

House of Representatives Standing Committee  
on Family and Community Affairs

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**PARLIAMENT OF AUSTRALIA  
HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS**

**INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE  
EVENT OF FAMILY SEPARATION**

**SUBMISSION FROM  
THE SALVATION ARMY**

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## EXECUTIVE SUMMARY

1. As a leading provider of social services in Australia, a major provider of aged care services, and a major provider of services to unemployed people within the Job Network, The Salvation Army is committed to meeting the needs of disadvantaged people in our community. The Salvation Army In Australia makes this submission to the House of Representatives Standing Committee Inquiry into *Child custody arrangements in the event of family separation* on the basis of our direct experience with those most disadvantaged. The Salvation Army has drawn from the practice experience of its workers and from the life experience of its clients, and in particular, staff and clients of its women's refuges. The submission focuses on the risks and difficulties as recognised by Salvation Army program staff which could ensue from any change in the Family Law Act, based on a presumption that children would spend equal time with each parent following parental separation.

2. Within the Family Law Act as it currently stands, the guiding principle is that the welfare of the children is of paramount importance, and that there are no advantages for either parent over the other. Evidence of current practice shows that shared residence is the least common post-separation arrangement, and recent figures show only 3% of children from separated families are in "shared care" arrangements. US studies have shown that the relationships between shared residence parents are commonly characterised by cooperation between the parties and low levels of conflict prior to and during separation. Research also shows that shared care was more likely to be arranged to suit the needs of parents rather than children. Some children find that shared care on a fifty-fifty basis can become very oppressive as they have to negotiate emotional as well as physical space and often feel responsible for ensuring "fairness" between their parents.

3. Any amendment to the Family Law Act which operates on a presumption of shared care following parental separation will not be economically feasible in many situations, and any enforcement of this principle will create financial hardship for some children.

4. Any amendment to the Family Law Act which operates on a presumption of shared care following parental separation may put children and mothers who have escaped situations of family violence or abuse into even greater risk of further violence or of manipulation. Case studies are provided to support this contention.
  
5. Any amendment to the Family Law Act which operates on a presumption of shared care following parental separation will create other practical problems of implementation.
  
6. The best interests of the child can only be paramount when each child is entitled to unique consideration of its interests and circumstances, rather than any presumed model of parental division of childcare.
  
7. The Salvation Army In Australia is therefore opposed to any primary presumption that children should spend equal time with both parents following separation. There will be situations in which the safety and well-being of children will, in fact, be put at risk if parenting is shared. The Salvation Army would prefer that if any presumption is to be introduced into the Family Law Act, it should be the presumption that children have no contact with abusive parents unless it is shown that they will be safe from abuse, and that contact will truly be in their best interests.

## CONTEXT FOR SUBMISSION

### MISSION STATEMENT OF THE SALVATION ARMY

The Salvation Army, an international movement, is an evangelical part of the universal Christian Church. Its message is based on the Bible. Its mission is to preach the gospel of Jesus Christ and meet human needs in his name without discrimination.

(International Mission Statement)

**The Salvation Army - A growing, loving community of people dynamically living God's mission in a broken world.**

#### INTRODUCTION

As a leading provider of social services in Australia, a major provider of aged care services, and a major provider of services to unemployed people within the Job Network, The Salvation Army is committed to meeting the needs of disadvantaged people in our community. We currently assist more than one million people each year. While the majority of our effort involves the provision of direct services in the form of personal and family support, accommodation, emergency relief, employment services, or drug and alcohol counselling and rehabilitation, we also recognise the important role that advocacy plays in developing a more just and equitable society.

The Salvation Army In Australia makes this submission to the House of Representatives Standing Committee Inquiry into *Child custody arrangements in the event of family separation* on the basis of our direct experience with those most disadvantaged in our community. In this instance our primary sources have been the practice experience of our workers and from the life experience of the women and children resident in our women's refuges.

It is expected that this submission will, in some ways, restate some of the arguments of academics and from other segments of the community sector. However it will particularly emphasise the risks and difficulties as recognised by Salvation Army program staff which could follow any change in the Family Law Act, based on a presumption that children would spend equal time with each parent following parental separation.

## RESPONSE OF THE SALVATION ARMY

As outlined on the web-page,  
the committee should inquire into, report on and make recommendations for action:

(a) given that the best interests of the child are the paramount consideration:

- (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and
- (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

(c) with the committee to **report to the Parliament by 31 December 2003.**

The submission from The Salvation Army addresses section (a) part (i) specifically.

