

Family law contemporary issues

[Sociology](#), [Social Issues](#)



Family law has been broadened in a wide range of areas that the law governs, as over the years the concept of family has been widely diversified due to changes in modern society and community standards. Family law governs areas such as marriage, family relationships, legal rights and obligations of parents and children, adoption and the protection and care of children within a family. However, over the recent years the changes in each area of family law has shown some changes have been effective and others demonstrate the need for law reform.

This is due to the rapid change of the law and changing social standards, therefore the law is attempting to balance the rights and interest of the society and individual family members. The legal recognition of same sex relationships in Australia has dramatically evolved over the years. Same sex relationships have tackled huge issues in regards to marriage, discrimination and property rights. As same sex relationships have been excluded from a number of rights and obligations for example; the legal recognition of same sex marriage.

The Marriage Act 1965 (Cth) defines marriage as 'the legal union of a man and woman with the exclusion of others'. Therefore same sex marriage is void in Australia even those who have married in another country it will be seen as an invalid marriage. Having the lack of legal recognition can have direct consequences to same sex relationships and their families as they are excluded from the protections and rights that normal heterosexual couples and families have.

This is demonstrated in the *Young V Australia (1999)* case, where a Sydney man was refused for a veteran's dependent pension as he was in a same sex relationship. In this incident the United Nations Human Rights Committee (UNHRC) determined the Australian government had breached the International Covenant of Civil and Political Rights (ICCPR), as ' all persons are equal before the law. ' Not only has it breached the ICCPR but it has breach the Sex Discrimination Act 1984.

Therefore, this demonstrates how the legal system is ineffective as there is a lack of enforceability with regards to the role that the international law plays in Australia. In order to create equality in the legal system for same-sex relationships the Australian Human Rights Commission report in 2008 had introduced reforms with the aim to provide same sex couples with the same entitlements as heterosexuals. The most significant reform was the introduction of the Property (Relationships) Legislation Amendment Act 1999 (NSW). This has allowed de facto relationships to have the right to divide property as seen in the *Hope and Brown v NIB Health Fund Ltd (1995)*. In this case the Equal Opportunity Tribunal had played an effective role as it has shown to be successfully in achieving justice and equality for same sex relationships. It has also protected the 2 year old son in which Hope and Brown were now permitted to give their child a family policy for his future. Therefore, the reforms that have occurred in the past decade have been successful as it has given some rights and obligations towards same sex relationships.

In NSW 241 300, reports were made about concerns of child's or young person's safety according to the Special Commission of Inquiry into child protection services NSW. The concern of the protection and care of both children and individual members under both the Family Law Act 1975 (Cwth) and the Crimes Act 1900 (NSW) is the increasing rate of family neglect, abuse and domestic violence. This issue is rapidly increasing each year as the crime rate of children has increased to 70% of young children committing crime due to being neglected or abused in reference to Australian Bureau Statistics (ABS).

The government has made numerous amendments and reforms to the Crimes Act 1900 (NSW) e. g. Crimes (Domestic Violence) Amendment Act 1987 (NSW), due to increased domestic violence cases within the domestic household. Over the years there have been a number of cases where family members have suffered domestic violence which has resulted in some of them murdering their husbands or partners, e. g. R v Heather Osland 1996 (VIC). Therefore, the legal system has shown how further amendments and reforms can protect individual family members effectively.

But the government needs to step up and focus on providing more resources and funds to smaller organisations e. g. Docs. The government has created the Department of Community Services (DOCs) under the Children Young Persons (Care and Protection) Act 1998. This organization helps protect children who are suffering abuse or neglect. Majority of the time Docs have overseen incidents' and have failed to report any sort of child abuse, neglect

or domestic violence. As shown recently in 2012 August 03 in the Sydney Morning Herald (SHM) ' Abuse Children were ignored by a welfare worker'.

The Department of Community Services have failed to protect and prevent children from harm due to being under resourced and not having the adequate resources to protect children. The Australian government should provide efficient resources e. g. having more people involved with better wages in protecting minors. This would therefore be more effective in protecting children and their rights. Without this new reform in the legal system it will increase the number of children who are in great harm, as recently seen in the media ' Ebony report'- " reveals history of Docs neglect".

For individual members to feel safe and protected the law has added extra provisions on the Crimes (Domestic Violence) Amendment Act 1982 which amended the Crimes Act 1900 (NSW), has included victims who suffer from domestic violence have the right to seek AVO's. Many people do not fulfill their responsibility towards their children and sometimes having a divorce within the family can cause major conflicts and struggles on the couple, and most importantly the child.

As the NSW Bureau of Crime Statistics and Research (BOSCAR) shows that inadequate parenting is associated with child neglect, to some extent these are the strongest predictors of juvenile crime as 36% of young people are cautioned. One of the most serious of these cases are children having the thought of committing suicide. As seen in one of the most recent cases Merrett and BASS 2013. This demonstrates how the strenuous tension

between a couple can have on child. As a parent they have the responsibility to ensure that their child receives an education and to discipline their child.

In the re Marion (1991) it demonstrates how the child had no right or say in her medical procedures. Therefore, the United Nations Convention on the Rights of Children (CROC) has not been effective as it has not been ratified, which therefore it hasn't protected the child's best interest. One of the most recent reforms to the Children and Young Persons (Care and Protection) Act 1988 (NSW) is that if a child has broken the law e. g. underage drinking or damages on property, the parents are penalized for their child's actions.

Another reform that has shown to be ineffective is the introduction of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth), this reform involves the equal custody of the child. However, this isn't always the case as the child may end up back with their abusive parent as seen in the *Whitehead v Storn*. The court system has shown to have responded to many issues of different areas of family law however, some of the attempts of reforms have demonstrated to be ineffective.