



Law Council
OF AUSTRALIA

30 November 2022

Coordinator
International Development Policy
Development Policy Section
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton ACT 0221

By email: development.policy@dfat.gov.au

Dear Coordinator,

SUBMISSION IN RELATION TO AUSTRALIA'S NEW INTERNATIONAL DEVELOPMENT POLICY

1. The Law Council of Australia welcomes the opportunity to make a submission to the Department of Foreign Affairs and Trade (**DFAT**) Development Policy Division, Development Strategy Branch in relation to Australia's new International Development Policy.¹
2. The Law Council is grateful to the South Pacific Issues Committee of its International Law Section (**ILS**), which provided input to this submission.
3. This submission focuses on the thematic priority of official development assistance (**ODA**) and non-ODA with respect to the law and justice sector and the opportunity to enhance efforts to support and strengthen independent legal professional associations in the Pacific.

Promotion of the rule of law and overseas development

4. In the 2012 Declaration of the High-Level meeting of the UN General Assembly on the rule of law at the national and international level, Member States noted:

“We are convinced that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms,

¹ This submission also draws upon relevant comments made by the Law Council in its submissions to the Senate Foreign Affairs, Defence and Trade Committee's *Review of Australia's ODA program* (2014), submission to the Senate Foreign Affairs, Defence and Trade References Committee *Inquiry into the delivery and effectiveness of Australia's bilateral aid program in Papua New Guinea* (2014), and submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Human Rights Sub-Committee *Inquiry into the human rights of women and girls in the Pacific* (2020).

including the right to development, all of which in turn reinforce the rule of law...”²

5. The Australian Government’s recognition that the rule of law and good governance serve as enablers of sustainable development, regional stability and economic growth is reflected in Australia’s existing ODA program, which includes allocations for Governance and Law and Justice.³
6. The Law Council notes that in 2020-21, ODA referable to Sustainable Development Goal 16 (Peace, Justice and Strong Institutions) accounted for just over 10% of Australia’s total ODA, behind Goal 3 (Good Health and Wellbeing) (17.7%), Goal 1 (No Poverty) (13.9%) and Goal 4 (Quality Education) (13.2%).⁴
7. The Law Council appreciates, for example, the contributions of the Australian Government towards the delivery of justice services in Papua New Guinea through the Justice Service and Stability for Development (**JSS4D**) Program,⁵ and welcomes the inclusion of, for example, the Solomon Islands Bar Association among key justice agencies named in the Solomon Islands Justice Program.⁶
8. The Law Council notes that the Solomon Islands Justice Program Design Document also mentioned the relevance of the Law Council’s longstanding links with legal professional associations in the Solomon Islands and Papua New Guinea, and remains willing to assist Australia’s ODA program as it relates to law and justice.⁷
9. The Law Council encourages the Australian Government, in its new International Development Policy, to expand its partnerships with independent legal professional associations in the Pacific region.
10. In 2011, the Office of Development Effectiveness (**ODE**) commissioned Dr Adrian Leftwich to produce a paper which considered Australia’s law and justice sector ODA. Dr Leftwich emphasises the importance of a locally appropriate and legitimate institutional order which “provides the stable institutional context in which predictable economic, political and social processes can occur.” Dr Leftwich notes that civil society organisations, including professional lawyers’ associations, are crucial to negotiating and shaping institutions in developing jurisdictions, and contribute to the ongoing process of stable politics by representing interests, participating in consultative policy processes, and promoting the flow of information between government and the public.⁸

² *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, GA Res 67/1 UN Doc A/RES/67/1 (19 September 2012) para 7.

³ ‘Australia’s Official Development Assistance: Statistical Summary 2021-22’, Department of Foreign Affairs and Trade, 30. <<https://www.dfat.gov.au/sites/default/files/australias-official-development-assistance-statistical-summary-2020-21.pdf>>.

⁴ *Ibid.*, 48.

⁵ Department of Foreign Affairs and Trade, ‘Australia’s support to law and justice in Papua New Guinea, (2021) <<https://www.dfat.gov.au/sites/default/files/australia-work-law-justice-png-jan-2022.pdf>>.

⁶ Department of Foreign Affairs and Trade, ‘Australia development partnership with Solomon Islands’ (2017) <<https://www.dfat.gov.au/geo/solomon-islands/development-assistance/development-assistance-in-solomon-islands>>.

