

Morality, Ethics and Commitment to the Law

- the extent to which law reflects moral and ethical standards

Morality is concerned with what is considered to be right or wrong and includes the notion of ethical behaviour; that is, behaviour that is seen to be good, right, honest, fair and proper. Moral and ethical standards of the community can change over time and will vary from one person to another. With these changes have come law reform.

Or society's idea of what constitutes a family; what the role of the family should be; and the importance of family, marriage and other relationships as social institutions have changed, in the past, behaviour such as adultery could be grounds for a divorce but this is not so today. Family law has been subject to review revision and reform to ensure it remains current and reflects the moral views of society.

Give examples of how the law reflects moral/ethical values:

Area of Family law	Examples
Marriage	
Responsibilities of spouses	
Responsibilities of parents to children	
Alternate arrangements: <ul style="list-style-type: none"> ▪ De-facto couples ▪ Same-sex couples ▪ Single parents ▪ Blended families ▪ Polygamous marriages 	
Children's rights <ul style="list-style-type: none"> ▪ AI/IVF ▪ Surrogacy 	
Birth technology	
Adoption	

Effectiveness of the Law

- factors to be considered when evaluating the effectiveness of law in achieving justice:
 - **for individuals:**
 - A** – accessibility
 - P** – protection and recognition of individual rights
 - R** – resource efficiency
 - E** – equality
 - E** – enforceability
 - **for society:**
 - C** – law as a reflection of community standards and expectations
 - R** – resource efficiency
 - A** – appeals and review
 - B** – balance of individual rights and values and community rights and values
 - E** – opportunities for enforcement

Obstacles faced by women obtaining justice

The Australian Law Reform Commission (ALRC) identifies the common significance obstacles faced by women in obtaining justice. These included:

- Lack of awareness of the law and legal services, due to the nature of domestic violence isolation
- Lack of confidence
- Lack of experience or knowledge about gaining information and negotiating systems
- Lack of child care services when receiving legal advice
- Inadequate information and poor advice
- Police/legal professionals being unaware of women's needs or experiences
- Services failing to provide accurate and appropriate assistance
- Prohibitive legal costs
- Inaccessibility of services
- Lack of appropriate safe waiting areas for women at the Local Court
- The overwhelming Court environment
- Undermining of a women's credibility and minimisation of the problem
- Failure to address the different needs of women

Law Reform

Law reform is the changing of the law to reflect contemporary attitudes and values so that it operates more effectively and efficiency.

- the agencies of reform
 - law reform commissions
 - parliament
 - courts



- the conditions which give rise to the need for reform
 - changing social values
 - changing composition of society
 - new concepts of justice
 - failure of existing law
 - International law
 - new technology

Conditions	Examples of Response
Changing Social Values	
Sexual attitudes/values	<ul style="list-style-type: none"> • Acceptance of single parents, de-facto couples
Public perception	<ul style="list-style-type: none"> • Expectation of 'no-fault' divorce
Relationships	<ul style="list-style-type: none"> • Domestic violence, rape in marriage no longer private issue but seen as crime • FLA 1995 reforms stress responsibility of parent and rights of child • New Relationships Centres to provide greater access to counselling • Acceptance of same-sex relationships
Expectation of parental responsibility	<ul style="list-style-type: none"> • Child Support Scheme • Shared parenting
Recognition of Children's Rights	<ul style="list-style-type: none"> • Intolerance of child abuse
Changing composition of society	
Sexual diversity	<ul style="list-style-type: none"> • Acceptance of same-sex couples
Indigenous peoples	<ul style="list-style-type: none"> • Customary marriages treated as de-facto
Ethnic diversity	<ul style="list-style-type: none"> • Rejection of some cultural norms: <ul style="list-style-type: none"> - polygamous marriages illegal - arranged marriages cannot be forced on couples (duress) - marriages age 18, illegal to marry younger although common in other cultures

New concepts of Justice	
Relationships	<ul style="list-style-type: none"> • FLA 1975 introduced 'no fault' divorce and Family Court
Dispute resolution	<ul style="list-style-type: none"> • Introduction of Family Court, mediation and counselling, consideration of non-financial contributions
Agreements	<ul style="list-style-type: none"> • Parenting plans, pre-nuptial agreements give greater over relationships to individuals
Equality of sexes	<ul style="list-style-type: none"> • Recognition of women's rights – DV, non-financial contributions
Juvenile justice	<ul style="list-style-type: none"> • Increase use of community service orders, warnings and cautions emphasis on rehabilitation, protection by suppressing names, closed courts and closed records.
Compliance	<ul style="list-style-type: none"> • Amendments to law to allow Family Court to impose sanctions on those who breach court orders – extended powers to deal with DV
Need to protect Children	<ul style="list-style-type: none"> • Amendments to law to provide greater protection to children in areas of care by parents (FLA 1996) • Changes to legal status of child • Acknowledgement rights of child to know both biological and birth parents • Stronger legislation and other measures to reduce child abuse
Failure of existing law	
Obsolete laws	<ul style="list-style-type: none"> • Repeal of Matrimonial Causes Act • Amendments to Crimes Act re CV and rape in marriage • Amendments to FLA 1975
Discrimination	<ul style="list-style-type: none"> • Recognition of women's rights – non-financial contributions, splitting of superannuation, DV
Court delays	<ul style="list-style-type: none"> • Emphasis on alternate dispute resolution • Introduction of Federal Magistrates Service
Continuing domestic violence	<ul style="list-style-type: none"> • Extension of BWS to include battered partners • With issue of ADVO, party is required to surrender weapons to police • 2004, police given power to arrest any person likely to commit DV.
Child support scheme	<ul style="list-style-type: none"> • Introduced to force parents to take financial responsibility for children • 2006 reforms to balance the financial burden to be calculated on the salary of one party, both parents will be considered
International law	
Treaties	<ul style="list-style-type: none"> • CROC recognition in changes to FLA and emphasis on rights of the child – added protection of children's rights • CEDAW lead to greater recognition of the rights of women eg recognition of non-financial contributions, laws to provide greater protection from DV
International criticism	<ul style="list-style-type: none"> • Australia has been criticised for its failure to protect the vulnerable, indigenous children and children of asylum seekers
New technology	
Birth technology	<ul style="list-style-type: none"> • Enactment of new laws
Investigation	<ul style="list-style-type: none"> • Advances in forensic science