### **A PRESUMPTION: THAT CHILDREN WILL SPEND EQUAL TIME WITH BOTH PARENTS FOLLOWING PARENTAL SEPARATION**

#### **The Family Law Act**

Within the Family Law Act as it currently stands, the guiding principle is that the welfare of the children is of paramount importance, and that there is no advantage for either parent over the other. Although mothers more often have legal "residence" (current term for custody) for their children, most of these orders are made by consent. Where parents cannot agree on arrangements for children and the decision is left to the Family Court, the Court is bound to treat the best interests of the child as the primary consideration.

#### **What Research Shows**

A majority of men who are separated (64%) have contact with their children and almost three quarters of these men have children staying overnight with them. Of parents with court orders, 70% of residence orders (including consent orders) are made in favour of mothers and 20% in favour of fathers. However only 5% of court orders are

made after a contested hearing. In cases where the matter is contested, as many as 40% of fathers are given residence of their children.

**Shared residence is the least common post-separation arrangement, and recent figures show only 3% of children from separated families are in "shared care" arrangements.** US studies have shown that the relationships between shared residence parents are commonly characterised by cooperation between the parties and low levels of conflict prior to and during separation. **Research also shows that shared care was more likely to be arranged to suit the needs of parents rather than children.** It is noted that some children will find that being shared on a fifty-fifty basis can become very oppressive. They have to negotiate emotional as well as physical space and often feel responsible for ensuring "fairness" between their parents.

#### **Economic factors**

A presumption that children will spend equal time with both parents assumes an economic capacity for both parents to:

- live close to one other, so children can maintain schools, health care, friendships etc
- negotiate flexible working arrangements
- communicate freely, regularly and easily
- afford to maintain two separate households that are "set up" for their children - clothes, toys etc
- negotiate equitable arrangements with Centrelink regarding any payments they are eligible to receive
- survive on the money available to the separate families

Meeting this combination of criteria is not viable for many parents.

#### **Domestic Violence**

A 1996 Australian Bureau of Statistics benchmark study showed that 23% of women who have ever been married or in a de facto relationship had experienced violence in the relationship. Any amendment to the Family Law Act which presumes equal shared care of children will place women and children who are the victims of violence at increased risk of further violence. It could force some children to live with violent



fathers, and force mothers to negotiate with, and be in the presence of, violent ex-partners. It also provides abusive and violent men with a dangerous tool to control their ex-partners after separation. It is the experience of Salvation Army workers that where there is a history of violence and abuse, this behaviour persists after separation.

Our experience also shows that in the present situation, where there are allegations of violence or child abuse, these are the cases most likely to be litigated and least likely to settle. In such cases as these, a presumption of joint residence could have a potentially dangerous effect. The Salvation Army would prefer that if any presumption is to be introduced into the FLA, it should be a presumption that children have no contact with abusive parents unless it is shown that they will be safe from abuse and that contact will truly be in their best interests.

### **Actual case studies from one Salvation Army centre of the effects of access arrangements under existing legislation on women and children who are escaping domestic violence.**

- ❖ Toby came back with a broken arm to his mother after access with his dad, who is a known perpetrator of family violence. Mum was not informed in any way about it by dad, and she had to attend to the treatment of the injury by herself, with no real information to guide her.
  
- ❖ in another family, prior to each access visit Robert would beg and plead to his mum not to have to go to access, but he had to go because this had been ordered by the family court. Mum heard Robert's fears and worries about going to access, but didn't have any room to negotiate on behalf of her child's choices and requests. Robert's stepbrother would also become very distressed and anxious every time Robert went to access, worrying constantly about what was happening to his brother.  
(This access arrangement is all in accordance with a standard family court order (ie alternate weekend and occasional weeknight access). Imagine what it would be like

for this same child if it was joint custody and he was to go more often than this when he is already begging not to.)

