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**Submission on the Family Law Amendment (Financial
Agreement and Other Measures) Bill 2015**

Background

1. Soroptimist International works to ensure that the voices of women and girls around the world are included in national and international decision making and policy settings. Soroptimist International maintains an active network of permanent representatives at all the major United Nation centres around the world and holds a General Consultative Status with the United Nations Economic and Social Council and also maintains official relations with several agencies and technical bodies.

2. Soroptimist International is one of the oldest and largest women's organisations in the world, with over 80,000 members in around 3,000 clubs in 130 countries.

3. One of the program focus objectives for Soroptimist International is the elimination of violence against women.

4. Accordingly, any matter that affects the victims of family and domestic violence, particularly as it relates to women, is of concern to the members of Soroptimist International Australia.

5. We thank the committee for the opportunity to provide feedback on the *Family Law Amendment (Financial Agreement and Other Measures) Bill*

2015 ("the Bill"), amending the *Family Law Act 1975*.

6. The amendments are said to arise from the Family Law Council's *Interim Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* and aim to address some issues affecting those who experience domestic and family violence.¹

Summary

7. The members of Soroptimist International Australia are largely business and professional women.
8. In principle, Soroptimist International Australia supports legislative amendments that enhance the ability for all women to be able to negotiate effectively on their own behalf and to enter into binding financial agreements that suit their needs, rather than engaging in lengthy (and expensive) court proceedings. Such legislative amendments, in principle, empower and enable women.
9. Financial stability is critical to escaping a violent and abusive relationship.
10. Where women are the victims or survivors of domestic and family violence, there are considerable disadvantages suffered from participating in the negotiation process to enter into binding financial agreements.
11. Because of the out of court process enjoyed by entering into binding financial agreements, and the difficulty in setting those agreements aside once made, under the proposed Bill, the process is likely to be highly utilised.
12. The members of Soroptimist International Australia do not support the Bill in its present form and are concerned that the Bill does not adequately reflect the intended purposes to assist those who experience domestic and family violence.

The issues

13. While domestic and family violence presents "*a unique definition challenge, as it encompasses a broad range of behaviours*"² it can be said unequivocally that domestic and family violence is characterised by dominating and coercive control.
14. It is this characteristic of domination and control that is reflected in the definition of family violence under the *Family Law Act 1975*.³

¹ Second Reading Speech, Senator Ryan, 25 November 2015, The Senate, Parliament of Australia

² Special Taskforce on Domestic and Family Violence, "*Not Now, Not Ever*" *Putting an End to Domestic and Family Violence in Queensland*," Queensland, page 68

15. Research has shown that financial stability is critical factor in successfully escaping a violent and abusive relationship.⁴
16. It is important to appreciate that in domestic and family violence relationships, dominance and control frequently extends beyond the physical separation of the parties, and into the family court process relating, among other things, to entry into financial support agreement and binding financial agreements.
17. The prohibitive cost of proceedings and the frequent the lack of legal aid funding to assist in the financial negotiations process results in many self-represented litigants navigating the process themselves.
18. In the case of those who experience domestic and family violence, there often exists a power imbalance and this creates a situation where the domestic and family violence is exacerbated by the court process.
19. This is because the negotiations are often undermined because of the greater position of power enjoyed by the perpetrator of the domestic and family violence over the victim or survivor.
20. It also enables perpetrators of domestic and family violence the opportunity to exercise control through the negotiation process as well as in the terms of the binding financial agreement that may be ultimately made.
21. It has been said that *“women with a history of domestic violence can be reluctant to pursue their financial entitlements through the legal system post-separation for a variety of reasons: they may be fearful of their former partner and choose safety over property; they may lack confidence; feel they do not have the necessary skills; be daunted by the costs involved in legal proceedings and they may be unaware of their financial entitlements under the law. Women who have experienced family violence, including financial abuse, are more likely to do poorly in financial settlements compared with those who have not. These factors can result in a lifetime of financial hardship for many women and their children.”*⁵
22. A case example:⁶

³ Section 4AB, *Family Law Act 1975* (Cth)

⁴ Bell, K. and Naugle, A (2005) Understanding stay/leave decisions in violent relationships: A behavior analytic approach. *Behavior and Social Issues*, 14, 21-45.

