



## Family Court Proceedings Bill Justice and Electoral Committee

### The Salvation Army (New Zealand, Fiji and Tonga Territory) Submission

#### 1. BACKGROUND

- 1.1 The Salvation Army is an international Christian and social services organisation that has worked in New Zealand for one hundred and thirty years. The Army provides a wide-range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.
- 1.2 We have over 90 community ministry centres and churches (corps) across the nation, serving local families and communities. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society by God's power.<sup>1</sup>
- 1.3 This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army. The Unit works towards the eradication of poverty by advocating for policies and practices that strengthen the social framework of New Zealand.
- 1.4 This submission has been prepared in consultation with our Courts and Prisons Service staff, our social workers and other Salvation Army staff. We have Courts and Prisons staff stationed at several District Courts around New Zealand, performing court-ordered drug alcohol assessments and giving general advice and support to people going through the Court process. We also have highly experienced social workers working at our Community Ministry centres around the country.
- 1.5 This submission has been approved by Commissioner Donald Bell, the Territorial Commander of The Salvation Army New Zealand, Fiji and Tonga Territory.

#### 2. THE SALVATION ARMY PERSPECTIVE

- 2.1 We are generally **opposed** to the passing of this Bill into law.

---

<sup>1</sup> <http://www.salvationarmy.org.nz/our-community/mission/>

2.2 There are specific provisions in the Bill that we are supportive of. We will specify these in section 3 of this submission.

2.3 This Bill is essentially an omnibus of amendments, seeking to make changes to nine different statutes. Given the size and complexities of this Bill, our submissions will be targeted towards specific provisions or themes that we wish to highlight.

### 3. RESPONSES TO SPECIFIC AMENDMENTS TO LEGISLATION

#### 3.1 Family Dispute Resolution (FDR)

3.1.1 We are opposed to the new mandatory FDR service families will have to undertake even before a case may proceed to court. While we agree that not all disputes need to progress through the family court process, we do not agree with establishing a brand new FDR service that effectively forces people to pay a fee to use it before moving onto the family court process. There are many positive aspects of the FDR, including the focus on trying to resolve disputes out of the courts. But making this service compulsory will likely reduce accessibility to effective court measures and orders available in the family court.

(a) We believe the cost to access this service will be too high for many of the families that need to access the family court process.

(b) In June 2012, the average family income in New Zealand was \$703.00 per week before tax. For many of the people and families we engage with, the weekly income is much lower than this, particularly for beneficiaries or single or lower income households. If one of the parties to a dispute is a low income earner, then they will have some trouble affording the \$897.00 fee to access this FDR service. Additionally, for higher-income earners, there are still concerns around the cost of this fee if this Bill passes. For instance, how disputing parties or couples will finalise how this fee is paid if their incomes exceed any subsidy threshold, and if there is a potential power-imbalance within the relationship wherein one person/party in the dispute is the main or sole income earner and the other person is not are critical questions. Foreseeably, the higher income earner will have more power and influence over the couple's finances and so negotiating the payment of this fee will likely add more stress and tension to this couple's relationship.

We believe the cost of \$897.00 to use the new family dispute resolution service might be unnecessarily prohibitive for some people, particularly for those living in vulnerable or dangerous domestic situations.

(c) We acknowledge that the Bill discusses the availability of subsidies for people who could not afford this initial cost. But as for any subsidy, there will have to be a 'cut-off' point for people are eligible for these subsidies. We submit there should be clarity around what this cut-off point is, and who will administer and enforce this subsidy process.

Clause 60 of the Bill does indicate that the civil legal income threshold will be used to help determine which families can attain a subsidy for the new service. That is a good starting point to help being more clarity in this area.

3.1.2 If this Bill does pass and this FDR service is established, we recommend that:

- The cost to use this service be reduced significantly to ensure all New Zealanders can access the service.
- Greater clarity is needed around who would be eligible for the subsidies for this service.
- Guarantees are needed to ensure that FDR providers that the Ministry of Justice (MOJ) contracts for these services are indeed highly-trained and experienced practitioners who can understand the various contexts disputing parties might come from. We want assurance that these approved providers discussed in clause 60 of the Bill are culturally aware and sensitive, and are located in easily accessible areas for the parties.
- Current levels of counselling sessions remain free or subsidised by the MOJ. Under this Bill, free counselling sessions will be cut from 6 to 1 free session. We believe this Bill is ultimately a cost-cutting set of reforms. But we believe these counselling sessions, if the parties are committed to the process and the counselling services are relevant, professional and cultural appropriate, could be crucial in supporting families and couples to stay together.

## 3.2 Legal Representation

3.2.1 We are very concerned about the changes to legal representation this Bill details.

(a) This Bill proposes three new family court 'tracks' for cases if the mandatory FDR process is unsuccessful. For two of these tracks—the Simple and Standard Tracks—

lawyers are no longer required to represent the parties for these hearings.

