

Submission

from Salt Shakers

Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011

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Salt Shakers is a national organisation promoting Christian values with thousands of subscribers across Australia.

Introduction

Fundamentally family law in Australia should be primarily concerned with the best interests of all parties involved. In particular, the best interests of any children concerned must be given the highest priority, as they are the most vulnerable party in any family breakdown.

Salt Shakers opposes any form of family violence and child abuse. We are saddened by family breakdown which is sometimes the result of such events. Unfortunately, divorce can occur and this is extremely unlikely to be in the best interests of any children.

In family separation and divorce, the involvement of both parents in the raising of the children is the optimum situation. It is in the best interests of the child that they receive consistent input from both parents.

We wish to commend the 2006 changes to the *Family Law Act 1975* (Cth) that implemented 'shared parenting' as the preferred outcome, and all of the positive work that has come from the previous amendment.

The proposed Bill seeks to "provide better protection for children and families at risk of violence and abuse". While this might seem to be a noble cause, this amendment extends the definition of abuse in ways that could be misinterpreted. The Bill reverts back to some of the aspects of the pre-2006 situation, where claims of abuse can be made and the requirement for substantiating those claims has been lowered.

This Bill does not address one of the important aspects of this important debate, namely, the influence of alcohol and drugs in a great deal of the reported domestic and family violence.

Salt Shakers believes that more needs to be done to encourage marriage and commitment, as the research shows that children do best and are happiest when they are raised by their biological mother and father who are married.

Many of the tragic instances of family violence leading to the death of young children being killed are cases where a young child is killed by their mother's *de facto* boyfriend – who is often not the biological father of the child - such cases include Daniel Valerio.

In other cases family violence occurs following bitter separation and divorce proceedings – such as the case of Darcey Freeman, thrown off the Westgate Bridge in Melbourne by her father – and a previous case where a woman jumped off the bridge holding her young daughter.

In summary, Salt Shakers is concerned that the proposed Bill could lead to more problems in the family law system. Instead we recommend more support for families undergoing separation and divorce with the aim of keeping families together and ensuring that children have access to both parents.

The following comments relate to particular sections of the proposed Bill and Explanatory Memorandum.

Section 4(1)

The Bill proposes extending the definition of abuse to include “serious neglect”. The inclusion of “serious neglect” as well as the current categories of sexual abuse and so on, means that the extent of the legislation would be considerably widened.

Salt Shakers believes that the stated types of failures which might be seen to be “neglect” in the proposed Bill, namely the “failure to provide adequate food, shelter, clothing, supervision, hygiene or medical attention”, have the capacity to be abused in custody battles. There are many families who do exist in circumstances where there would be neglect as per this definition. That doesn't mean the children are being abused. Who is to decide what constitutes ‘neglect’? This could result in even more families being split up, and children's custody arrangements affected.

Salt Shakers firmly believes that a loving and caring family, with their biological mother and father, is the most beneficial environment for a child to be raised in. They could live in a loving home, even with one parent, and still be considered by the authorities to be ‘neglected’. A loving family home, even with a single parent, is far more important than some of these measures of so-called ‘neglect’.

A recent study in the UK found that **"life satisfaction is higher for those [children] living with both their biological parents"**.

The study, called ***Understanding Society***, is part of a £50 million, government-funded study. This section of the study questioned about 14,000 households. The study is being conducted by academics from the universities of Essex, Oxford, Warwick and Surrey.

The Telegraph reported that **the study reinforced the central importance of the traditional family unit to children's development.**

The study has found that **"not living with both natural parents has a greater negative impact on a young person's life satisfaction than their material situation"**.

The study found **'Married couples are most likely to be happy with their relationships, while family breakdown does more damage to children than living in poverty'**.

See Study: <http://research.understandingsociety.org.uk/findings/early-findings>

Material possessions are not the only measure that should be used for success. “Serious neglect’ or ‘neglect’ should not be included in the definition of family violence.

Section 4AB

We are concerned with the new definition of ‘family violence’. In particular Salt Shakers believes that there could be many situations where a child may feel “coerce[d] or control[l]ed” by a parent where the parent is actually acting in a legitimately loving and disciplining way.

