

19 January 2015

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

Dear Sir or Madam,

Re: Family Law Amendment (Financial Agreements and Other Measures) Bill 2015

Thank you for inviting comments to the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015 ('the Bill'). The Top End Women's Legal Service Inc. ('TEWLS') welcomes the opportunity to make a submission to the proposed amendments to the *Family Law Act 1975* (Cth) ('the Act'), particularly with regard to domestic and family violence.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We are funded by the Commonwealth Attorney General's Department to provide referrals, legal advice, casework and community legal education to women in the Top End of the Northern Territory ('NT'). TEWLS provides assistance in a number of areas of law including domestic and family violence, sexual assault, family law, compensation for victims of crime, housing, discrimination, workplace health and safety, employment law, motor vehicles and consumer credit debts. We provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and women incarcerated in the Darwin Correctional Precinct.

Our Submission

Domestic and family violence

In 2015, approximately 40% of TEWLS clients sought assistance in relation to domestic and family violence matters. In many of these matters, domestic and

family violence is intertwined with family law issues, including parenting arrangements.

Family violence measures

TEWLS supports the comments made by Senator Ryan during the Second Reading Speech of the Bill in that family violence is an unacceptable and serious social issue which requires an urgent response both on the ground and by policy makers alike.

The Act and family violence orders

As noted in the Bill's explanatory memorandum, the current operation of section 68R of the Act provides that a state or territory court making a family violence order (known in the NT as a domestic violence order ('DVO')) may revive, vary, discharge or suspend a parenting order, recovery order, injunction or other arrangement to the extent to which they provide for a child to spend time with a person. Notably, the existing section 68T of the Act places a 21-day time restriction on the operation of any order made pursuant to section 68R of the Act.

In contrast to final family violence orders, the operation of interim family violence orders is affected by the 21-day time limit held within section 68T of the Act.¹ Currently, where a court revives, varies or suspends a parenting order in the context of proceedings to make an interim family violence order or an interim variation of a family violence, the first in time parenting order is only revived, varied or suspended for 21 days. In the context of a pressured court system, where parties are often unable to access a court date within three weeks of an order being made, section 68T of the Act is able to produce two valid and yet inconsistent orders at the end of the 21 day time limit – one which provides for a child to spend time with a person and one which restricts that time. The current operation of section 68T of the Act can produce conflicting orders and potential safety risks to children and other relevant persons.

TEWLS has held concerns regarding the above existing arrangements, where outcomes have had the potential of putting children and relevant related persons and carers at risk of further family violence. Further, we note that proceeding-waiting periods regarding a hearing for a contested DVO where interim orders can be lengthy – particularly in regional and remote areas of

¹ While it is not a subject of the Bill, TEWLS notes the operation of sections 68P and 68Q of the Act, which provides for the relationship between an existing family violence order and an order or injunction under the Act.

the NT where Courts may not sit even on a monthly basis, making the first available hearing date well in excess of the existing 21 limitation period for a hearing. Of note, it is our experience that clients ordinarily present for DVO assistance prior to seeking assistance with parenting arrangements, such that sections 68P and 68Q of the Act are rarely relevant to our practise.

Proposed amendments to section 68T of the Act

TEWLS endorses the proposed amendments to section 68T of the Act, which will bring the section's operation in line with section 68R of Act's provision for family violence orders, as well as acting to mitigate the discussed potential inconsistencies on the face of Court orders and risks to children and their carers.

Proposed new subsections 68P(2A), (2B) and (2C) of the Act

TEWLS strongly endorses the proposed new subsections to section 68P of the Act, which will address issues associated with the court's compliance with existing section 68P(2)(c)(iii) of the Act. Further, we also strongly endorse the operation of section 68P of the Act being focused on the best interests of the child.

We thank you for your consideration of the above and would be pleased to be contacted should you wish to discuss this submission further. Should you require further information, please do not hesitate to contact our office on (08) 8982 3000.

Yours sincerely,

TOP END WOMEN'S LEGAL SERVICE INC.

Caitlin Weatherby-Fell
Solicitor