



17 February 2016

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Committee Secretary,

Senate inquiry into the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015_QoN

At the public hearing on Friday, 12 February, Senator Collins asked me:

[... the Australian Women Against Violence Alliance and the Women's Legal Service Queensland] also raised a concern as to whether CEDAW has been considered with respect to these amendments. Could you please take on notice for the Human Rights Commission – I know it might not specifically by you – to look specifically at those submissions as to whether there is a concern in terms of the application of CEDAW.

Both the Explanatory Memorandum and the Statement of Compatibility refer to the aims of the Bill, one of which is to 'enable the courts to offer better protection to victims of family violence'.

The Commission notes that the Parliamentary Joint Committee on Human Rights has considered the human rights implications of the Bill.¹ The Committee has requested further information from the Attorney-General as to reasonableness and proportionality of the amendments. However, this request is in reference to the Convention on the Rights of the Child only.

As stated at the hearing, I consider that the measures in the Bill concerning financial arrangements may ensure greater stability for children as they grow and develop, if they are deemed to be accompanied by adequate safeguards for vulnerable parents.²

The Women's Legal Service Queensland submission notes that gender-based violence is a form of discrimination within Article 1 of CEDAW.³ Article 2 sets out the

legal obligations under the Convention, one of which is the obligation to respect. This obligations requires:

... States parties to refrain from making laws, ... administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their [human] rights.⁴

The General Recommendation goes on to state in paragraph 10 that discrimination against women can occur when the State fails to take necessary legislative measures to ensure the full realisation of women's human rights.

There is no doubt that the legislation will have some impact on women. However, there is no consideration of what this impact will be and how the Bill complies with CEDAW. The Commission therefore agrees with the submission of the Women's Legal Service (Recommendation 2) that the Explanatory Memorandum provide an explanation of how the legislation complies with CEDAW obligations.

Should the Committee have further questions, please do not hesitate to contact the Commission.

Yours sincerely,

Megan Mitchell
National Children's Commissioner

¹ Parliamentary Joint Committee on Human Rights, *Thirty-third Report of the 44th Parliament*, p 4. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2016/Thirty-third_Report_of_the_44th_Parliament (viewed 17 February 2016).

² Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 12 February 2016, 26 (Megan Mitchell, National Children's Commissioner).

³ Committee on the Elimination of Discrimination against Women, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women* UN Doc CEDAW/C/GC/28, 16 December 2010, para 5. At <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> (viewed 17 February 2016).

⁴ Committee on the Elimination of Discrimination against Women, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women* UN Doc CEDAW/C/GC/28, 16 December 2010, para 9. At <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> (viewed 17 February 2016).