

National Interest Analysis [2017] ATNIA 10

with attachment on consultation

Withdrawal of Australia's reservation under the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) in relation to the exclusion of women from combat duties

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Withdrawal of Australia's reservation under the CEDAW in relation to the exclusion of women from combat duties

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Nature and timing of proposed treaty action

1. Australia ratified the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) on 28 July 1983, with two reservations. The first reservation relates to maternity leave with pay or with comparable social benefits pursuant to Article 11(2)(b). The other reservation concerns women in combat and combat related duties and is made in respect of Australia's obligations under Article 11(1)(b) and (c).
2. The reservation relating to women in combat duties is the subject of this treaty action. The reservation currently states that "the Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat duties." The reservation was initially made because Australian Defence Force (ADF) policy was inconsistent with Article 11 of CEDAW, which requires State Parties to 'take all appropriate measures to eliminate discrimination against women in the field of employment'. Under the former ADF policy men and women could compete equally for all employment except those involving 'Direct Combat Duties'. Direct Combat Duties are defined as: 'Duties: requiring a person to commit, or participate directly in the commission of an act or violence against an armed adversary; and exposing a person to a high probability of direct physical contact with an armed adversary'.
3. As of 1 January 2016, the Australian Government's policy to remove all gender restrictions from ADF combat roles was fully implemented. The effect of the full implementation of this policy is that women have equal opportunities to apply and be considered for all ADF positions. Changes to ADF policy since ratification mean the reservation dealing with combat duties is no longer necessary and should be withdrawn.
4. It is proposed that Australia's notification of withdrawal be lodged with the Secretary-General of the United Nations as soon as practicable following consideration by the Joint Standing Committee on Treaties and subject to approval by Executive Council. In addition to the withdrawal of this reservation, the Government intends to repeal section 43 of the *Sex Discrimination Act 1984* (Cth) (SDA). Section 43 of the SDA exempts discrimination against women in connection with employment, engagement or appointment in ADF positions involving combat duties from the scope of the SDA. This section is proposed for repeal as current ADF employment policy no longer requires an exemption under the SDA. As of 1 January 2016 the Australian Government's policy to remove all gender restrictions from ADF combat roles was fully implemented, and therefore the exemption is no longer necessary. Repeal of section 43 of the SDA is being progressed through the Civil Law and Justice Legislation Bill 2016.

Overview and national interest summary

5. The purpose of CEDAW is to promote equality of rights between women and men and to improve the status of women by eliminating gender based discrimination. The chapeau to CEDAW recognises that discrimination against women violates the principles of equal rights and respect for human dignity and is an obstacle to the equal participation of women in political, social, economic, community and cultural life. CEDAW was created in the context of concerns that, despite various international instruments, extensive discrimination against women continued to exist.
6. As there are no longer any policies in place which exclude women from combat duties, Australia's reservation to CEDAW is no longer necessary and should be withdrawn.
7. The withdrawal of Australia's combat duties reservation to the CEDAW will ensure Australia's commitment to satisfying its obligations under Article 11(1)(b) and (c) of CEDAW and its commitment to ADF policy, which cannot be reversed in the future without risking inconsistency with Australia's obligations under Article 11(1)(b) and (c) of CEDAW. The ADF has committed to opening up of all roles in the ADF to women on the basis that determination for suitability for roles in the ADF is to be based on their ability to perform in the role, not gender.
8. Roles to be open in the future to women from which women were previously excluded are: Navy Clearance Divers and Mine Clearance Diver Officers; Air Force Airfield Defence Guards and Ground Defence Officers; and Army Infantry and Armoured Corps and some Army Artillery roles.

Reasons for Australia to take the proposed treaty action

9. Taking the proposed treaty action is consistent with current Government initiatives to increase the recruitment of women into the armed forces, following the Review into the Treatment of Women in the ADF led by former Sex Discrimination Commissioner, Elizabeth Broderick AO.
10. Withdrawal of Australia's combat duties reservation under the CEDAW will be received positively by stakeholders, including women's rights organisations and other human rights NGOs, as well as the international community.
11. Withdrawal of Australia's combat duties reservation promotes the right to non-discrimination and the rights to the same employment opportunities and to free choice of profession and employment on an equal basis with men.

Obligations

12. Withdrawing Australia's combat duties reservation under the CEDAW will require that ADF policies continue to be implemented consistently with Australia's obligations under Articles 11(1)(b) and (c) of the CEDAW:

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

...

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right

to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.

Implementation

13. The withdrawal of Australia's combat duties reservation under the CEDAW is in accordance with current domestic law and policy.
14. No state or territory action is needed to implement the withdrawal of Australia's combat duties reservation under the CEDAW.
15. No additional policy action is required as the removal of gender restrictions from ADF combat roles took full effect from 1 January 2016.
16. The Government will also move to repeal section 43 of the *Sex Discrimination Act 1984* (SDA), which exempts discrimination against women in connection with employment, engagement or appointment in ADF positions involving combat duties. Withdrawal of Australia's combat duties reservation under the CEDAW is not contingent upon repeal of section 43 of the SDA.
17. Article 18 of CEDAW requires States Parties to submit regular reports on the measures they have adopted to give effect to the provisions of CEDAW. The withdrawal of this reservation would be referenced in Australia's next periodic report, which is made public by both the Australian Government and the United Nations.

Costs

18. The proposed withdrawal of the reservation to CEDAW will place no financial costs on Australia.

Future treaty action

19. The proposed treaty action under consideration does not commit Australia to the negotiation of future related legally binding instruments.

Withdrawal or denunciation

20. Under Article 28 of CEDAW, a reservation may be withdrawn at any time by notification to the Secretary-General of the United Nations.

Contact details

International and Engagement Section
Office for Women
The Department of the Prime Minister and Cabinet

ATTACHMENT ON CONSULTATION

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1. Australia's National Human Rights Institution (the Australian Human Rights Commission) and human rights non-government organisations have long advocated for the removal of gender restrictions in the ADF and the withdrawal of Australia's combat duties reservation under the CEDAW.
2. These organisations welcomed Australia's announcement, as part of its response to the UN Human Rights Council's Universal Periodic Review process, that it would move to withdraw its reservation to CEDAW relating to the exclusion of women from combat roles.
3. State and territory governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties. No requests for further information or comments have been received to date.