. In relation to the first issue, the Conservative Party explained that the proposal was simply an "amplification" of existing policies, and therefore would not impose any additional regulatory burden.¹²

In relation to the second issue, many UK MPs and NGOs praised the incumbent Government's existing efforts to improve gender equality.¹³ The UK Act was not seen as a rebuke to the incumbent Government, nor as an admission that existing policy had failed. Instead, those who supported the UK Act did so on the basis that gender equality should be enshrined in the law so that governmental officials would always be obliged to consider gender equality even if the Government changed.¹⁴

The statutory basis for providing development assistance differs, however, between the UK and Australia. The UK assistance regime is governed by the *International Development Act 2002* (UK), which provides a general framework for assistance, including objectives such as poverty reduction, sustainable development and the promotion of personal welfare.¹⁵ The UK Act merely added the promotion of gender equality as another factor for consideration into this process.

Recommendations

While the LIV supports the Bill, it recommends consideration be given to:

- extending the duty to require Commonwealth aid officials to consider other important development goals consistent with Australia's Aid Policy and the approach taken in the United Kingdom.

The duty to "have regard to" should be extended to include other important development goals.

The Millennium Development Goals and the proposed Sustainable Development Goals include a number of development goals in addition to achieving gender equality, including in relation to:

- promoting sustainable agriculture and water management;
- promoting quality education and health; and
- promoting sustainable economic growth.

All of these examples are also features of Australia's Aid Policy.

¹² United Kingdom, *Parliamentary Debates*, House of Commons, 17 January 2014, c1121 (William Cash).

¹³ See, eg, Karen Ruimy, 'Why our MPs need to support the International Development Bill (Gender Equality)', *The Huffington Post* (online) at http://www.huffingtonpost.co.uk/karen-ruimy/gender-equality-bill_b_4611473.html, 17 January 2014; Liz Ford, 'Development bill to tackle gender inequality poised to become law', *The Guardian* (online) at <http://www.theguardian.com/global-development/2014/mar/04/development-bill-gender-equality-law>, 5 March 2014; United Kingdom, *Parliamentary Debates*, House of Commons, 17 January 2014, c1120 (William Cash).

¹⁴ United Kingdom, *Parliamentary Debates*, House of Commons, 17 January 2014, c1135 (Alan Duncan).

¹⁵ *International Development Act 2002* (UK) s 1.

The LIV recommends that consideration be given to amending the Bill to require Commonwealth aid officials to have regard to other important development goals that are consistent with Australia's Aid Policy and Australia's international obligations, in addition to gender equality.

Conclusion

The LIV supports the proposal to enshrine the duty to have regard to gender equality when making decisions about providing development and humanitarian assistance.

The Bill is a step towards promoting gender equality through international aid, which has been shown to be an effective tool to promoting economic and social development and is widely supported internationally and in Australia.

However, the LIV respectfully submits that the Committee should consider the matters raised in this submission in its report to the Senate.

If you would like to discuss any of the matters raised in this letter please do not hesitate to contact Elizabeth Maginn, Acting Manager of the Young Lawyers Section of the LIV, on

Sincerely yours,

Katie Miller

President

Law Institute of Victoria