This definition is further confused by the addition of the phrase referring to this coercion or control 'causing fear' to the family member. Again, this could incorporate numerous home interactions common in almost every household, including time out, a child being sent to their room, etc. If a parent is placing the child's interests first we feel that there is no need to introduce such an open-ended definition.

Furthermore, the definition covers a "wide range of behaviour including assault, sexual assault or other sexually abusive behaviour, stalking, emotional and psychological abuse, and economic abuse".

Salt Shakers agrees that assault, sexual assault and other sexually abusive behaviours should be covered by the definition. However, "stalking" lacks clarity and seems that it could be regularly misconstrued in divorce proceedings. Hence, we have some reservations about this being included.

Another question, would smoking in the presence of children constitute assault, or neglect, and be considered a form of 'abuse'?

The inclusion of "emotional and psychological abuse" a very vague expression, and is very open to interpretation. It should not be included as it stands, at least not without a great deal of clarification. Many things can be construed under this type of so-called "abuse". There is grave concern as to whether such a 'blanket' should be thrown over all forms of "emotional and psychological abuse".

Children might often perceive some action as "abuse" when the parent sees it as discipline and/or something in the best interests of the child. When a divorce or separation is involved there is also the possibility of a child playing one parent off against another and this section opens up a new front of dispute within families.

Section 60B

It should be stated outright that Salt Shakers did not support Australia's confirmation of the United Nations 'Convention on the Rights of the Child'.

If Australia were to prescribe to any of the rights listed in this Convention under the *Family Law Act 1975* (Cth) then these should be specifically stated in the Act. Section 60B is merely a token effort to our "obligations" under the Convention. After all, the memorandum states that, if there is a conflict between the two then "the Act would prevail". If this is the case, what is the purpose of fashioning this new section?

We propose that this Section be eliminated.

Section 60CC(3)(c)

This section is yet another example of undermining the custody process. The proposal for the law to take into account the "responsibilities as a parent" is concerning – this phrase is described as taking opportunities to spend time and communicate with the child.

However, this does not take into account the family paradigm of one parent being the bread-winner. If one parent is in full-time work it is not appropriate to expect each parent to have EQUAL 'opportunities' to spend time and communicate with their children, as the other parent may have much greater opportunity to interact with their children since they are at home. If one parent has custody for much of the time, it is difficult to compare the time and communication of each parent. On the other hand, the non-custodial parent may not spend as much 'everyday' time with the child, but is often seen to provide more 'special treats' and outings because that is often what they do when they have access visits. This section is very short-sighted and does not reflect real-world family dynamics.

While this may not be how this section is used, in most cases, surely it would be more beneficial to reword this section to ensure that it is not misconstrued and abused.

Section 117AB

There is significant danger that a repeal of section 117AB could be used as a manipulation tool in divorce proceedings to overwhelm parenting rights. This could undermine much of the positive work that has been created by the 2006 amendments in regards to shared parenting.

Section 117AB of the *Family Law Act 1975* (Cth) is clearly defined to protect against false allegations or statements being made by requiring those making a 'false allegation' to pay legal costs. Even though the new section allows the court to determine if false allegations are made and determine what costs should be paid, the deterrent of having this stated in the Act is worthwhile. The repeal of this section is unjustified and dangerous. It potentially allows unfounded accusations of child abuse to be unchecked despite the devastating effect this could have on the accused parent and their relationship with their child/children.

The claim that section 117AB operates as a "disincentive to disclosing family violence" is merely a lack of understanding by a parent as to what the intentions of this section are. It is not meant to prohibit **incorrect** allegations, only those which are deliberately **false** and intended to mislead or tell an untruth. A legitimately concerned parent has nothing to fear from this provision. However, unsubstantiated claims should be discouraged and this section seems an appropriate discouragement which should not be removed.

Conclusion

The proposed Bill has some flawed provisions and needs to be re-assessed. We have elaborated on just a few of the problems that Salt Shakers perceives with these changes. Many of these provisions do not encourage what is best for the child and they are likely to be misused by some parents in custody battles.