⁷ *Ibid.*

⁸ Adrian Leftwich, ‘The political approach to the law and justice sector’, (2011) Think piece prepared for the Office of Development Effectiveness, AusAID, 13-14. <<https://www.dfat.gov.au/sites/default/files/leftwich-thinkpiece.pdf>>. See also, Office of Development Effectiveness, *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance*, Canberra, December 2012.

11. The Law Council urges the Australian Government to consider, as part of its new International Development Policy, the role of independent legal professional associations to develop and support a locally appropriate and legitimate institutional order. These activities include efforts to improve access to justice, monitor and promote effective, accountable and transparent institutions, influence and engage in law reform, and protect human rights in accordance with national legislation and international agreements.
12. Individually and together, these activities are consistent with the purpose of the new International Development Policy to build effective, accountable states that can sustain their own development, and enhance the resilience of states and communities to external pressures and shocks.
13. The Law Council recognises the success of the Pacific Islands Law Officers' Network (**PILON**) – of which the Attorney-General's Department is a member – to strengthen policy and operational cooperation on law and justice issues, build capacity of member law and justice agencies, and share expertise. It notes, however, that government lawyers and law officers represent only part of the legal profession in Pacific jurisdictions.

The Law Council of Australia's Engagement in the Pacific

14. The South Pacific Lawyers' Association (**SPLA**) is comprised of bar associations, law societies and lawyers' groups representing 17 jurisdictions in the Pacific region.⁹ SPLA exists to support and strengthen law societies and bar associations in the Pacific region, represent the interests of South Pacific lawyers on regional issues concerning the rule of law, access to justice, and regional law and justice policy, promote effective and robust regulation of the legal profession in Pacific jurisdictions, and improve access to legal education for South Pacific lawyers. The Law Council has served as SPLA's Secretariat since its establishment in 2007.

Assistance for the Pacific Island Legal Information Institute (PacLII)

15. In a letter addressed to the Minister for Foreign Affairs on 28 October 2022, the Law Council previously urged the Australian Government to support the Pacific Islands Legal Information Institute (**PacLII**) which is currently facing a critical threat to its ongoing sustainability having lost its primary source of funding in 2022.
16. PacLII is the principal source of legal information for 20 Pacific Island jurisdictions,¹⁰ and is relied upon by the legal profession, the judiciary, researchers and the broader community across the Pacific. In individual Pacific Island countries and the region as a whole, PacLII facilitates the administration of and access to justice, underpins the delivery of legal services, supports the development of Pacific jurisprudence, and promotes transparency, accountability and good governance.
17. Independent legal associations across the Pacific have emphasised the fundamental contribution that PacLII provides to promote and support access to justice and the rule of law in the Pacific, and unanimously endorsed calls for the

⁹ American Samoa, Australia, Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Norfolk Island, Papua New Guinea, Samoa, Solomon Islands, Timor Leste, Tonga, Tuvalu and Vanuatu.

¹⁰ American Samoa, Cook Islands, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Fiji, Guam, Kiribati, Marshall Islands, Nauru, Niue, New Caledonia, Palau, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

Australian Government to provide essential funding to enable PacLII's ongoing operation.¹¹

18. Through this submission the Law Council reiterates that support for PacLII would provide an invaluable opportunity for the Department of Foreign Affairs and Trade to promote transparency, good governance, and the rule of law amongst Australia's neighbours.

Further Information

19. The Law Council and the South Pacific Lawyers' Association (**SPLA**) would welcome the opportunity to participate in further consultations with the Development Policy Division and External Advisory Group regarding the new International Development Policy.
20. Thank you for your consideration of the matters raised in the submission. If you would like to discuss these matters further, please contact Charlotte Stubbs, Senior Policy Lawyer (International) on 02 6246 3753 or charlotte.stubbs@lawcouncil.asn.au.

Yours sincerely



James Popple
Chief Executive Officer

¹¹ At the time of this submission, American Samoa Bar Association, Cook Islands Law Society, Fiji Law Society, Kiribati Law Society, Marshall Islands Law Society, New Zealand Law Society, Samoa Law Society, Tonga Law Society, and Vanuatu Law Society have expressed support for PacLII and endorsed calls for the Australian Government to provide funding to enable PacLII to continue