- (b) We believe this new emphasis on the parties representing them in court during cases in the Simple and Standard Tracks is highly problematic.
- (c) Many of the families that we have worked with who have used the family court process have arrived at the family court struggling to deal with the dispute or separation. Consequently, these people are experiencing real grief, anger, exasperation and even desperation because of the dispute. We have experience in working with people, often women, who are in the family court process but who are in unsatisfactory, dangerous or abusive relationships with the other party to the dispute.
- (d) Because of the emotions and intensity of the dispute, people cannot always make logical, rational or effective decisions. We cannot see how these very same people can be expected to represent themselves in court, in front of the very person they are disputing and/or afraid of, especially since this after the FDR process has already failed for them. This is a highly untenable position and we strongly urge the Justice and Electoral Committee to review and change these provisions of the Bill.
- (e) We also believe that power imbalances that may have existed in the relationship might also play out in court if this Bill passes. What if English is the second language for one or both of the parties? What if one of the parties has more experience, training or education in public speaking and presenting arguments and the other party does not? We assert that these cases within the Simple and Standard Tracks would not be truly fair and just.
- (f) We believe that experienced lawyers are crucial within the family court process to help the parties make rational decisions and also work towards reasonable outcomes. We also believe that lawyers are needed through **all** of the new court tracks to truly help streamline the family court process. We submit that encouraging self-representation in these tracks will slow down the court process even further as many of these parties would be unfamiliar with the complexities of court and could be unwilling or unable to effectively work towards reasonable outcomes. We also submit that this process would likely lead to more damage for the parties and any children they might have, because they would be more directly involved in the stress of the court case itself and would not have the benefit of a lawyer providing sound advice.
- (g) We also submit that the reduction in assigning a lawyer for child under this Bill is very concerning. The lawyer for

child plays a critical role in any family court hearing, particularly as it helps ensure the child's best interests are advocated for and represented in court. If the use of this role is limited, we want to know how the court will ensure that the child's views and interests are truly considered. We submit that a specialist lawyer for the child is critical and must remain as a mandatory assignation for court for all cases in the Fast Track which involve violence, abuse and vulnerable children.

(h) We are also concerned that there are changes to the use of professional report writers to assist the court. These experts are vital, especially in providing valuable psychological and cultural reports for the court. We do not believe that parties should have to contribute these costs, particularly if the power imbalances and relationship issues we mentioned above exist for the parties.

3.2.2 We submit that these amendments to legal representation in this Bill should not be passed into law. If this Bill does pass, we recommend that:

- Legal representation is made available to all parties for all of the three new court tracks.
- If lawyers are still not allowed for all cases in the Simple and Standard Tracks, we request an amendment in the Bill that would allow parties to access other forms of professional support for their case. For instance, many of our social workers currently support battered and abused women at family court proceedings. If lawyers are prohibited from these tracks, then other qualified, experienced and trusted professionals should be allowed to support people during the court process. If this change does happen, then we submit that those organisations that have staff supporting clients in these cases should be funded for this work, especially as support at court is usually over and above the normal workloads for these organisations.
- The Lawyer for child assignation is used for all cases that fall within the Fast Track, and that this role is not limited by this Bill.
- Greater clarity is needed around who will decide what track a case goes into. We contend that this process needs to be transparent and easy to manoeuvre for families using this system.
- The court must still pay for specialist report writers where they are needed, particularly for psychological

and cultural evaluation reports that provide valuable insights and context about the child's condition and interests.

### **3.3 Other Key Issues**

#### **3.3.1 Interim Orders**

(a) We submit that the court should still have the power to make Interim Orders to trial any care and access arrangements between the parties. We believe this is crucial to see what is and is not working for these parties, and also to ensure the welfare and interests of the child are protected by the court.

#### **3.3.2 If a child is uplifted**

(a) We seek further clarification around the uplifting of children by CYFS. Specifically, if a child has been uplifted and the parents subsequently become involved in a family court hearing, what will continue to happen for that child.

(b) We seek greater safeguards for uplifted children. In recent times the child was housed with other family members. But this is not always the best solution and can (and has) led to more damage and suffering for the child. We submit that a full and proper vetting of any and all potential caregivers during this interim period is crucial by CYFS.

### **3.4 Amendments We Support**

As aforementioned, there are provisions of this Bill that we are very supportive of.

3.4.1 We support the general ethos of the Bill around streamlining the family court process.

3.4.2 We support Clause 51 that increases the maximum penalty for breaching protection orders from two to 3 years imprisonment. We are working towards ensuring that as many people as reasonably possible are not incarcerated in New Zealand. However, we do understand that there are people for whom incarceration is the only option available to ensure public safety. But we hope that this change in the penalty for breaching protection orders can act as a deterrent for any continued abuse or violence from whomever the protection order has been served on. We also want to ensure that the welfare of the child and other partner is protected from any breaches. If this Bill passes in entirety, then we want

guarantees that this change will not be misused by the other spouse or the Police.

3.4.3 We are very supportive of Clause 35, which will broaden the definition of violence. We affirm that including financial and economic abuse as types of psychological abuse is a very helpful addition. Many of our social workers and budgeters have worked with spouses suffering from financial and economic abuse. We applaud the committee for acknowledging this form of abuse with this clause.

#### 4. CONCLUSION

The Government estimates that these reforms to the family court system will save over \$70 million over the next four years and cut the number of cases proceeding through to the family court by 4,000 cases per year. Streamlining this system could have its benefits.

But we contend that on this occasion, the costs and potential damaging effects of this Bill far outweigh the benefits. We have summarised above the critical parts of this Bill that we urge this committee to truly review, analyse, and if necessary, make brave decisions. The Salvation Army is absolutely committed to seeing disputes amicably and efficiently resolved, and ensuring the rights and dignity of people—and especially children—are protected.

These reforms might or might not save money. But they will certainly cause, if this Bill is passed, greater damage and harm to children, families and communities. We urge this committee to oppose the passing of this Bill into law.

Thank you for your consideration of this submission.

Major Campbell Roberts  
National Director, Social Policy and Parliamentary Unit  
The Salvation Army New Zealand, Fiji and Tonga Territory  
+64 27 450 6944 | + 64 9 261 0883 (DDI)  
[campbell\\_roberts@nzf.salvationarmy.org](mailto:campbell_roberts@nzf.salvationarmy.org)