⁵ Cameron, P, *WIRE Women's Information submission*, “The Senate Finance and Public Administration References Committee Inquiry into Domestic Violence in Australia, 31 July 2014” citing Fehlberg & Millward, 2013; 2014 (Fehlberg, B & Millward, C. 2014 “Family violence and financial outcomes after parental separation” in Hayes, A., & Higgins, D. (Eds.) 2014 *Families, policy and the law: Selected essays on contemporary issues for Australia*. Australian Institute of Family Studies, Melbourne: pp 235-44; Fehlberg, B. & Millward, C. 2013 ‘Post-separation parenting and financial arrangements over time: Recent qualitative findings’ *Family Matters* No:92 pp.29-40)

⁶ *Safe Steps Family Violence Response Centre*, <http://www.safesteps.org.au/family-violence-explained/>, website accessed 18 January 2015

"Struggling financially and living in a rental property Sheree could not afford to buy her own home because of the debt she incurred from her previous marriage and the father of her children, Robert. Sheree is the sole income earner and provider for her children due to Robert's gambling problem. To add to this, Sheree was concerned that she was at risk of losing her job as a hairdresser. She had taken numerous sick days to deal with the stress associated with the abuse from Malcom."*

23. When as many as 80 to 90 per cent of women who experience domestic and family violence also experience financial abuse, and when considering that 1 in 3 Australian women experience some form of domestic or family violence in their lifetime, it has been conservatively estimated that around 2 million women will be financially abused in their intimate relationship.⁷
24. When a self-represented litigant is not an officer of the court "they are independent of, and not governed by the duties owed to a court by a legal practitioner upon which the operation of the court system is so highly dependent. Those duties are duties of disclosure to the court, of avoidance of abuse of the court process, to not corrupt the administration of justice and to conduct cases efficiently and expeditiously."⁸
25. Article 13 of the *Convention of the Elimination of All Forms of Discrimination Against Women*, which provides that appropriate measures to eliminate discrimination against women in areas of economic and social life in order to ensure the same rights to family benefits,⁹ is not properly followed in the Bill.
26. When so many women are victims of domestic and family violence, which is prevalent in many cases in the Family Court and / or Federal Magistrates Court, the proposed amendments in the Bill are problematic and prejudicial to victims and survivors of domestic and family violence.

The recommendations

⁷ Cameron, P, WIRE Women's Information submission, "The Senate Finance and Public Administration References Committee Inquiry into Domestic Violence in Australia, 31 July 2014" citing McDonald, 2012:12; Corrie & McGuire, 2013 (MacDonald, F. 2012 *Spotlight on Economic Abuse: A Literature and Policy Review*, Good Shepherd Youth & Family Service and Kildonan UnitingCare, North Collingwood, https://www.goodshepvic.org.au/current_projects#Section3; Corrie, T. & McGuire, M. 2013 *Economic Abuse: Searching for Solutions*, Good Shepherd Youth & Family Service and Kildonan UnitingCare, North Collingwood); Macdonald, F, "Spotlight on Economic Abuse: A Literature and Policy Review", *Good Shepherd Youth and Family Service: Uniting Care Kildonan*, September 2012.

https://www.goodshepvic.org.au/Assets/Files/Spotlight_on_Economic_Abuse_LitPolicyReview.pdf

⁸ Deputy Chief Justice Faulks, "Self-Represented Litigants: Tackling the Challenge", *Managing People in Court Conference National Judicial College of Australia and the Australian National University* citing Family Court of Australia, February 2013 citing Hon Justice Robert Nicholson AO, 'Australian experience with self-represented litigants' (2003), 77(12) *The Australian Law Journal* 820, 821

⁹ United Nations, "Convention of the Elimination of All Forms of Discrimination Against Women", <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article17>, 18 December 1979

27. The members of Soroptimist International Australia do not support the Bill in its present form.
28. The hardships and discrimination facing women those who experience domestic and family violence and who participate in the binding financial agreements process should be given greater consideration under the proposed Bill.
29. The members of Soroptimist International Australia submit that considerations be given to amendment of the Bill to better reflect the prevalence of financial abuse in the family court processes and the imbalance in bargaining position when victims of domestic and family violence undertake negotiations concerning binding financial agreements.
30. Such amendments may include:
 - a. To the objects of the Bill to reflect consideration being given, affecting the victims of domestic and family violence who are usually more vulnerable in the negotiations process, and to achieve a fair, just and equitable outcome in binding financial agreements – proposed sections 90AM, 90UAB;
 - b. Requirements that the independent legal adviser also be required to certify to the court in an approved form on oath consideration that full and frank disclosure by the parties has occurred and that allegations of domestic and family violence have been considered in providing the advice on the binding financial agreement – proposed sections 90GA, 90UJA;
 - c. Mandatory consideration by the judicial officer when determining endorsing and making the binding financial agreement to have specific regard to allegations of domestic and family violence and whether there is a possibility of financial or economic abuse – proposed sections 90GB, 90UJB;
 - d. Before the judicial officer exercises the power to declare a binding financial agreement in the absence of independent legal advice being provided and in the absence of compliance with section 90G, the judicial officer have mandatory consideration to whether there has been full and frank disclosure and allegations of domestic and family violence, and, whether there is a possibility of financial or economic abuse – proposed sections 90GB, 90UJB; and
 - e. Before the judicial officer exercises the power to set aside or terminate a binding financial agreement, mandatory consideration to any domestic and family violence allegations, and, whether there is a possibility of financial or economic abuse – proposed sections 90J; 90UL.

31. We would be pleased to discuss the matter further and are happy to be involved in any additional consultation that may take place.

Kind regards,

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