- ❖ Isobel was taken to Centrelink by her dad (also a known perpetrator) during access time in order to convince staff that he was the permanent carer and therefore entitled to Centrelink payments on behalf of the child. Unfortunately for this father, the social worker at this Centrelink office was aware of the situation and rang The Salvation Army program concerned. Salvation Army staff were able to confirm that Isobel was, in fact, only on an access visit and this was supported with documentation. (If joint custody was the norm, consider how this would affect women leaving a d.v. (domestic violence) situation and therefore not being eligible to receive all or full Centrelink payment (ie PPS). Usually whenever a woman escapes a violent relationship she leaves with nothing, and if joint custody meant Centrelink payments would be reduced, then she would get less and she and her children would be further disadvantaged.)
- ❖ Emma had a burnt hand that was already being treated when she went to access to her father. Dad, who was in the middle of family court proceedings, claimed this to be the result of abuse and notified DHS Child Protection and took the child to hospital. Both services saw his actions as unnecessary and harmful to Emma, as well as adding stress to the mother's already difficult state.
- ❖ The ex-partner of Janet had been so violent and persistent in his violence that he had been imprisoned. During the time in jail and immediately upon release, there had been a court order that he only be granted limited supervised phone access in the interests of the children's safety. However, despite this history of violence, over time the father was eventually granted unsupervised access. He continues to be a threat to both Janet and her children. The matter continues to come before the Family Court years later, even with support from services and child psychologists. It is feared that any legislative change could place similar families at even greater levels of risk.

Salvation Army staff are aware that violent partners of women with children often use children as a bargaining tool and family breakdown becomes a further exacerbation of their violence. This means that the abuse can continue for years. This is harmful and disturbing for the children, as well as their mothers.

Staff are particularly concerned about the impact of family violence on a child when their mother cannot be around to protect them.

Salvation Army staff also hold concerns about parents who have any form of addiction (which is often, though not always, involved when a person is violent) and the effect this has on children if joint custody is automatically granted.

## **OTHER ISSUES**

The Salvation Army hold other concerns related to a presumption of equal caring which we raise without further development for the consideration of the Committee.

- Children whose parents separate generally have greater difficulty adjusting to life through a lack of stability. When the parents are not getting along and one parent does things differently from the other (eg different rules at different houses, messages being passed via the child, or different standards of care/nutrition), this becomes exacerbated when the child's parents are separating due to family violence.
- A question that must be considered is how does joint custody work when there are a number of children of different fathers in one woman's family? Shared parenting would have considerable impact on family dynamics, stability and sibling relationships.
- The majority of women who are resident in a refuge must take their children to a safe and neutral location for access drop off and pick up (ie usually a police station or a drop off centre). Have the logistical problems created by an

increased demand that would be created by the implementation of a joint custody arrangement been considered?

## SUMMARY

The Family Law Act is based on the principle that decisions must be made in the best interests of the children. Although it would seem that children's rights could be best protected by ensuring the access of children to both parents, this will not be the case in a violent family. Not only does the child need to be protected from actual violence, but he /she also needs to be free from the fear of violence. And in order to provide a sense of stability and security for family and child development, the other parent also needs to be protected from both actual violence and the fear of violence. As stated previously, The Salvation Army would prefer that if any presumption is to be introduced into the Family Law Act, it should be a presumption that children have no contact with abusive parents unless it is shown that they will be safe from abuse and that contact will truly be in their best interests.

The factors listed in Section 68F of the Family Law Act in order to define a child's best interests should be weighted towards safety as the threshold determinant of a child's best interests. The Government should establish a national child protection service for the family law system to assist the courts in the investigation of safety issues where violence or abuse is alleged. Where violence or abuse is established on the balance of probabilities, there should be a rebuttable presumption of 'no contact' with the person who has used violence until they can demonstrate how contact would not pose a threat to the safety of the child, or other family members. The service should also be able to investigate and review the outcomes for children following orders which allegedly expose the child to risk of violence, abuse or other harm arising from the orders.

The current provisions of the FLA already include capacity for shared residence, where it is in the child's best interest. Even where sharing is not equal, many men still participate actively in their children's lives after separation. Most mothers wish to share parenting duties and responsibilities with fathers who were involved in their children's lives prior to separation. However children at risk of violence or abuse must be protected.

To amend the Family Law Act based on a presumption that children will spend equal time with both parents following separation does not reflect current practices in families where mothers are still the main primary carers of children, and undertake most of the domestic work. It also ignores the evidence that shared residence works best in cases where there has been a history of cooperation prior to, and around the time of, separation, and where these arrangements are voluntary, not enforced.

The practical difficulties and the financial burden of running two households will be impossible for many. Child support consequences will force single mothers, already amongst the poorest in the community, into further poverty, increasing the numbers of children also living in poverty.

It should also be anticipated that there will be an increase in litigation as parents who do not want 50-50 shared residence may feel the need to go to court - another source of stress for all concerned.

**The best interests of the child can only be paramount when each child is entitled to unique consideration of its interests and circumstances, rather than any presumed model of parental division of childcare. The Salvation Army In Australia is therefore opposed to any primary presumption that children should spend equal time with both parents following separation.**